



Council of the European Union
General Secretariat

Brussels, 28 November 2023

Interinstitutional files:
2022/0426 (COD)

WK 15909/2023 INIT

LIMITE

DROIPEN

COPEN

JAI

FREMP

SOC

CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

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

Delegations will find below a paper prepared by the Presidency, intended to present potential compromise proposals. The document presents the amendments compared to the text of the initial Directive on trafficking in human beings (Directive 2011/36/EU), for presentation and clarity purposes only.

Discussions with the Parliament are ongoing and these compromise proposals are subject to changes.

Article 2

Offences concerning trafficking in human beings

In the last meeting, Member States that expressed themselves indicated their preference for the current wording of paragraph 3. This could be considered as part of a final compromise with the EP. The Presidency is working on a possible recital to explain what would be included in this reference to the exploitation of surrogacy.

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, **or the exploitation of forced marriage, of illegal adoption or of surrogacy.**
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Suggested Article 2a

Offences concerning trafficking in human beings committed or facilitated by means of information or communication technologies

For the time being, the Presidency understands that Member States could accept the inclusion of an additional aggravating circumstance referring to the online dimension, in exchange for the deletion of Article 2a, as part of a possible compromise.

Article 4 Penalties

*The EP mandate includes three new aggravating circumstances in paragraph 2 of Article 4 (lines 35h, 35i and 35j of the 4-column table). A potential compromise could be to have an aggravating circumstance related to the use of information and communication technologies in return for the deletion of the rest. After the last meeting, the Presidency is still working on a possible wording for the aggravating circumstance. For now, the different options that were discussed in the last meeting can be found below, together with a new proposal by one Member State. **The exact wording of this new aggravating circumstance regarding ICT is still being discussed.***

1. 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 five years of imprisonment.
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 child victims;
 - (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime⁽¹⁵⁾;
 - (c) deliberately or by gross negligence endangered the life of the victim; or
 - (d) was committed by use of serious violence or has caused particularly serious **physical or psychological** harm to the victim.

Possible alternative drafting (options 1, 2 and 4 as suggested by the Presidency in the last Presidency note; option 3 is a new proposal coming from a delegation):

OPTION (1) was committed by means of information or communication technologies by sharing sexually explicit content featuring a victim of trafficking, which places or keeps the victim in a situation of exploitation.

OPTION (2) was committed by means of mass distribution, for example information or communication technologies, in a manner that places or keeps a victim of trafficking in a situation of exploitation by the distribution of sexual exploitation content.

OPTION (3) 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.

OPTION (4) (to amend letter d of the existing Article 4): d) was committed by use of serious violence or has caused particularly serious physical or psychological harm to the victim, for example by making accessible to third parties, by means of information and communication technologies, images or videos or similar material, depicting sexually explicit activities involving a victim of exploitation of prostitution or other forms of sexual exploitation or their intimate parts.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Article 5

Liability of legal persons

The Presidency suggests accepting the inclusion of 18a in paragraphs 1 and 2 of this Article, suggested by the EP (line 35o), as it corresponds to Article 18a (3), in the General Approach. The reference to paragraph 1 could be amended at a later stage, depending on the final wording of Article 18a. The Presidency also suggests this inclusion in paragraph 3, for consistency.

The Presidency understands that this can be accepted by delegations.

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2, ~~and 3~~ **and 18a(1)** committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person; or
 - (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2, ~~and 3~~ **and 18a(1)** for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 ~~and 3~~ **and 18a**.
4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on legal persons

The Presidency understands that Member States support the alignment with the ENVICRIME directive. The Presidency understands, also, that Member States agree with keeping the wording of the General Approach in paragraph 1 and the first part of paragraph 2, in particular concerning non-mandatory sanctions.

The Presidency is working on a recital explaining the connection with the Public Procurement Directives (Art. 57 (1) lit. f of Directive 2014/24/EU, Art. 80 (1) of Directive 2014/25/EU, Art. 38 (4) lit. f of Directive 2014/23/EU), and the reason why the reference to tender procurement, or the exclusion from participation in public contracts, should not be included in the operative part, as some delegations suggested in our last meeting.

