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NOTE

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Subject:	Trafficking in Human beings Directive – Written comments

Following the Presidency's invitation in the meetings on 31 october and 14 November, delegations will find attached written comments below.

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GERMANY

Statement by Germany following the meeting of the Working Party on Judicial Cooperation in Criminal Matters (COPEN) on 31 October 2023

Germany would like to thank the Spanish Council Presidency for giving it the opportunity to submit a written statement.

The fight against trafficking in human beings is an important concern for Germany. Equal standards of protection within the EU serve to effectively combat this form of crime. Germany therefore has a great interest in ensuring that the trilogue can be carried out swiftly. As already announced in the COPEN meeting on 31 October 2023, Germany would like to emphasize that it considers the General Approach to be a good basis for the upcoming trilogue.

At the same time, the European Parliament's Report with its extensive amendments proposed to the Commission's proposal for a Directive amending Directive 2011/36/EU requires in-depth examination. We therefore ask for your understanding that we still need to maintain a full scrutiny reservation at this stage.

In our view, however, it is already clear that the content and level of detail of the amendments requested by the EP will require intensive discussion in COPEN not only in the format of the JHA counsellors, but also with the capital experts.

Subject to our full scrutiny reservation, we would like to submit the following statement concerning the amendments proposed by the EP to various Articles of Directive 2011/36/EU.

Article 2(3) – definition of exploitation

Germany requests that the EP explain which cases of “surrogacy for reproductive exploitation”, “exploitation of children in residential and closed-type institutions” and “recruitment of children to commit or participate in criminal activities” are to be covered by the terms. Examples would be very helpful for understanding the scope of the proposals. In our view, cases potentially covered by these terms may already fall within the scope of the existing wording of Article 2(3). Furthermore, Germany requests that the EP explain the way in which these acts are connected to trafficking and thus fall within the regulatory scope of the Directive, as well as the need for action at EU level.

- With regard to “surrogacy for the purpose of reproductive exploitation”, the terminology is unclear because there are no recognized criteria for when surrogacy would be considered exploitation. In addition, such cases are likely to be classified as sexual exploitation or forced labour.

- With regard to the “exploitation of children in residential and closed-type institutions”, it is unclear which cases that have not been included so far should be covered and to what extent they are related to trafficking in human beings.
- The “recruitment of children to commit or participate in criminal activities” is already covered by the Directive through exploitation of criminal activity and recruitment as the relevant trafficking act.

In case of a stand-alone scope of application of these proposed forms of exploitation, Germany would also like to point out that their inclusion in Article 2(3) could trigger a far-reaching extension of criminal law in the Member States, since under the unamended point (b) of Article 10(1) in conjunction with point (a) of paragraph 3, the Member States must establish their jurisdiction for all acts committed abroad by their nationals in accordance with Articles 2 and 3, even if the act is not punishable at its place of commission.

With regard to forced marriage, Germany emphasizes that the wording used in the General Approach (“exploitation of forced marriage”) should be kept.

Article 4 – penalties for natural persons

The proposal encroaches considerably on the competences of the Member States due to the mandatory and clearly too detailed sentencing guidelines and is unacceptable from Germany’s point of view. This applies all the more against the background that the existence of aggravating circumstances should lead to a mandatory increase in the penalty. This is likely to trigger a considerable need for implementation in many Member States and would not be compatible with the system of the German Criminal Code. Here, consideration should be given to national peculiarities and the design should be left to the Member States.

Article 7 – freezing and confiscation

Germany rejects regulations on social re-use for reasons of principle. The decision on the use of state revenues including from confiscation of proceeds should be left to the Member States.

Article 8 – non-prosecution and non-application of penalties for victims

Germany welcomes the strengthening of the non-punishment principle but is critical of such a far-reaching and detailed provision on non-prosecution, especially considering that it extends far beyond criminal law and also applies to fines and other administrative sanctions. The existing Article 8 of the Directive offers adequate flexibility, which the EP proposes to replace with rigid obligations that do not leave enough room to take into account the specifics of each individual case.

Articles 11-17 – assistance, support and protection for and compensation to victims of trafficking in human being

Germany supports the objective pursued by the EP to improve victim protection. At the same time, Germany considers the EP's proposals as too detailed, leaving too little room for implementation. Germany would also like to emphasize that the provisions on victim protection must be coordinated with the Commission proposal for a Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Nevertheless, we support the notion that Member States should consider people as victims of trafficking the moment the competent authorities have reasonable grounds for believing that they are victims of human trafficking (Article 11(2)). This could greatly improve the overall detection and identification of victims of human trafficking. However, this does not apply to victim compensation. Member States must remain entitled to grant compensation only after it has been established that the person concerned is a victim of human trafficking.

The provision in Article 12(2) and Article 15(2) is too broad. The assertion of claims for compensation does not require legal representation. If victims of human trafficking could claim legal representation, this would put them in a better position than other victims of violent crimes. Insofar as the claim is asserted in court, the costs of a legal representative are only granted in the absence of own financial resources.

Germany would like to highlight that it cannot support the mandatory appointment of a guardian for child victims of trafficking as proposed in Article 14(2) in this form. It must be critically examined whether there is a sufficient competence for a provision at EU level that extends so far into family law. Moreover, the regulatory systems for the delimitation of parental responsibility and guardianship in the Member States are designed very differently, so that it seems difficult to design a provision at EU level that leaves sufficient room for corresponding national structures.

Germany also considers the proposal in Article 17(-1a) to provide a remedy for any violation of a right under the Directive as too broad.

Clearly structuring the assistance and support provided by the various actors involved (prosecuting authorities, migration authorities, the (specialist) support system and authorities that are likely to come into contact with victims of THB, civil society, etc.) – in a Member State and cross-border – contributes to the effective protection of victims. Germany therefore supports the objective of establishing a transparent mechanism which is readily comprehensible for victims and (professional) users without major hurdles. The requirements set in this regard should, however, take account of the Member States' national particularities and give the Member States sufficient leeway so that a referral mechanism can function properly. In Germany's case this is important on account of its federal structure, since victim protection first and foremost falls within the remit of the *Länder*. For the aforementioned reasons, flexibility will also be required in respect of a rule relating to the appointment of a "national focal point" to make referrals. With regard to the national referral mechanism, we also want to highlight that we see a national referral mechanism not as a separate authority, but as a set of rules, responsibilities and procedures.

The provision in Article 17(2) is too broad. Victims of human trafficking receive victim compensation under German law. Since it is primarily the perpetrator who is obligated to pay compensation, the victim's claims against the perpetrator are transferred to the state insofar as the state has paid compensation. It is not clear what function a "victims' fund" is supposed to have and why the Commission should provide compensation if this is already the task of the Member States.

Article 9(3) and (4) and Article 18 – training, investigative tools and prevention

Germany supports the implementation of evidence-based training and targeted information for people that are likely to come into contact with victims of trafficking in accordance with civil society (Article 9(4)).

Germany welcomes the changes in Article 18 in principle.

With regard to Article 18(1a), it remains unclear what EP understands under "specific plans to prevent trafficking in human beings" and "national child protection systems". It should be possible that the prevention of trafficking in human beings can be part of broader violence protection concepts.

We especially welcome the clear focus on the online dimension/internet/ICT. Also, we welcome the emphasis on education and awareness-raising of men and boys as well as the obligation to conduct in-depth qualitative research.

With regard to the complaint mechanism in Article 18(5), we are unsure who should receive the complaint and what the consequences of such a complaint should be.

Article 18a – criminalisation of the knowing use of services

Germany cannot support the extension of criminal liability for the use of sexual services by victims of trafficking as proposed by the EP in Article 18a(1). A subjective element is indispensable. As regards forced prostitution, Germany has already created a rule establishing the criminal liability of clients of victims of forced prostitution ("*Freierstrafbarkeit*") which makes the use of services, either knowingly or due to recklessness ("*Leichtfertigkeit*"), provided by victims of trafficking in human beings a punishable offence (section 232a (6) of the Criminal Code). Germany will examine whether a similar rule which includes recklessness is also necessary in respect of other forms of exploitation.

Furthermore, Germany rejects the proposal to consider measures against the use of sexual services in exchange for remuneration in Article 18a(1a). Such a provision would reach far beyond the regulatory scope of the Directive. In the interest of a successful conclusion, the negotiations on the important initiative to improve efforts in combatting and preventing human trafficking should not be burdened with a fundamental discussion on the introduction of the Nordic Model or a de facto sex purchase ban in the Member States.

Articles 19, 19a, 19b and 20 – Coordination at national and Union level, Statistics and Action plans

Pertaining to Article 19a, Germany shares the view that comparable levels of data on offenders, victims and criminal proceedings in the Member States should be collected. However, in Germany's view the level of detail in the provision proposed by the EP goes too far. The implementation of the requirements to collect and disaggregate data would require unjustifiable efforts. The proposal should thus be limited to the collection of "data available on the central level of the Member State concerned". Furthermore, Germany would not be able to meet the early deadline for data transmission as proposed by the EP due to the necessary compilation of data from the sixteen Länder. Therefore, Germany insists on the deadline as foreseen in the General Approach.

With regard to the proposals on Articles 19, 19b and 20, Germany underlines that it welcomes strong and effective NACs und NAPs but cannot support this level of detail as it lacks the necessary flexibility for implementation.