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is **punishable by** ~~subject to~~ effective, proportionate and dissuasive ~~sanctions, which shall include~~ criminal or non-criminal **sanctions or measures**.
2. **Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held liable pursuant to Article 5(1) or (2) for the offences referred to in Articles 2 and 3** include criminal or non-criminal fines and may include other **criminal or non-criminal** sanctions **or measures, such as:**
 - (a) exclusion from entitlement to public benefits or aid;
 - (b) **exclusions from access to public funding, including grants, concessions and licences**

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

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

(e-e) placing under judicial supervision;

(d-f) judicial winding-up;

(e g) temporary or permanent closure of establishments used for committing the offence.

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

Article 7

Seizure Freezing and confiscation

The EP could consider deleting the extended provision about freezing and confiscation included in its mandate (particularly, regarding the creation of a compensation fund) (lines 46 to 47a of the 4-column table), as well as the new rules on compensation in Article 17 (lines 49a to 49aq), if the text includes a recommendation to use confiscated assets for the compensation of victims, in line with Article 17 of the proposal of a Directive on asset recovery and confiscation, currently under discussion. Recital 13 from Directive 2011/36 already included a reference to this. Nevertheless, this issue is still under discussion.

*After the last meeting, **the Presidency understands that a reference to using confiscated assets for the compensation of victims is not acceptable to delegations.***

Article 8

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

The Presidency has explained to the EP that including its amendments in the text of Article 8 would be very problematic for the practical application of this Article. The discussions on this article are still ongoing. Nevertheless, the Presidency would like to have Member States' opinion on the addition of "unlawful" activities. The EP's reason for this amendment is to make it possible for national authorities not to impose administrative sanctions to victims of trafficking (thus covering administrative fines as well as criminal penalties). This could be further explained in a recital.

The Presidency understands that in the last Counsellors' meeting there was no clear position on the changes in this paragraph, and will wait for the lifting of the scrutiny reservations regarding this Article. The Presidency is working on a Recital to explain the possible extension of the principle of non-application of penalties to administrative sanctions.

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

Article 9

Investigation and prosecution

The EP suggests some changes to the text of this Article:

- *A reference to adequate expertise for units investigating acts committed or facilitated by ICT.*
- *The recommendation to create specialised units in paragraph 3.*
- *A reference to cybercrime in paragraph 4.*

A reference to 18a is included in the first paragraph, for consistency with the previous changes in Article 5 and because this is already included in Article 18a (3) of the GA.

The Presidency understands that in the last meeting there was no clear position on the changes in paragraphs 3 and 4, and will wait for the lifting of the scrutiny reservations regarding this Article.

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 ~~and 3~~ **and 18a** is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly. **Member States shall ensure that persons, units or services investigating and prosecuting acts committed or facilitated by means of information or communication technologies have adequate expertise in these matters. Member States are encouraged to create specialised units within their police forces and prosecution services.**

4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, **as well as those which are used to investigate cybercrimes**, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

Article 10

Jurisdiction

The Presidency would suggest adding references to article 18a in this Article for consistency with other proposed changes.

The Presidency understands that this can be accepted by delegations.

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2, ~~and 3~~ **and 18a** where:
 - (a) the offence is committed in whole or in part within their territory; or
 - (b) the offender is one of their nationals.
2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2, ~~and 3~~ **and 18a** committed outside its territory, inter alia, where:
 - (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
 - (b) the offence is committed for the benefit of a legal person established in its territory; or
 - (c) the offender is an habitual resident in its territory.
3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:
 - (a) the acts are a criminal offence at the place where they were performed; or
 - (b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 11

Assistance and support for victims of trafficking in human beings

The EP suggests several amendments to this Article. Changes in Paragraph 4, concerning the national referral mechanisms, have been discussed with the EP.

As a result of the comments made by delegations in the last meeting, the Presidency suggests a possible drafting compromise that includes:

- *a mention to the current Victims' Rights Directive.*
- *an update on the references of paragraph 6.*

- a possible compromise drafting for paragraphs 1, 2, 3, 5 and 7.
- a re-drafting of paragraph 1a, according to a suggestion by one delegation.
- a re-drafting of paragraph 4, to adapt the language to the possibility of the referral mechanism being a network of competent authorities and not a single body.