FRANCE

Réf. : WK 14545/2023 - Note de la présidence

WK 13598/2023 – Tableau 4 colonnes

Suite à la réunion de la réunion des Conseillers JAI + experts du 14 novembre 2023 au cours de laquelle les délégations ont été invitées à répondre aux questions de la présidence et à faire part de leurs commentaires sur le tableau 4 colonnes en vue des trilogues à venir, les autorités françaises souhaitent indiquer les éléments suivants :

- **S'agissant de l'article 18a relatif aux infractions concernant le fait d'utiliser les services fournis par une victime d'une infraction liée à la traite des êtres humains :**

Les autorités françaises soutiennent la proposition du Parlement européen qu'elles avaient proposée pendant les négociations au Conseil, visant à introduire une distinction entre les cas de recours aux services sexuels, pour lesquels la preuve de la connaissance par l'auteur de la situation de la victime ne serait plus exigée, et les autres cas, pour lesquels la preuve d'une telle connaissance serait toujours exigée.

Courtesy translation :

The French authorities support the European Parliament's proposal which they themselves put forward during negotiations in the Council and to introduce a distinction between cases of recourse to sexual services, for which proof of the perpetrator's knowledge of the victim's situation would no longer be required, and other cases, for which proof of such knowledge would still be required.

- **S'agissant de l'inclusion dans la partie opérative de la directive (nouvel article 2a) d'une disposition sur les infractions commises avec l'utilisation des nouvelles technologies:**

Les autorités françaises soutiennent cette inclusion sur son principe mais sous la forme d'une circonstance aggravante.

Elles proposent par conséquent la suppression de l'article 2a (lignes 32 à 35) et le maintien de la ligne 35h (« *(da) was committed by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm* »).

Toutefois, la rédaction proposée par le Parlement européen leur paraissant à la fois trop précise et confuse, les autorités françaises proposent la reformulation suivante : « ***was committed while the victim has been put in contact with the perpetrator or has been exploited by use of means of information or communication technologies*** ».

Les autorités françaises indiquent que la formulation proposée leur paraît ainsi plus claire et davantage de nature à préserver les victimes dès la mise en contact avec l'auteur. Elles estiment que cette formulation permet d'incriminer également toute utilisation pouvant être faite de l'image de la victime et proposent, si nécessaire, de préciser dans un considérant ce qui est entendu par l'exploitation par le biais des technologies d'information et de communication.

Courtesy translation :

The French authorities support this inclusion in principle but in the form of an aggravating circumstance.

They therefore propose deleting article 2a (lines 32 to 35) and retaining line 35h (« (da) was committed by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm »).

*However, the wording proposed by the European Parliament seeming to them both too precise and confused, the French authorities propose the following rewording: "***was committed while the victim has been put in contact with the perpetrator or has been exploited by use of means of information or communication technologies***".*

In their view, this wording is clearer and more likely to protect victims from the moment they come into contact with the perpetrator. They consider that this wording also makes it possible to criminalize any use that may be made of the victim's image and propose, if necessary, to specify in a recital what is meant by exploitation by means of information and communication technologies.

- **S'agissant des ajouts proposés par le Parlement concernant les sanctions contre les personnes morales, et plus particulièrement les peines d'exclusion de la participation aux marchés publics (ligne 40a du tableau à quatre colonnes) et de restitution de tout ou partie des avantages publics, aides ou subventions accordés jusqu'à 12 mois précédant la commission des délits de traite (ligne 40b du tableau à quatre colonnes tableau) :**

Les autorités françaises sont favorables à ces deux sanctions à l'égard des personnes morales, proposées par le Parlement européen.

S'agissant de l'exclusion des marchés publics, elles proposeront la formulation suivante : « **(ba) exclusion from participation in the procedure of public contracts** »

Courtesy translation:

The French authorities are in favour of these two sanctions for legal entities proposed by the European Parliament.

In the case of exclusion from public contracts, it will propose the following wording: "(ba) exclusion from participation in the procedure of public contracts: "(ba) exclusion from participation in the procedure of public contracts".

- **Concernant la collecte de données et les statistiques (article 19a) :**

Les autorités françaises insistent sur la nécessité de ne pas prendre en compte les statistiques sur la race et l'origine ethnique.

Elles soulignent la tendance du Parlement européen à demander toujours davantage de statistiques et la difficulté à produire des chiffres qualitatifs dans les délais sollicités.

Sur la date de transmission de ces statistiques, les autorités françaises indiquent ne pas être en mesure de fournir ces données pour le 1er juillet, mais plutôt pour le mois de septembre de l'année N+1.

Les autorités françaises soulignent l'importance de conserver la mention « *lorsque cela est possible* » à l'ajout proposé par le Parlement à la ligne 60 sur la fourniture de données ventilées par genre, origine ethnique, handicap, âge, nationalité et forme d'exploitation, sans la restreindre aux seuls cas où cela serait compatible avec la loi nationale. En outre, en l'absence de base de données des personnes effectivement reconnues comme étant des mineurs non accompagnés, les autorités françaises sont défavorables aux deux ajouts suivants :

- ligne 61 du tableau sur le nombre de victimes enregistrées des infractions visées à l'article 2 : « *including the number of children without parental care and unaccompanied minors* » ;

- le nouveau paragraphe proposé par le Parlement à la ligne 61a du tableau: « (aa) the number of victims applying for regularisation and receiving temporary or permanent residence permits as set out in Directive 2004/81/EC, on the residence permit issued to third-country nationals who are victims of trafficking in human beings; (ab) the number of victims holding a part-time or full-time occupation; (ac) the number and type of assistance, support, and protection services accessible to victims, the number of victims accessing or seeking international protection , and the number of cases in which victims benefit from these services and receive compensation ».

Courtesy translation :

The French authorities stress the need to exclude statistics on race and ethnic origin.

They underline the European Parliament's tendency to ask for more and more statistics, and the difficulty of producing qualitative figures within the requested deadlines.

As far as the date for transmitting these statistics is concerned, the French authorities are not in a position to provide these data by July 1, but rather for September of year N+1.

The French authorities stress the importance of retaining the phrase "where possible" to the addition proposed by Parliament to line 60 concerning the provision of data broken down by gender, ethnic origin, disability, age, nationality and form of farming, without restricting it to cases where this would be compatible with national law.

Furthermore, in the absence of a database of persons actually recognized as unaccompanied minors, the French authorities are opposed to the following two additions:

- line 61 of the table, "including the number of children without parental care and unaccompanied minors" on the number of registered victims of the offenses referred to in Article 2.
- the new paragraph proposed by Parliament in line 61a of the table : « (aa) the number of victims applying for regularisation and receiving temporary or permanent residence permits as set out in Directive 2004/81/EC, on the residence permit issued to third-country nationals who are victims of trafficking in human beings; (ab) the number of victims holding a part-time or full-time occupation; (ac) the number and type of assistance, support, and protection services accessible to victims, the number of victims accessing or seeking international protection , and the number of cases in which victims benefit from these services and receive compensation ».

- **S'agissant de l'inclusion d'un plan d'action national (article 19b) :**

Les autorités françaises peuvent accepter le principe d'un plan national, sous réserve de laisser aux Etats membres une certaine flexibilité dans l'élaboration de ce plan. Elles suggèrent par conséquent que ces dispositions figurent en considérant, avec l'emploi de « *should* » plutôt que « *shall* » et qu'en tout état de cause le contenu du plan soit plus flexible en ajoutant à la ligne 68 e : « ***National Action Plan shall include one or several of the followings*** ».

Courtesy translation :

*The French authorities can accept the principle of a national plan, provided that member states are allowed a degree of flexibility in drawing up the plan. They therefore suggest that these provisions be included in the recital, with the use of "should" rather than "shall", and that in any case the content of the plan be made more flexible by adding to line 68 e: "**National Action Plan shall include one or several of the followings**".*

- **Sur les ajouts proposés par le Parlement concernant l'article 20 (lignes 68j et 68k du tableau à quatre colonnes) sur la coordination de la stratégie de l'Union en matière de lutte contre la traite des êtres humains :**

Les autorités françaises partagent les objectifs en matière de recueil de statistiques et de communication avec la coordinatrice de l'UE sur la lutte contre la traite des êtres humains, mais estiment que le mécanisme proposé apparaît particulièrement complexe et qu'il n'est pas de nature à fluidifier la communication d'informations. Elles sollicitent la suppression de cet article.

Courtesy translation :

The French authorities share the EU anti-trafficking coordinator's objectives in terms of statistics collection and communication, but feel that the proposed mechanism is particularly complex and not likely to facilitate the flow of information. They request the deletion of this article.

- **S'agissant de la modification de la disposition relative aux sanctions à l'encontre des personnes physiques (article 4) :**

Sur la liste des circonstances proposées par le Parlement européen, les autorités françaises peuvent accepter les formulations proposées aux lignes 35d, **sous réserve de limiter la liste des situations caractérisant une vulnérabilité particulière**, ainsi qu'aux lignes 35e (« *(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* ») et 35g (« *(d) was committed by use of serious violence or has caused particularly serious physical or psychological harm to the victim* »).

Les autorités françaises, comme indiqué ci-dessus, sont ouvertes à la possibilité de prévoir que la circonstance aggravante relative à l'utilisation des technologies d'information et de communication de la ligne 35h « *(da) was committed by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm* ») soit obligatoire, à condition de retenir sa proposition rédactionnelle.

Elles s'opposent à l'ajout à la ligne 35 f des termes : « *(c) (...) or caused the death of the victim* », dans la mesure où elles estiment que causer la mort de la victime constitue davantage une infraction séparée.

S'agissant de la circonstance aggravante (db) proposée à la ligne 35i (« *(db) was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substance* »), les autorités françaises indiquent soutenir l'objectif du Parlement européen mais ne peuvent en l'état accepter l'inclusion de cette circonstance aggravante dans le texte qu'à la condition qu'elle soit prévue de manière facultative.