The Presidency proposes to refer to Recital 8 of the General Approach, which explains that these referral mechanisms can take the form of a set of established procedures, guidelines, framework protocols or cooperation arrangements. The Presidency understands that in the last meeting there was no clear position on many of the changes in this Article, and will wait for the lifting of the scrutiny reservations.

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims **in a gender-, disability- and child-sensitive approach.** **Member States shall ensure that assistance, support and protection are provided to victims** before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA **Directive 2012/29/EU** and in this Directive. **Member States shall ensure that the victims have access to assistance free of charge and in a language they can understand.**

1a. Where trafficking victims allege to be stateless or at a risk of statelessness, Member States shall take the necessary measures to ensure that assistance and support are provided to those victims taking into account their specific protection needs and to ensure that those persons are directed to the competent authority in order to lodge their claim".

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.
3. Member States shall take the necessary measures to ensure that assistance, **and** support **and protection** for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.
4. Member States shall take the necessary measures to establish **by laws, regulations and administrative provisions, one or several** appropriate mechanisms aimed at the early **detection**, identification of, assistance to, and support for **identified and presumed victims**, in cooperation with relevant support organisations, **and to appoint one or several focal points for the cross-border referral of victims.**
The referral mechanisms established in accordance with this paragraph, with competences in at least the following areas, shall be responsible at least for the following:

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

- (b) referring the victim to the most appropriate support and assistance;
- (c) establishing protocols with the asylum authorities to ensure that assistance, support and protection is provided to victims of trafficking who are also in need of international protection, taking into account the victim's individual circumstances.

5. The assistance and support measures referred to in paragraphs 1, **1a** and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and **financial material** assistance, **resources for their economic and social recovery through access to education, training and access to labour market** as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

5a. Member States shall take necessary measures to provide specialised facilities for the detected and identified victims of trafficking, including women and children, and to ensure safe places in shelters.

If a provision on shelters is included, the reference to gender-trained staff could be explained in a Recital. An additional explanation, clarifying that it should be avoided that people cooperating with trafficking networks work there, should be added, as the Commission explained during the last meeting. A possible reference to be included in the recitals could read as follows:

Member States shall ensure the presence of gender-trained staff in reception facilities and provide adequate support and funding to civil society organisations working with them. In order to reinforce the safety of presumed or identified victims, Member States are encouraged to require a clean criminal record from personal of civil society organisations coming in contact with victims of trafficking in shelters.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to **Directive 2011/95/EU¹** and **Directive 2013/32/EU²** or pursuant to other international instruments or other similar national rules.

¹ **Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).**

² **Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).**

7. **The assistance, support and protection measures provided to the victims shall be adapted to the form of trafficking or exploitation of human beings suffered and the specific needs of the victim.** Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 11a

Victims of trafficking in need of international protection

The EP suggests including a new Article 11a, which refers to victims of trafficking in need of international protection and has suggested drafting proposals. This Article is still under discussion. The Presidency understands, after the last meeting, that the current wording of this provision is not acceptable for delegations and is currently working on possible alternatives with the EP.

1. **Member States shall ensure the right of victims to apply for international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human being. The victims shall be informed of their right to apply for international protection in a language they can understand and at the earliest opportunity.**
2. **Member States shall take the necessary measures to ensure the rapid and accurate detection and identification of victims of trafficking in human beings, and their referral to international protection procedures by competent authorities, relevant civil society organizations another relevant stakeholders involved in the identification, reception and processing of irregular migrants.**
3. **Member States shall take the necessary measures to ensure that the principle of non-prosecution or non-application of penalties to the victim under Article 8 is applied to victims of trafficking in need of international protection.**

Article 12

Protection of victims of trafficking in human beings in criminal investigation and proceedings

The Presidency understands, after the last meeting that delegations could possibly accept the updating of the reference to the Victims' Rights Directive, and the reference to a "language that the victim can understand". However, there is no support to include legal counselling and representation "free of charge" in all cases.

1. The protection measures referred to in this Article shall apply in addition to the rights set out in ~~Framework Decision 2001/220/JHA~~. **Directive 2012/29/EU**.
2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be provided **in a language that they can understand and** free of charge where the victim does not have sufficient financial resources.
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.
4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:
 - (a) unnecessary repetition of interviews during investigation, prosecution or trial;
 - (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
 - (c) the giving of evidence in open court; and
 - (d) unnecessary questioning concerning the victim's private life.