Enfin, s'agissant de la circonstance aggravante (dc) prévue à la ligne 35j (« *(dc) the offender has previously been convicted of offences of the same nature.* »), les autorités françaises s'opposent à cet ajout qui ne correspond pas en droit pénal général à la notion de circonstance aggravante.

Ainsi, les autorités françaises proposent la rédaction suivante :

Article 4:

paragraphe 2 :

"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 :

- 1. was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least the grounds of residence status, pregnancy, a situation of dependence or a state of physical, mental, intellectual or sensory disability or distress, living in institutions, such as retirement homes, children's homes, reception centres, detention facilities or accommodation centres for asylum seekers, as well as victims who are stateless and child victims;**
- 2. 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 crime¹;**
- 3. deliberately or by gross negligence endangered the life of the victim or caused the death of the victim;**
- 4. was committed by use of serious violence or has caused particularly serious physical or psychological harm to the victim
(da) was committed while the victim has been put in contact with the perpetrator or has been exploited by use of means of information or communication technologies; by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm;
db) was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances;
(dc) the offender has previously been convicted of offences of the same nature².**

Member States shall also take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstance to an offence referred to in article 2 was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances “.

Courtesy translation :

*With regard to the list of circumstances proposed by the Parliament, the French authorities can accept the wording proposed in lines 35d, **provided that the list of situations characterizing particular vulnerability is limited**, as well as lines 35e (« (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 crime¹ ») and 35g (« (d) was committed by use of serious violence or has caused particularly serious physical or psychological harm to the victim »).*

As indicated above, the French authorities are open to the possibility of making the aggravating circumstance relating to the use of information and communication technologies in line 35h (« (da) was committed by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm ») mandatory, provided that their proposed wording is adopted.

They are opposed to the addition of the words "or caused the death of the victim" to line 35f, as they consider that causing the death of the victim constitutes a more separated offence.

With regard to the aggravating circumstance (db) proposed in line 35i («(db) was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substance »), the French authorities support the European Parliament's objective, but can only accept the inclusion of this aggravating circumstance in the text on condition that it is optional.

Lastly, with regard to the aggravating circumstance (dc) set out in line 35j («(dc) the offender has previously been convicted of offences of the same nature. »), the French authorities are opposed to this addition, which does not correspond in general criminal law to the notion of aggravating circumstance.

The French authorities therefore propose the following wording:

Article 4:

paragraphe 2 :

“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 the grounds of residence status, pregnancy, a situation of dependence or a state of physical, mental, intellectual or sensory disability or distress, living in institutions, such as retirement homes, children’s homes, reception centres, detention facilities or accommodation centres for asylum seekers, as well as victims who are stateless and 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 crime¹;*
- c) *deliberately or by gross negligence endangered the life of the victim or caused the death of the victim;*
- d) *was committed by use of serious violence or has caused particularly serious physical or psychological harm to the victim*

(da) was committed while the victim has been put in contact with the perpetrator or has been exploited by use of means of information or communication technologies; by means of information or communication technologies by creating sexually explicit content featuring a victim of trafficking, including sharing or threatening to share such content, or obtaining economic benefits from it, which places or keeps the victim in a situation of exploitation or vulnerability and causes significant psychological harm;

db) was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances;

(dc) the offender has previously been convicted of offences of the same nature’.

Member States shall also take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstance to an offence referred to in article 2 was committed by means of causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances “.

- **S’agissant de la disposition plus détaillée à l'article 8 sur la non-poursuite et la non-application de sanctions aux victimes :**

Les autorités françaises rappellent leur engagement dans la protection des victimes de traite des êtres humains et leur soutien à l’article 8 tel qu’il est rédigé dans la directive 2011/36.

Elles sont toutefois défavorables à la proposition du Parlement qui, dans la rédaction envisagée, ôte toute liberté procédurale en matière de poursuites et de jugement, ce qui est contraire au principe de l’opportunité des poursuites et pourrait nuire aux victimes des infractions commises dans le cadre de l’exploitation des êtres humains par les autres victimes de cette exploitation.

Courtesy translation:

The French authorities reiterate their commitment to the protection of victims of human trafficking and their support for Article 8 as drafted in Directive 2011/36.

They are, however, opposed to this proposal, which, in the proposed wording, removes all procedural freedom in terms of prosecution and judgment, which is contrary to the principle of discretionary prosecution and could harm the victims of offenses committed in the context of the exploitation of human beings by the victims of such exploitation.

- **S'agissant de la création de nouvelles obligations pour les États membres de prévoir des formations et des outils d'enquête spécialisés (articles 9(3), 9(4) et 9(5)) :**

Les autorités françaises sont défavorables à la proposition du Parlement européen qui vise à introduire des dispositions portant création d'unités spécialisées au sein des services de police et des autorités judiciaires des Etats membres [article 9(3)], s'agissant de choix et de dispositions relevant du domaine de l'organisation institutionnelle et procédurale qui ressortit aux Etats membres.

Elles soulignent que la spécialisation ne répond pas toujours au mieux aux besoins des victimes qui peuvent également avoir besoin d'une procédure pénale rapide et d'un jugement rendu à proximité de leur lieu de vie.

Les autorités françaises sont en revanche favorables à la spécialisation des formations dans ce domaine [articles 18 et 9(4)].

Courtesy translation :

The French authorities are opposed to the European Parliament's proposal to introduce provisions for the creation of specialized units within the police services and judicial authorities of the Member States [article 9(3)], as these are choices and provisions falling within the domain of institutional and procedural organization, which is the responsibility of the Member States.

They point out that specialization does not always best meet the needs of victims, who may also need rapid criminal proceedings and a judgment handed down close to where they live.

On the other hand, the French authorities are in favor of specializing training in this field [articles 18 and 9(4)].

- **S'agissant de l'insertion d'une disposition plus détaillée concernant l'article 11a sur la protection, en particulier, des victimes de traite provenant de pays tiers :**

Les autorités françaises sont réservées sur l'ajout au sein de ce texte de dispositions ayant trait au droit d'asile mais peuvent accepter les propositions du Parlement, et notamment celles prévues à la ligne 49l (« (5) Member States shall ensure that the examination of applications for international protection of victims of trafficking and the assessment of the merits of the application is not linked to a victim's willingness or ability to cooperate with the authorities in the criminal investigation and prosecution of trafficking without prejudice to Directive 2004/81/EC or provisions of national law transposing that Directive. »).

En outre, les références aux directives sur la protection internationale à la ligne 49c (« (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 Council Directive 2004/83/EC1 and Council Directive 2005/85/EC2 or pursuant to other international instruments or other similar national rules »), devaient mentionner les textes les plus récents actuellement en vigueur, à savoir :

- la directive 2011/95/UE du Parlement européen et du Conseil du 13 décembre 2011 concernant les normes relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir bénéficier d'une protection internationale, à un statut uniforme pour les réfugiés ou les personnes pouvant bénéficier de la protection subsidiaire, et au contenu de cette protection (refonte)/ *Directive 2011/95/EU of the European Parliament and of the Council 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) ;*
- la directive 2013/32/UE du Parlement européen et du Conseil du 26 juin 2013 relative à des procédures communes pour l'octroi et le retrait de la protection internationale / *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).*

Courtesy translation :

The French authorities have reservations about the inclusion in this text of provisions related to the right of asylum, but can accept Parliament's proposals, particularly those set out in line 49l (« (5) Member States shall ensure that the examination of applications for international protection of victims of trafficking and the assessment of the merits of the application is not linked to a victim's willingness or ability to cooperate with the authorities in the criminal investigation and prosecution of trafficking without prejudice to Directive 2004/81/EC or provisions of national law transposing that Directive. »).

Finally, the references to the directives on international protection in line 49c (« (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 Council Directive 2004/83/EC1 and Council Directive 2005/85/EC2 or pursuant to other international instruments or other similar national rules »), should refer to the most recent texts currently in force, i.e. :

- Directive 2011/95/EU of the European Parliament and of the Council 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) ;
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).
- **S'agissant de l'insertion d'une nouvelle disposition sur le droit à des conseils juridiques et la protection des victimes mineures, ainsi que de nouvelles règles pour renforcer la protection spécifique des enfants (articles 13, 14, 15, 16) :**

Les autorités françaises estiment que ces dispositions relèvent exclusivement de la directive 2012/29 relative au droit des victimes et dont la révision est actuellement en discussion au sein du Conseil.

Elles rappellent que la directive 2012/29 constitue l'instrument principal de protection des droits des victimes et que si des dérogations ponctuelles peuvent être prévues dans des *lex specialis*, cela ne doit être le cas que dans le cadre de besoins spécifiques d'une catégorie précise de victime.

Les autorités françaises considèrent que l'accès à un avocat et la prise en charge des mineurs victimes sont des droits essentiels qui s'appliquent aux victimes de toute infraction et non uniquement aux victimes de traite des êtres humains.

Courtesy translation :

The French authorities consider that these provisions fall exclusively within the scope of Directive 2012/29 on victims' rights, the revision of which is currently under discussion within the Council.

*They point out that Directive 2012/29 is the main instrument for protecting victims' rights, and that while specific derogations may be provided for in *lex specialis*, this should only be the case in the context of the specific needs of a precise category of victim.*

The French authorities consider that access to a lawyer and care for minor victims are essential rights that apply to victims of any crime, not just victims of human trafficking.