Article 13

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

The EP suggests adding two new paragraphs to this Article (lines 49o to 49q). After the last meeting, the Presidency understands that most delegations have a scrutiny reservation on this Article. Moreover, paragraph (2a) would already be included in the amendment of the Victims' Rights Directive, and paragraph (2b) is difficult to understand.

The Presidency is currently working on possible alternatives with the EP.

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

(2a) Member States shall ensure that reporting procedures are safe, confidential and accessible for children, in accordance with their age and maturity.

(2b) Member States shall take the necessary measures to detect and identify early child victims of trafficking who give any indication that they could be at risk of persecution in need of international protection and referred to the competent national asylum authorities in accordance with Article 11a.

Article 14

Assistance and support to child victims

The EP suggests several changes to this Article (lines 49r to 49x). These changes are still under discussion. After the last meeting, the Presidency understands that most delegations have a scrutiny reservation on this Article, and that some of the amendments are problematic for Member States or have no added value.

The Presidency is currently working on possible alternatives with the EP.

1. Member States shall take the necessary measures to ensure that the specific actions **and support services** to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child, **including programs to support their transition to emancipation and adulthood in order to avoid re-trafficking.** Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law. **Member States shall provide accommodation for child victims without depriving them of their liberty.**

2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities ~~where, by~~ **when, under** national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child. **This provision shall apply also when a child victim of trafficking is under the guardianship of a public or a private institution.**
3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of ~~Framework Decision 2001/220/JHA~~. **Directive 2012/29/EU** to the family.

(3a) Member States shall ensure that a guardian is appointed to unaccompanied child victims of trafficking to represent them, assist them and act on their behalf, as applicable, in order to safeguard their interests and general well-being and so that the unaccompanied children can benefit from the rights under this Directive. Member States shall also take the necessary measures to determine the identity and citizenship of the unaccompanied child and to find their family, provided that this is in the best interest of the child.

(3b) Child victims shall have access to specialised child protection and support services, including child friendly shelters and facilities. Member States shall ensure that support measures for protection are adequately afforded to those child victims who go through adoption and welfare services.

4. This Article shall apply without prejudice to Article 11.

Article 15

Protection of child victims of trafficking in human beings in criminal investigations and proceedings

The EP suggests several changes to this Article (lines 49y to 49ac), some of them in line with those suggested in Article 12. The Presidency understands, after the last meeting, that delegations could accept the reference to a "language that the victim can understand". However, there is no support to include legal counselling and representation "free of charge" in all cases. Three delegations were against deleting "unjustified" in paragraph 3, letter (a). The Presidency understands that most delegations have a scrutiny reservation on this Article.

-
1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.
 2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling **in a language they can understand** and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.
 3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:
 - (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
 - (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
 - (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
 - (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
 - (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
 - (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.
 4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.
 5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:
 - (a) the hearing take place without the presence of the public; and
 - (b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.
 6. This Article shall apply without prejudice to Article 12.

Article 16

Assistance, support and protection for unaccompanied child victims of trafficking in human beings

The EP suggests several changes to this Article (lines 49ad to 49ak). After the last meeting, the Presidency understands that there is no support for paragraph 5a in this Article. For the rest of paragraphs, the Presidency suggests its deletion, and, as a potential compromise, to include references to training in a new Article.

The Presidency would like to know if Member States could accept these suggested changes.

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim. ~~Law enforcement authorities and other professions likely to come in contact with victims or potential victims should be adequately trained for assisting and supporting unaccompanied minors.~~
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.
3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.
4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family. ~~Those persons shall receive specialised training to take particularly into account the vulnerabilities and needs of child victims of trafficking in human beings.~~
5. This Article shall apply without prejudice to Articles 14 and 15.

~~5a. Member States shall cooperate and take the necessary measures to trace family of victims or to find and protect unaccompanied child victims who have disappeared.~~

Article 17

Compensation to victims

The EP suggests several changes to this Article (lines 49al to 49aq). However, in view of the position of Member States regarding compensation in other files, the EP would accept minor changes in this Article and Article 7, as explained previously. The final wording of this Article is still under discussion.