- **S'agissant de l'article 17 sur l'indemnisation des victimes :**

Les autorités françaises s'opposent à l'instauration d'un droit au recours tel que prévu à l'article 17 a) («Member States shall ensure that the victims of trafficking have the right to an effective and in due time legal remedy under national law in the event of a breach of obligations deriving from this Directive »), c'est-à-dire sans précision sur le type de recours ni sur l'étendue de ce dernier, en cas de non-respect de la directive. Elles précisent qu'il est impossible d'introduire un recours judiciaire pour des mesures non juridictionnelles.

S'agissant du droit à une indemnisation intégrale des victimes de traite par l'Etat, les autorités françaises, si elles partagent cet objectif, estiment qu'il s'agit de prévisions engageant le budget des Etats membres qui n'ont pas leur place au sein de cette directive.

Courtesy translation :

The French authorities are opposed to the introduction of a right of appeal as provided for in Article 17 a) («Member States shall ensure that the victims of trafficking have the right to an effective and in due time legal remedy under national law in the event of a breach of obligations deriving from this Directive »), without specifying the type of appeal or its scope, in the event of non-compliance with the Directive. They specify that it is impossible to seek judicial redress for non-judicial measures.

With regard to the right to full compensation from the State for victims of THB, the French authorities, while sharing this objective, consider that these are forecasts involving the budgets of the Member States, which have no place in this directive.

- **S'agissant de l'insertion d'un nouvel article 18 sur la prévention, incluant ainsi les obligations concernant la recherche, les programmes éducatifs et les mécanismes de réclamation :**

Les autorités françaises rappellent l'intérêt de la prise en compte des vulnérabilités et de leur cumul, mais font part de réserves rédactionnelles sur la mention de « *l'intersectionnalité* » et proposent plutôt la mention « indicateurs de formes multiples de discrimination », plus claire.

En outre, elles soulignent qu'en raison du fait que toutes les victimes potentielles doivent faire l'objet des mêmes mesures de sensibilisation et d'information, l'approche « *gender-based* » ne semble pas opportune et peut créer une forme induue de discrimination.

Courtesy translation :

The French authorities reiterate the importance of taking vulnerabilities and their accumulation into account, but express editorial reservations about the reference to "intersectionality" and propose instead the reference to "indicators of multiple forms of discrimination", which is clearer.

In addition, they point out that, given that all potential victims must be subject to the same awareness-raising and de-victimization measures, the gender-based approach does not seem appropriate and may create an undue form of discrimination.

LUXEMBOURG

As requested, Luxembourg would like to submit its comments to the above mentioned note. We would like to point out that these are preliminary comments and that we have to maintain a scrutiny reservation until we are able to fix our position on several, more political, issues with other relevant actors and stakeholders, especially after the parliamentary elections from October this year.

a) Article 2 (3) concept of exploitation

We are of the opinion that there is a need of clarification on these new concepts or forms of exploitation. What is meant by “surrogacy for reproductive exploitation”? Would surrogacy be treated as THB no matter the circumstances or only if the surrogate mother e.g. has been victim of exploitation?

We also need clarification regarding “exploitation of children in residential and closed-type institutions, or the recruitment of children to commit or participate in Criminal activities”:

As for the exploitation in institutions, we are wondering about the form of exploitation this could represent and what kind of institutions are meant?

As for the Criminal activities, we would like to know what would be the difference to the already existing general “exploitation of Criminal activities”? If the victim is a minor we are normally in the case of aggravated circumstances. The question is why the parliament wants to introduce this specific form for child victims?

b) Article 4 – Penalties for natural persons

We only have one comment regarding the aggravated circumstance under dc) (row 35j): what is meant by “offence of the same nature”? Only human Trafficking or other “related” offences like pimping, migrant smuggling etc. ?

c) Article 8 – Non-prosecution and non-application of penalties for victims

We would need to have more explanations on the intentions of the Parliament regarding Article 8 and especially the addition under row 47 d and 47 e.

As for the provision in row 47 d, we are wondering about the cases where the victim has entered the territory irregularly by its own and has become a victim of THB only later on?

Also we need to understand what EP means with “annul any related penalties and to expunge their Police and Criminal records...”.

We can understand why the EP is eager to introduce the option under 47 e because for some forms of exploitation, it is obvious that the victims would never cooperate with the law enforcement or judicial authorities. Nevertheless, it should not be introduced as a general clause applying for each and every case.

It is crucial to remind that trafficking in the vast majority of the cases can only be investigated and prosecuted because of the declarations of the victims, so cooperation with law enforcement and judicial authorities is essential to prove that there is a case of THB. Sometimes it happens that it is difficult to establish who is victim and who is the offender. Therefore, a proper and careful investigation has to be carried out. This is the reason why we are of the opinion that the assessment under 47 f should be carried out by law enforcement mainly and assisted by specialised victim support services if needed.

d) Articles 11 etc. on Assistance

We have to consult with the relevant stakeholders.

e) Articles 9 et 18

We have to consult with the relevant stakeholders.

f) Article 18 a

Scrutiny reservation as internal discussions are still ongoing.

g) Articles 10 etc.

For identified victims it should be no problem to obtain the information required in row 60 but it will be tricky for detected victims. Every association/organization can “detect” a victim and those victims are not necessarily identified afterwards by the Police because sometimes they prefer to stay anonymous.

As for the content of the action plan, the requirements of the EP are quite ambitious and very detailed. We would prefer to have more general provisions.

As soon as we are able to give more detailed observations we will come back to you. In the meanwhile, we wish you good luck for the upcoming negotiations.

NETHERLANDS

The Netherlands would like send in the following comments with regards to the proposed amendments of the EP, following the meeting of the 14th of November. Some of the comments refer to articles which have not been explicitly discussed during this meeting but we chose to include them to have a complete overview of our opinion until now.

We consider it crucial that the proposal is proportional, effective and enforceable in order to achieve the objective of the proposed directive. In our view some of the amendments fall outside the scope of the Directive and with regards to some of them we prefer to maintain the wording which was previously agreed upon within the Council.

With regards to article 2(3):

- The Netherlands cannot agree with the proposals of the Parliament to go back to the original proposal of the Commission on illegal adoption and forced marriages.
- The Netherlands does not consider all cases of forced marriage and illegal adoption to be human trafficking, as originally proposed by the Commission and also now by the Parliament. As far as we are concerned, illegal adoption and forced marriage are not by definition human trafficking and an element of exploitation needs to be present for cases to fall under the directive.
- In previous negotiations we therefore proposed an alternative text which was supported in the Council. We would like to hold on to that text of the General Approach in which a clear link is made between illegal adoption and forced marriage and the aspect of exploitation:

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

- In general we are of the opinion that the article should not use such an exhaustive list of phenomena in order to guarantee that the phenomena mentioned in the article are not seen as an exhaustive list, and the article remains applicable to crimes that fit the definition of human trafficking but are not explicitly named in the text.

- Therefore we are not in favour of adding surrogacy, exploitation of children in residential and closed-type institutions, or the recruitment of children to commit or participate in criminal activities, to article 2.
- In case other Member States are of the opinion that these phenomena should be added, the same wording with regards to the link with the exploitation element has to be made. These phenomena are not considered human trafficking by definition. Also for these phenomena the Netherlands proposes to use the text proposal which has been agreed upon in the General Approach, which refers to the element of exploitation.
- And also we suggest to add the link “illegal” to the wording of surrogacy.
- We would also like to receive clarification on what is meant by “the exploitation of children in residential and closed-type institutions, or the recruitment of children to commit or participate in criminal activities”.
- Our text proposal is as follows:

*Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, , ~~“or forced marriage, or 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** forced marriage, **OF** illegal adoption **OR OF ILLEGAL**” ~~is added at the end of the paragraph~~ *surrogacy for reproductive exploitation, exploitation of children in residential and closed-type institutions, or the recruitment of children to commit or participate in criminal activities.*’;*

- We are of this opinion because there are also cases of forced marriage and illegal adoption that do not involve (intent of) exploitation. Illegal adoption sometimes takes place purely out of a desire to have children. In that case, a child may be brought to the Netherlands illegally, but there is no question of (the intention of) exploitation.
- Forced marriages also take place because of culture, or loyalty to the family, such as the desire to restore the family's honour. This requires a different approach from tackling human trafficking. But rather an approach to domestic and honour-based violence.

- The same applies to surrogacy, which is certainly not trafficking in most cases. It should be demarcated when there is responsible surrogacy, as is now being regulated in our Bill on Children, Surrogacy and Parentage, and when there is unacceptable surrogacy. Only in exceptional cases can surrogacy fall under human trafficking, for example when the surrogate mother is pressured to participate in a surrogacy programme. The same applies to the other phenomena surrounding children that the EP also wants to add.
- Moreover, without exploitative aspects, surrogacy within the Netherlands falls under the law of parentage as part of family law and not under criminal law. Given Article 81(3) TFEU, the EU lacks the power to materially regulate, in a general sense, an area of family law through this directive. As well as forced marriages outside the context of exploitation.

The abovementioned elements are a red line for the Netherlands.

With regards to article 2a and 4:

- The Netherlands is supportive of the proposal of the EP to follow the General Approach in the sense that the original proposal of the EC will be deleted, if the use of technology will be added as an aggravating circumstance under article 4. With regards to the wording we would like to note that it is important that the aggravating circumstance is formulated in such a way that it is congruent with the DSA
- With regards to the other aggravating circumstance under article 4 the Netherlands would like to keep a scrutiny reservation.

With regards to article 6:

- We propose to go back to the wording of the General Approach, since that wording is coherent with the text in other Directives that are being negotiated.
- Another reason that we prefer the wording of the General approach is that the 2 extra proposals of the EP, (ba) exclusion from participation in public contracts (bb) recovery of some or all public benefits, aid, or subsidies granted for up to 12 months preceding the commission of the offences of trafficking are hard to incorporate in our current criminal law. As the wording in the EP proposal seems to suggest that we should recover all public benefits, aid or subsidies before it is established that financial gains were obtained through human trafficking or another criminal offense.

With regards to article 7 (and recital 7):

- On the issue of asset recovery and confiscation The Netherlands believes that asset recovery and confiscation should preferably be dealt with in the proposal for a directive on deprivation and confiscation (EUR-Lex – 52022PC0245 – EN – EUR-Lex (europa.eu)) and not separately in the trafficking directive for the benefit of this group of victims.
- Regarding the EP's proposal to retain or delete article 7 we have no strong opinions. However, if the article remains, we have a preference for the Commission's original text proposal (and the reference to the yet to be adopted Confiscation Directive).
- The Netherlands does not support the EP amendment on the setting up of a victim fund, as it prescribes that confiscated assets should be used for victim compensation or invested in further investigations into human trafficking cases. This prescription is problematic because confiscated assets flow back to the state treasury in The Netherlands. And also it blocks other seizure procedures that might take place in favour of the victim.
- If art. 7 is maintained, the part of the EP amendment referring to the use of compensation to victim could be adopted, but without the use for victim support and investigation.
- In that case our text proposal is:

Member States shall take the necessary measures to ensure that frozen and confiscated proceeds derived from, and instrumentalities used for the commission, or contribution to the commission, of the offences referred to in this Directive are used, as a matter of priority, to provide ~~victims support, assistance and protection, including through direct compensation of victims and further invest into investigation and prosecution of trafficking cases.~~”;

The elements of not having a compensation fund is very important for the Netherlands.

Regarding Article 8:

- The Netherlands cannot agree with the amendment of the Parliament on non-punishment. It broadens the scope of the non-punishment principle from "criminal activities" to "unlawful acts" (paragraph 1). The latter term may also include non-criminal acts (e.g.: unlawful acts). In this way, the non-punishment principle would be given a much broader scope than required by, for example, ECtHR case law. The Netherlands does not consider this desirable.

- As mentioned before we are of the opinion that the decision whether or not to prosecute someone should be left to the Member States themselves and not depend on the fact that the person is a victim.

The Netherlands proposes to not amend the article on non-punishment and this is very important for the Netherlands.

Regarding Articles 9(3), 9(4)

- The Netherlands is positive about the proposals to act more on the prevention side of human trafficking. We are of the opinion that the proposed amendments go in too much detail and the general idea and aim already implicitly included in the articles 9 and 18. Therefore we propose to hold on to the original text.

With regards to the Provisions on assistance to victims 11, 11a, 12(2), 13(2a), 13(2b), 14(1), 14(2), 14(3a), 14(3b), 15(2), 15(3a), 16(1), 16(4) 16(5a), 17:

- Regarding the several articles that focus on extra support for victims the Netherlands can agree that in general extra support for victims is a positive development. However, due to time constraints we have not been able to examine all articles proposed by the EP and we therefore would like to apply **a scrutiny reservation**. We think it is important to make sure that not all items are already being negotiated within other Directive such as the Victims' Directive.
- The amendment of the Parliament of article 11 about "decoupling the residence permit of third-country nationals from cooperation in criminal proceedings" does not correspond to current Dutch policy.
- The current aims of Dutch policy are twofold, to protect victims and to bolster our ability to effectively deal with perpetrators. In this sense our policy is partly aimed at promoting the detection and prosecution of those guilty of human trafficking as much as possible. In light of this, the Netherlands has established a link between cooperation of third-country nationals in the criminal process and the granting of residence rights. We are of the opinion that it is very important that victims and witnesses of trafficking report human trafficking by filing a criminal case and would like the text of the article to reflect that.

- Regarding the amendment of the parliament of article 12(2) we would propose to add the word without unnecessary delay. While we support the intention behind the paragraph the wording used “legal counselling without delay, provided in a language that they can understand” might turn out to be difficult in practice.
- Concerning the EP’s proposal for art. 17 - new rules on remedies and compensation to victims - the Netherlands is of the opinion that rules on the compensation of victims should be regulated through Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ([COM/2023/424 final d.d. 12-7-2023](#)) and do not have a place in the directive on human trafficking. If the current art. 17 were to stay in place in its current wording we have some additional comments. While we support the general idea that member states have an active or facilitating role in retrieving the compensation, that has been awarded to the victim during the criminal proceedings, from the offender. In the Netherlands the State collects the compensation in case the judge has sentenced the offender to pay compensation to the victim. It is an advantage for the victim because he or she doesn’t have the burden of the execution of the verdict concerning the compensation. On behalf of the State the Central Judicial Collection Agency tries to collect the compensation from the offender. If the offender has not payed the full amount of the compensation to the victim within a period of eight months, the State pays the compensation upfront eight months after the final judicial ruling. This upfront compensation is capped at an amount of € 5000. Grave violent and sexual offences are an exception to this cap.
- We therefor consider the proposal of the European Parliament for art. 17 is not proportional. As we are of the opinion it is not a task of the government to take on the full responsibility of the victim and the convict. In our view the state’s responsibility for compensation is less far-reaching than that of the liable party. We consider the proposed obligation to go beyond what is necessary. An alternative would be a duty for member states to collect the compensation and to forward the payments made by the offender to the victim.

With regards to article 18 and 18a:

- Art. 18 : The Netherlands has a **scrutiny reservation** with regards to art 18.

- Art 18a paragraph 1: The Netherlands cannot agree to the proposals of the EP with regards to article 18a (1). We cannot agree to deleting the aspect of “knowingly use” when using services of trafficking victims in the proposal of the Parliament. The Netherlands believes that criminalising individuals without a requirement of intent (or even guilt) is at odds with our principles of culpability in criminal law.
- Regarding recital 9: With regards to the proposal that Member States may impose stricter rules we are of the opinion that it is sufficiently clear that the Directive gives minimum rules, there is no need to make this more explicit, nor is it appropriate at EU level. On the one hand, the approach in the General Approach gives scope to take criminal action against abuses on the demand side (users) and on the other hand - because of the knowledge-requirement - does justice to the principles of criminal law.
- Regarding paragraph 1a of 18a: The amendment to consider criminalising prostitution as such is something the Netherlands cannot agree with. In the Netherlands, sex work is a legal profession. The Netherlands believes that a regulated prostitution system ensures visibility, provides sex workers with legal workplaces, resulting in better and safer working conditions (with specific protective rights) and social security for sex workers.
- Prostitution will always take place. Criminalisation of clients or sex workers is unlikely to lead to the disappearance of prostitution. A system of criminalisation will potentially increase the illegal market, it will potentially increase the risk of exploitation and violence, and it will lead to increased vulnerability for sex workers who are forced to offer their services in secret. We believe that member states should be allowed to be responsible for shaping their own prostitution policies.

The changes to article 18a are a red line for The Netherlands.

Regarding article 19:

- The proposals with regard to the installation of a National Anti-trafficking Coordinator we are still studying the proposals and would like to know more about the scope and the responsibilities of this coordinator. And whether the coordinator can be part of the government structure or not.
- We are awaiting the proposals of the Presidency on this particular article.

With regards to article 19a:

- With regards to the proposals of the EP on the article 19a with regards to the data, the Netherlands is of the opinion that it would be very important to have clear definitions about the several numbers and figures we would like to collect together. This to make sure Member States send in the same information and therefore it would be possible to compare to the information.
- We therefore prefer the compromise previously reached and would like to go back to the text as agreed upon in the General approach.
- From a principal point of view we wonder if collecting data on racial, ethnic and disability would be correct. In our law that is forbidden.

With regards to article 19b on a National Action Plan:

- The Netherlands has an action plan but we would like to keep the content, the coming about and the monitoring of it at national level. We prefer that the amendments will be deleted or at least modified to come in line with our point of view.
- The amendments in the lines 68e and 68f are too detailed.

Regarding article 20: Coordination at national and Union level,

- The Netherlands would like to keep the original article 20, since the content is clear enough and works well at the moment.

AUSTRIA

Preliminary comments on the Parliament's report on the proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

The preliminary comments are subject to a scrutiny reservation by AT.

Art 2 (3)

AT is open to discuss the addition of examples for exploitation. However, there is a need for a legal definition of the new forms of exploitation proposed by the Parliament, especially the "exploitation of children in residential and closed-type institutions, or the recruitment of children to commit or participate in criminal activities." Surrogacy is already partially covered by the national provision on trafficking in human beings § 104a ACC.

Art 7

AT is for the retention of the general approach and not in favor of special provisions compared to the Proposal for the Directive on asset recovery and confiscation.

Art 8

Austria can only give preliminary statements regarding Art 8. The non-punishment principle in AT is implemented in § 10 ACC and also a decree by the Ministry of Justice. As Art 8 is formulated in the current version, it could possibly also be implemented by way of diversion. So, beyond that, there is no impunity. In reality, this is not a special regulation for victims of human trafficking. In this respect, a more generous regulation would probably be conceivable. The only thing is: apart from the question to what extent a special treatment of trafficking victims compared to other victims of crime could appear to be objectively justified, the new version of Art. 8 proposed by the EP is rather vague and therefore cannot be assessed definitively.

Provisions on assistance to victims

AT is for the retention of the general approach. AT is against the introduction of a separate victim's fund. Similar (but not necessarily identical) proposals from the EP are being discussed parallel in several instruments and we are referring to the position represented there. The budgetary sovereignty of the MS should be respected.

Art 18a (1)

Austria is clearly in favor of maintaining the requirement of knowledge and against any differentiation between sexual exploitation and other forms of exploitation.