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Article 18

Prevention

The EP suggests several changes to this Article, which is still under discussion. However, the EP could consider deleting its suggestions for paragraphs 2a, 2b and 5 (lines 50f, 50g, 50i and 50j, not included in the following text) and moving them to the provision concerning “national action plans” or to the recitals. Other minor changes are suggested by the Presidency to the text of the EP mandate.

After the last meeting, some amendments have been introduced to the wording (for instance, deleting “women and girls”). Paragraph 3, about training activities, has been moved to a new Article 18 (2), on training.

The Presidency would like to know if Member States could accept these suggested changes.

1. Member States shall take appropriate measures, such as education **and** training **and campaigns, with a specific attention to the online dimension,** to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take **gender and child specific** appropriate action, **with a gender-sensitive and child-friendly approach,** including through the Internet, such as information and awareness-raising campaigns, research and education programmes, **including the promotion of digital literacy and skills for potential victims, specifically targeted at women and girls, and,** where appropriate in cooperation with relevant civil society organisations and other stakeholders **such as the private sector and online platforms,** aimed at raising awareness and reducing the risk of people, especially children **and persons with disabilities,** becoming victims of trafficking in human beings.
3. ~~Member States shall **offer or** promote regular **specialised** training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, **judges and social workers** aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.~~
4. ~~In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.~~

Article 18(2)

Training

As a possible compromise with the EP, the Presidency suggests having a separate new Article on training. This would allow having a more consistent approach to training, as well as deleting multiple references to training included in the EP mandate.

The Presidency would like to know if Member States could accept these suggested changes.

- 1. Member States shall promote or offer regular and specialised training for professionals likely to come into contact with victims or potential victims of trafficking in human beings, including law enforcement authorities, front-line officers, assistance and support services, social services and healthcare workers, aimed at enabling them to prevent and combat trafficking in human beings and avoid re-victimisation, and detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, gender-, disability- and child-sensitive.**
- 2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall encourage both general and specialised training for judges and prosecutors involved in criminal proceedings aimed at enabling them to prevent and combat trafficking in human beings and avoid re-victimisation, and detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, gender-, disability- and child-sensitive.**

Article 18a

Offences concerning the use of services with knowledge that the person providing the services is a victim of trafficking in human beings

Article 18a is still under discussion with the EP.

After the last meeting, the Presidency understands that delegations agree to delete paragraph 3 of the General approach, because the reference to Article 18a has been already included in Articles 5, 6, 9(1) and Article 10(1) and (2).

- (1) Member States shall take the necessary measures to ensure that the intentional use of services provided by a victim of an offence referred to in Article 2, constitutes a criminal offence, where the victim is exploited to render such services and the user of the services acts with the knowledge that the person providing the service is a victim of an offence referred to in Article 2.**

(2) Member States shall take the necessary measures to ensure that an offence as established in accordance with paragraph 1 is punishable by effective, proportionate and dissuasive penalties.

(3) ~~Articles 5, 6, 9(1) and Article 10(1) and (2) shall apply to the offence described in paragraph 1.~~

Article 19

National rapporteurs or equivalent mechanisms

National Anti-Trafficking Coordinators and National Rapporteurs

The EP mandate suggests the creation of National Anti-Trafficking Coordinators, which would be a part of the national administration (paragraphs 1 and 2). At the same time, national rapporteurs, as independent bodies, would carry out the tasks of paragraph 3. The original text, in lines 55b to 55g, is still under discussion and below is a compromise suggestion.

After the last meeting, the Presidency understands that there is not enough support for establishing a mandatory list of competences of NAC in paragraph 2, or the mandatory establishment of an independent body in paragraph 3. For this reason, both paragraphs have now a “may” provision. The paragraphs have also been redrafted to include more flexibility (text in italics).

The Presidency asks Member States if this compromise, with a more flexible drafting, could be accepted.