(1a)

This point is of optional nature. As already noted in the previous COPEN meetings, AT is opposed to the criminalization of the acquisition of sexual services (in the context of prostitution per se), even if this were only optional.

(1b)

Regarding knowingly, reference should be made to the negotiations in the COPEN meetings. In Austria, the knowing use of services provided by victims of human trafficking whose labor is exploited is often punishable under Sections 12 (3) and 104a Austrian Criminal Code due to the broad scope of the offense. The provisions of § 28a Act Governing the Employment of Foreign Nationals (AuslBG) and § 116 Austrian Alien Police Act (FPG) are also relevant.

Knowingly using the services of victims of human trafficking who are exploited for organ removal is also punishable under Austrian criminal law (Sections 12 (2), (3), 85 (2) ACC).

With regard to the forms of exploitation of begging, the commission of punishable acts and, pro futuro, forced marriage or illegal adoption, it is practically inconceivable that the services of such victims of human trafficking could be knowingly utilized outside of a determination or contribution to human trafficking. This also applies to the forms of exploitation of children for criminal acts or in institutions proposed by the EP.

With regard to the form of exploitation of surrogacy proposed by the EP in Art. 2 para. 3, the knowing use of this is currently not yet punishable in AT (possibly §§ 12 case 3 in conjunction with 104a ACC, if exploitation is involved).

Any form of criminal liability for negligent conduct in the present context is strictly rejected by AT.

AT supports the Non-Paper of the Netherlands and Belgium.

Sanctions

AT opposes 35l (obligatory additional fines). Regarding 35j, in which a relevant previous conviction should lead to a higher penalty as an "aggravating circumstance", is also clearly rejected by AT, as this cannot be reconciled with the national criminal law system. AT points out that this topic is also being discussed in other directives at the same time; it is important here to consider the positions from the other directives and to ensure consistency.

POLAND

Poland's written comments 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

We would like to thank you for the opportunity to provide written comments. As a matter of principle, Poland supports all measures aimed at reducing the phenomenon of human trafficking as much as possible.

However, Poland would like to raise a number of issues related to the doc. 14545/23 and EP's proposals:

1. At the beginning, it should be noted that Poland objects to the contrasting of the concepts of gender and sex, as proposed by the EP, for instance in recitals 4b and 10 or on several occasions in Article 1. It again points out that the term 'gender' is not reflected in primary law of the European Union and contradicts the Polish constitutional order. Poland reserves the interpretation of the term gender as identical to the unambiguous and well-established term sex. It is also necessary to eliminate from the draft all ambiguous expressions - in accordance with the principle that the law, and in particular criminal law, should be formulated in an unambiguous and comprehensible manner. Examples include expression such as "gender dimension".
2. **With regard to offences committed using information and communication technologies (Articles 2a and 4 (da) of the Parliament's report),** Poland remains flexible in recognising the need for legislative changes appropriate to the increasing digitalisation and the growing threat of human trafficking offences committed with the use of the Internet.

3. At the same time, the current wording of the content of line 35h (da) refers to the criminalisation of the creation of sexually explicit content, whereas it should also focus on the form of presentation of such content, which would not be created, but merely presented. In this respect, the suggested content could be given the wording "presenting or creating". This would allow this interpretation to accommodate both materials presenting a person actually existing as well as his or her image that has been artificially created. At the same time, the criminalisation associated with the presentation of the material in question should not be conditional only on obtaining economic benefits, but on obtaining any kind of benefit (e.g. any kind of benefits; obtaining economic or any kind of benefits). Furthermore, with regard to the effect of causing "significant psychological harm" to the victim, it should be submitted that, in order to protect potential victims, the Directive should refer to the occurrence of any psychological harm, not only "significant". Such harm may already be caused by the mere posting of particular content using information and communications technology. Taking this into account, a person should be identified as a victim already at the moment when such content is made available by the perpetrator and not only when the harm is "significant".
4. At the same time, Poland remains flexible with regard to proposals for potential penalties, **indicated in Article 4.**
5. **With regard to the proposed Article 8,** Poland accepts the principle of non-punishment of persons who are victims of trafficking in human beings for illegal crossing of the border and illegal stay in the territory of the State Party, as well as for other prohibited acts they were forced to commit in relation to trafficking in human beings. However, it should be ensured that the proposed provisions of the Directive do not lead to victims of trafficking in human beings being granted an automatic right of permanent residence or protected from legal liability for acts, committed voluntarily. The provisions of the directive should be formulated in such a way that there is no risk of making it legally impossible to deport a victim of trafficking in human beings who subsequently breaks the emigration regulations of their own free will. This may be the case when such a person, after benefiting from the necessary assistance, does not obtain the right to reside and, having had the opportunity to safely return to the country of origin, does not use this opportunity. A similar situation may occur when a person who was previously a victim of trafficking in human beings becomes an undesirable person e.g. due to extremist activities.

6. **With regard to the proposed Article 17,** Poland is critical of the EP's proposal to introduce a solution regarding compensation for victims. Among other things, this solution may result in potentially huge costs for the state budget. Compensation is intended to compensate victims for their losses, and the amount may vary depending on the nature of the crime and the effects it has had on the victims. The increased cost of compensation payments can affect the budget balance, forcing a reallocation of resources allocated to other areas. In addition, the payment of compensation directly by state authorities, as proposed by the EP, will generate additional administrative costs associated with handling the process. Poland's position is that while ensuring justice and support for victims is important, a balanced approach to funding this objective is also necessary.

ROMANIA

Line 54 – Art. 18 prevention. *We can be flexible taking into consideration that the discouraging demand can generate a positive impact in the sphere of reducing the vulnerability to trafficking of persons at risk of sexual exploitation and is likely to underline the firm commitment of the European states in respecting the provisions of some very important instruments in the field of human rights, namely: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Additional Protocol, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Rights civil and political, the Universal Declaration of Human Rights and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, etc.*

Line 61- art. 19 statistical data: *We underline that, currently, there is no clear and common definition and understanding of the concepts of presumed/identified/detected victim, which may lead to a non-uniform application of the present proposal of the Directive (EU) and also an unclear situational picture of the THB phenomenon (a person which is considered a presumed victim in a MS may not have same status in another MS due to the difference between national legislations).*

We maintain the previous observation regarding the clarification of the notion of "registration institution, as it is unclear what is meant by such phrase; each institution and/or organization that comes into contact with the victim of human trafficking due to their duties, will register the victim, therefore, a victim can be registered with different organizations and institutions. From a statistical and indicative on anti-trafficking actions point of view, we consider it necessary to provide data on the organization that granted the victim such status according to national legislation.

Regarding the additions proposed by the EP regarding Article 20 (line 68j and 68k of the four-column table), we support the COM reply to the EP on “coordination structure” , respectively: The Commission recalled that the network of national rapporteurs and the civil society platform already exist (doc. WK 14545/2023).

FINLAND

Written comments of Finland on the EP report on a Directive on preventing and combating trafficking in human beings and protecting its victims (3 November 2023)

Finland would like to thank the Presidency for the possibility to send written comments. Due to the seriousness of human trafficking offences, the Finland considers it important to combat human trafficking and to identify, assist and support victims of human trafficking.

We are still scrutinising the EP report on the national level. Our general premise is that, we support the general approach (GA) that achieved at the beginning of the year under the excellent Swedish Presidency and which reflects the views adopted quite unanimously in the working group. In addition, GA in many respects is based on the Commission's original proposal, which is the result of thorough preparation.

Article 2(3) – minimum definition of exploitation

The additions proposed by Parliament are partly unclear, particularly in the context of trafficking in human beings when looking the means and methods of committing the crime. They are also partly included in the forms of exploitation already mentioned in the paragraph (sexual abuse and exploitation of criminal activities). Nor does it seem necessary or appropriate for the European Union to differentiate between global (e.g. Palermo Protocol) or broadly regional (Council of Europe Convention) definitions of trafficking in human beings. There must be a clear, justifiable need in order to start opening up a comprehensive list of the concepts of exploitation. The necessary clarifications can be made in the recitals.

Article 4 - penalties for natural persons

Questions of penalty scales must respect the characteristics of national criminal justice systems. This also applies to how different types of crimes fall within the framework of national penal scales. Offences punishable by a maximum sentence of imprisonment of at least ten years must be particularly serious. The additions proposed by Parliament concern acts, which are supposedly already punishable in the Member States and are punishable separately when committed in connection with the crime of human trafficking, which increases the penalty. The last criterion of “the offender has previously been convicted of offences of the same nature” is unusual in the context of the penalty scale.

Article 8 - The provision on non-prosecution and non-application of penalties for victims

The current Article 8 is of a general nature. The provision on non-prosecution and non-application of penalties for victims is an important issue in which clarification and supplementation of the regulation may be necessary. In view of this, Parliament's proposals may be justified in some respects. At this stage, as we are still scrutinising the EP report on the national level, it is not yet possible to take a detailed position on all the issues, but this needs to be examined in greater depth.

Articles 7, 11, 11a, 12(2), 13(2a), 13(2b), 14(1), 14(2), 14(3a), 14(3b), 15(2), 15(3a), 16(1), 16(4) 16(5a), 17 – Assistance, support and protection for and compensation to victims of trafficking in human being obligations of national referral mechanisms and focal points

We support the GA. This also applies to Article 17 and 7, on which, however, there are already some comments at this stage:

- 17(1a) is not necessary. In general, provisions on compensation to victims under state compensation should be included in a horizontal provision.
- It is unclear what the word "effective" added to 17(1) is intended to achieve. Also the addition that victims' access to the compensation system should be ensured, regardless of whether legal proceedings have been initiated must also be assessed.
- Finland is strongly against the proposals of the European Parliament on binding rules regarding the use of confiscated assets in Art. 7(2) and 17(2). This is a red line for us, as this kind of earmarking of individual revenue items of the State for a particular purpose would be against the budgetary autonomy of Member States and the budgetary power of our national Parliament, as laid down in the Constitution of Finland.