- 1. Member States shall take the necessary measures to establish national anti-trafficking coordinators (NAC) [or equivalent mechanisms] as part of the national authority and provide them with the adequate resources necessary to effectively carry out their functions. The national anti-trafficking coordinator shall work with relevant national, regional and local bodies and agencies, particularly law enforcement authorities, national referral mechanisms, and with relevant civil society organisations active in this field.**
- 2. The NAC shall ensure the coordination, and support the government in the development of coherent and effective policies, including the National Action Plans referred to in Article 19b 19e, to assist, support and protect victims. Tasks of NAC may include at least the following:**
 - (a) setting up contingency response plans in order to prevent the threat of trafficking in human beings in case of major emergencies;**
 - (b) promoting, coordinating and, where appropriate, financing programmes for the identification of victims of against trafficking;**
 - (c) collecting statistics in accordance with Article 19a.**

~~(c) establishing minimum standards for the referral of victims to specific shelters or to psychosocial support as well as for the services and functioning of the shelters.~~

3. Member States ~~shall~~ may also establish independent national rapporteurs to monitor the implementation and impact of anti-trafficking measures, to submit regular and monographic reports on matters requiring special attention of the competent national authorities. They shall be also responsible for and carrying out assessments of root causes and trends in trafficking in human beings and the gathering of statistics covered in Article 19a.

Article 19a

Data collection and statistics

The EP mandate has a more ambitious approach to data collection and statistics. The Presidency understands, after the last meeting, that there is no flexibility to change the text agreed in the General Approach.

Article 19b

National Action Plan

The EP suggests establishing National Action Plans in each Member State. The following text is an amended version of its original proposal (lines 68b to 68f), with a more flexible content. However, the EP insists on a “shall” clause for the content of the National Action Plan. After the last meeting, the Presidency understands that delegations prefer a “may” clause in paragraph 2. For the rest of the paragraphs, the Presidency will wait until scrutiny reservations are lifted.

1. Member States shall adopt by [insert date-two years from the date of entry into force of this Directive] National Anti-Trafficking Action Plans [or Strategies], developed and implemented in cooperation with the national anti-trafficking coordinators, in accordance with Article 19, the national rapporteurs and relevant stakeholders active in the field of preventing and combating trafficking in human beings. Member States shall ensure that the National Action Plans are reviewed and updated at regular intervals of no longer than five years.
 2. National Action Plan shall may include the following elements:
-

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

Concerning this line, the EP suggests adding a recital that could refer to children in residential or closed-type institutions and children deprived of parental care, to reflect the idea originally included in line 50d in the EP Mandate:

In the case of children, Member States shall ensure that national child protection systems, including residential or closed-type institutions, develop specific plans to prevent trafficking in human beings.

- (b) preventive measures, such as education, awareness raising campaign and training, and as part of the emergency response to the risks of trafficking in human beings caused by humanitarian crises;
- (c) measures to strengthen the fight against trafficking in human beings, including to improve investigations and prosecutions of cases of trafficking in human beings and cross-border cooperation;
- (d) measures to strengthen the early identification, assistance, support and protection of the victims of trafficking in human beings;
- (e) procedures for regular monitoring and evaluation of the results achieved through the implementation of the National Anti-Trafficking Action Plans.
3. Member States shall communicate their National Actions Plans [or strategies], and any updates of their Plans [or strategies], to the Commission within three months from their adoption.
4. The National Anti-Trafficking Action Plans shall be publicly available.

Article 20

Coordination of the Union strategy against trafficking in human beings

The EP suggests amendments to this Article. The following text is a revised version of the text in lines 68i to 68k of the 4-column table. After the last meeting, the Presidency understands that the reference to Article 19a can be deleted. For the rest of the changes, the Presidency will wait until the scrutiny reservations are lifted.

1. In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of ~~an~~ the EU anti-trafficking coordinator (EU ATC). In particular, Member States shall transmit to the EU ATC at least the information referred to in Article 19, and the data referred to in 19a and 19b. The EU ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings, in consultation with national anti-trafficking coordinators, national rapporteurs, EU agencies and relevant civil society organizations active in the field.
2. In order to ensure a coherent and comprehensive approach the EU ATC shall ensure coordination with national anti-trafficking coordinators, national rapporteurs and relevant civil society organizations active in the field.

Article 23
Reporting

Changes to this Article (line 70 in the 4-column table) are still being discussed. After the last meeting, the Presidency understands that in paragraph 3, the reference can be made to the Directive itself, and not only to Article 18a. The discussion about the deadline affects mainly the Commission.

1. The