The rules proposed by the EP would also entail important practical problems. If provisions on earmarking of confiscated assets were taken into this instrument, the same would happen in the future instruments too. As a result, there would be numerous (possibly overlapping and competing) rules on earmarking, which would make the national enforcement system very complicated.

These matters are sufficiently covered in the current Confiscation Directive (2014/42/EU, Article 10(3)) and in the Commission proposal for a Directive on Asset Recovery and Confiscation (Article 17(2), which remained as such in the GA).

When it comes to Article 7 otherwise, we support the GA and the deletion of the Article. We may nonetheless consider the proposal of the EP to include a general reference to the upcoming Directive on asset recovery and confiscation. This is the maximum concession, since more specific rules on these matters belong to the said Directive, not in sector-specific legislation.

- Relation to Article 17(2) it also seem unreasonable to create another compensation system alongside the existing state compensation schemes.

E. Articles 9(3), 9(4) and 18: Training, investigative tools and prevention

At this point, Finland supports the GA.

F. Article 18a: Criminalisation of the knowing use of services

During the Swedish Presidency, a good compromise was reached in the GA, which must be the starting point for the negotiations and which, however, may still need to be specified in order to achieve precise regulation. However, the amendments proposed by Parliament do not specify the rules in view of the context in question. It is precisely the directive on human trafficking in human beings that is at issue, and Parliament's proposals somewhat makes this link unclear. This applies in particular to the substitution of the victim by people in paragraph 1 and paragraph 1a. 1a seems to concern the general criminalisation of buying sex.

G. Articles 19, 19a, 19b and 20: Coordination at national and Union level, Statistics and Action plans

Finland supports the GA.

Regarding to coordinators and Article 19, it is underlined that responsibility for coordination at EU level should lie with the EU coordinator, not with the coordinators of the Member States. In any case, it should be clear what coordination work is carried out at EU level and what national coordinators do. According to Parliament's proposal, this does not appear to be the case.

Written comments of Finland on the EP report on a Directive on preventing and combating trafficking in human beings and protecting its victims (17 November 2023)

Finland would like to thank the Presidency for the possibility to send written comments. Due to the seriousness of human trafficking offences, the Finland considers it important to combat human trafficking and to identify, assist and support victims of human trafficking.

We are still scrutinising the EP report on the national level. Our general premise is that, we support the general approach (GA) that achieved at the beginning of the year under the excellent Swedish Presidency and which reflects the views adopted quite unanimously in the working group. In addition, GA in many respects is based on the Commission's original proposal, which is the result of thorough preparation.

Articles 2a and 4(da) of the Parliament's report – Offences committed using ICT

Finland supports the General Approach.

The articles 2a, according to which offenses of trafficking in human beings and their partial acts may be committed using information and communication technologies, could clarify the scope of human trafficking offenses. It is also important to note the developments and international nature of the crimes committed by using the internet and ICT in general. However, both are already part of the scope of the current directive. So, the need of the clarification is not that clear and should be reconsider.

Finland is skeptical towards the proposed aggravating circumstance. Why should it be aggravating circumstance in human trafficking? Picture about the victim in online can cause psychological harm. However, this act should be consider separate from human trafficking, not as part of it and then as aggravating circumstance.

Article 4 - penalties for natural persons

Questions of penalty scales must respect the characteristics of national criminal justice systems. This also applies to how different types of crimes fall within the framework of national penal scales. Offences punishable by a maximum sentence of imprisonment of at least ten years must be particularly serious. The additions proposed by Parliament concern acts, which are supposedly already punishable in the Member States and are punishable separately when committed in connection with the crime of human trafficking, which increases the penalty. The last criterion of “the offender has previously been convicted of offences of the same nature” is unusual in the context of the penalty scale.

Article 6 – Sanctions on legal persons

Finland supports the General Approach.

As a general principle, Finland believes that member states should have sufficient possibilities to apply sanctions against legal persons at the national level by their own national legal system. Specific sanctions can pose severe problems for the internal coherence of the national sanction system.

Finland emphasizes that the drafting of criminal legislation at the EU level must respect the traditions of national legal systems and, in particular, the internal coherence of the national sanction system. According to the Parliament's proposal, it should be possible to impose sanctions on legal persons that are can be problematic to compatible with the Finnish sanction system.

Also, in order to maintain legal clarity and consistency, certain sanctions imposed on legal persons should not be limited to offenses of trafficking in human beings, where other serious criminal offenses may be committed within the activities of the legal person.

Article 8 - The provision on non-prosecution and non-application of penalties for victims

The current Article 8 is of a general nature. The provision on non-prosecution and non-application of penalties for victims is an important issue in which clarification and supplementation of the regulation may be necessary. In view of this, Parliament's proposals may be justified in some respects. However, at the moment, it seems to be too detailed. At this stage, as we are still scrutinising the EP report on the national level, it is not yet possible to take a detailed position on all the issues, but this needs to be examined in greater depth.

Articles 9(3), 9(4) and 9(5)). – Training and investigative tools

At this point, Finland supports the GA. We have scrutiny reservation, as earing of national experts is still ongoing.

Article 19a – Data statistics

Finland supports the GA as some data is too detailed. We prefer the use of the wording 'to the extent possible.'

We did not have the time to obtain answers regarding whether specific data is acceptable to our national statistical organization. However, it is important that the regulation does not create unnecessary administrative burdens and is as compatible as possible with the existing national data statistic systems.

For example, in line 68, our national Statistics organization has stated that they will not be able to provide the data before October 1. If the date is changed from December 31, it should be allowed to use last year's data.

Articles 11(4), 19, 19b and 20 of the Parliament's report – National referral mechanisms and other Parliament's additions

Finland supports the GA. The hearing of the national experts is still ongoing, so our views are preliminary.

Regarding coordinators and Article 19, it is underlined that responsibility for coordination at the EU level should lie with the EU coordinator, not with the coordinators of the Member States. In any case, it should be clear what coordination work is carried out at the EU level and what national coordinators do. According to Parliament's proposal, this does not appear to be the case.

In regards to a possible action plan, enough margins should be provided to member states.

SWEDEN

Written comments from Sweden on the issues referred to in note WK 13597/2023

Sweden would like to thank the Presidency for the opportunity to provide written comments on the following issues. Furthermore, we would like to reserve the right to come back with more comments and writing suggestions further on.

A. Article 2(3) – minimum definition of exploitation (line 30)

The EP proposed another wording of the provision than the Council, and in particular suggests to indicate a few additional examples of activities that should be included in the notion of exploitation, such as surrogacy, exploitation of children in residential institutions and recruitment of children to commit crime.

Delegations are invited to consider the text proposed by the EP, and to indicate whether they could agree to the inclusion of additional activities in the provision, under condition that the structure of and the idea behind the wording of the general approach (“exploitation of forced marriage”, etc.) is kept.

Comments

Sweden would be open to considering further examples of exploitation but needs to analyse the EP’s proposal further. We welcome the Presidency’s intention to seek clarifications from the EP.

Regarding the proposal to add the recruitment of children to commit or participate in criminal activities, there seems to have been a confusion between the elements of the criminal offence. As stated in Article 2(1), recruitment is one of the means and so could not be a form of exploitation.

B. Article 4 – penalties for natural persons (line 35a–35l)

The EP proposes to add a number of additional aggravating circumstances, under which the offence should be punishable by a maximum penalty of at least 10 years of imprisonment.

Delegations are invited to reflect on the proposal of the EP and on what possible scope for compromise there could be.

Comments

We are not in favour of opening this article. The level of detail is not appropriate for the Directive, and at least some of the criteria are highly problematic from a systemic point of view.

In general, we do not see room for compromise with the EP on the provisions on penalties and sanctions. The coherence of EU criminal law should be safeguarded, which sticking to the current text and the general approach will ensure.

C. Article 8 – The provision on non-prosecution and non-application of penalties for victims (line 47b–47h)

The EP proposes a detailed provision in Article 8 on the non-prosecution and non-application of penalties for victims.

Delegations are invited to consider if any aspect of the EP proposal could be taken onboard.

Comments

The proposed provisions are too detailed and far-reaching. Sweden cannot accept provisions that for example restrict the ability of prosecutors and other authorities to investigate and prosecute serious criminal offences. Furthermore, the EP's proposal in line 47d regarding police and criminal records is problematic.

D. Articles 11, 11a, 12(2), 13(2a), 13(2b), 14(1), 14(2), 14(3a), 14(3b), 15(2), 15(3a), 16(1), 16(4) 16(5a), 17 – Assistance, support and protection for and compensation to victims of trafficking in human being obligations of national referral mechanisms and focal points

The EP proposes a series of new rules on specific aspects regarding victims (children, referral mechanisms, etc.) which are considerably stronger and more detailed than the one proposed by the Council.

Delegations are invited to consider if any aspect of the EP proposals in this area could be taken onboard.

Comments

General

When considering the legal basis of the Directive, Sweden is doubtful as to whether various provisions concerning migration can be introduced.

Sweden would be open to finding solutions that satisfies the EP to some extent. However, this is a difficult area to enter into, in view of the ongoing negotiations on the revision of the Victims' Rights Directive. We have also noted that many of the EP's proposals appear to overlap rather than complement the proposed amendments to the Victims' Rights Directive. Furthermore, the provisions are very detailed, far-reaching and, in some respects, difficult to interpret. It is important that the provisions be designed with respect to the Member States' right to organise their administration. At first glance, many of the provisions seem highly problematic in this respect.

While we are still scrutinising the text, comments on some of the most problematic proposals are provided below.

Article 11 (line 48a–49d)

Line 48c

The term “protection” is unclear, especially in view of the EP's proposal in line 49h. The term needs to be clarified.

Line 48d

Sweden cannot accept the EP's proposal. Provisions on statelessness and national citizenship do not fall within the scope of the EU's competence.

Line 49

Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations.

Sweden is hesitant to establishing the competence of a referral mechanism in this detailed manner. The meaning of “minimum standards in reception centres” in the EP's proposal in (c) needs to be clarified.

Article 11a (line 49f–49l)

Line 49h

The principle of non-refoulement and the right to apply for international protection do not only apply to certain victims. It is therefore inappropriate to have such references in this Directive.

The meaning of “protection” needs to be clarified.

Line 49i

The meaning of “referral to international protection procedures” and how it relates to the obligation to inform about the right to apply for international protection in the same line is unclear.

Furthermore, it is more appropriate if the obligation to inform about the right to apply for international protection is regulated in one single provision (cf. the EP’s proposal in line 49c).

Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations.

Line 49j

Please refer to our comments on Article 8.

Line 49k

Further analysis is needed. However, the meaning of “ensure complementarity and coordination between international protection systems and procedures for the protection of victims of trafficking” needs to be clarified.

Line 49l

Provisions on the examination and assessment of applications for international protection should be generally designed and should therefore not be included in this Directive. Sufficient regulation on the asylum procedure can already be found in for example the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

Article 12(2) (line 49n)

Further analysis is needed.

Article 13(2a) and (2b) (line 49p and 49q)

Further analysis is needed. However, the EP's proposal in line 49p regarding confidential procedures is problematic. We propose adding “, in accordance with national law,” after “confidential”.

Article 14(1) and (2) (line 49t and 49u)

As regards the EP's proposal in line 49t, please refer to our general comments above about the ongoing negotiations on the revision of the Victims' Rights Directive.

Sweden opposes the inclusion of provisions on guardians and representatives for child victims (cf. the EP's proposal in line 49u). These proposed provisions can be considered to be regulation in the field of family law which shall be established in accordance with a special legislative procedure under Article 81(3) of the Treaty on the Functioning of the European Union.

Article 14(3a) and (3b) (line 49w and 49x)

Regarding the EP's proposal in line 49w, please see comments on Article 14(2) above.

Article 15(2) and (3a) (line 49aa–49ac)

Further analysis is needed.

Article 16(1) (line 49af)

Further analysis is needed.

Article 16(4) and (5a) (line 49ah–49aj)

Further analysis is needed.

Article 17 (line 49al–49aq)

Firstly, it can be questioned whether provisions setting out the design of the system of compensation for victims fall within the legal basis of this Directive. Member States must be allowed to organise their own systems. Provisions on compensation should also be generally designed and not cover only one type of victim. Furthermore, there are already sufficient regulation in this field (cf. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims).

Sweden considers that the intention of the EP's proposal in line 49an needs to be clarified.

Sweden cannot accept the EP's proposal in line 49aq. The use of confiscated property concerns the state budget and is a matter of state sovereignty.

E. Articles 9(3), 9(4) and 18 – Training, investigative tools and prevention

The EP proposes a number of detailed rules in the said areas.

Delegations are invited to consider if any aspect of the EP proposals in this area could be taken onboard.

Comments

Article 9(3) (line 47j)

It is important that the provisions be designed with respect to the Member States' right to organise their administration.

Sweden opposes the EP's proposal to make certain organisational structures mandatory ("create specialised units").

Article 9(4) (line 47k)

The proposed provision is too detailed. Mandatory training for police officers and judges is problematic.

Article 18 (line 50–50j)

Sweden would like to emphasise the importance of evidence-based prevention.

We would be open to find solutions that satisfy the EP to some extent. However, the proposed provisions are, in some respects, too detailed and far-reaching and need to be further analysed.

Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations (cf. the EP's proposal in line 50e).

We believe that provisions governing research in detail are not appropriate (cf. the EP's proposal in line 50e and line 50g). Furthermore, the proposal on mandatory training for police officers and judges is problematic (cf. the EP's proposal in line 50h).

It is unclear what is meant by "emergency response plans" (cf. the EP's proposal in line 50i).

F. Article 18a – Criminalisation of the knowing use of services (line 51–55)

The EP proposes a new wording as well as scope of the provision, which now appears to focus exclusively on use of services from prostitution.

Delegations are invited to reflect on the proposal of the EP and on what possible scope for compromise there could be.

Comments

In 1999 Sweden became the first country in the world to criminalise the purchase, but not the sale, of sexual services. Our experience of this type of criminalisation is very positive. Sweden can support provisions that encourage criminalisation of the purchase of sexual services (cf. the EP's proposal in line 54a).

As regards the EP's proposal in line 54, an offence without a subjective element is an alien concept in both EU and Swedish criminal law.

G. Articles 19, 19a, 19b and 20 – Coordination at national and Union level, Statistics and Action plans

The EP proposes a number of detailed provisions on these topics.

Delegations are invited to consider if any aspect of the EP proposals in these areas could be taken onboard.

Comments

Article 19 (line 55c–55g)

It is important that the provisions be designed with respect to the Member States' right to organise their administration. Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations (cf. the EP's proposal in line 55e).

Article 19a (line 56–68)

The statistical data to be included are too detailed. In this context it is unclear what is meant by "where possible under national law". It should be noted that there are no international standards for how crime statistics should be produced and presented.

Article 19b (line 68a–68f)

The provisions are too detailed and far-reaching and need to be further analysed.

Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations (cf. the EP's proposal in line 68d).

Article 20 (line 68h–68k)

The provisions need to be further analysed. Sweden cannot accept mandatory provisions requiring Member States to involve civil society organisations (cf. the EP's proposal in line 68j and line 68k).

Written comments from Sweden on the issues referred to in note WK 14545/2023

Sweden would like to thank the Presidency for the opportunity to provide written comments. Our comments concern the provisions proposed by the EP listed on page 5 and 6 in the Presidency note, and the question regarding “national anti-trafficking coordinators” and “national rapporteurs” raised by the Presidency at the last meeting. Furthermore, we would like to reserve the right to come back with more comments and writing suggestions further on.

1. Penalties for natural persons, Article 4 (lines 35a to 35l of the four-column table)

Comments

Please refer to our comments of 3 November 2023. In addition, we would like to underline that we are strongly opposed to fines as an additional penalty (cf. the EP’s proposal in line 35l). Such a requirement is also impossible to deal with in our system of penalties.

2. Non-prosecution and non-application, Article 8 (lines 47b to 47h of the four-column table)

Comments

Please refer to our comments of 3 November 2023.

3. Training and investigative tools, Articles 9(3), 9(4) and 9(5) (lines 47i to 47l of the four-column table)

Comments

Please refer to our comments of 3 November 2023 concerning Article 9(3).

As regards Articles 9(4) and 9(5), we would like to highlight that provisions requiring police officers and judges to undergo certain training are problematic. To a certain extent this also applies to prosecutors (cf. the EP’s proposal in line 47k). Furthermore, it is important that the provisions be designed with respect to the Member States’ right to organise their administration. Concerning coercive measures, we suggest modernising the provision following the model established in other recent negotiations (see e.g. the Environmental Crimes Directive), rather than the way proposed by the EP (cf. the EP’s proposal in line 47l).

4. Third-country victims, Article 11a (lines 49f to 49l of the four-column table)

Comments

Please refer to our comments of 3 November 2023.

5. Legal counselling, Article 12.2 (lines 49m and 49n of the four-column table)

Comments

Further analysis is needed.

6. Protection of children, Articles 13, 14, 15 and 16

Comments

Article 13 (lines 49o to 49q of the four-column table)

Please refer to our comments of 3 November 2023.

Article 14 (lines 49r to 49x of the four-column table)

Please refer to our comments of 3 November 2023.

Article 15 (lines 49y to 49ac of the four-column table)

Further analysis is needed.

Article 16 (lines 49ad to 49aj of the four-column table)

Provisions requiring police officers and judges to undergo certain training are problematic. To a certain extent this also applies to prosecutors.

7. Remedies and compensation to victims, Article 17 (lines 49ak to 49aq of the four-column table)

Comments

Please refer to our comments of 3 November 2023.

8. Prevention, Article 18 (lines 50 to 50j of the four-column table)

Comments

Please refer to our comments of 3 November 2023. In addition, we would like to point out that the meaning of a “complaint mechanism”, and why it should be independent, may need to be clarified (cf. the EP’s proposal in line 50j).

9. National Anti-Trafficking Coordinators and National Rapporteurs, Article 19 (lines 55b to 55g of the four-column table)

Comments

At the last meeting the Presidency asked whether the Member States could accept a system with National Anti-Trafficking Coordinators (NAC) and independent National Rapporteurs proposed by the EP.

As part of a global compromise, it would seem reasonable for the Council to accept the establishment of NAC's. This could be an important bargain chip and should be traded for concessions on issues of importance to the Council. The specifics should also be discussed further. Although we might be in a position to agree to NAC's, we cannot accept provisions requiring Member States to involve civil society organisations. We might also be open to supporting the EP's proposal of establishing independent National Rapporteurs, although this too would depend on the compromise as a whole.
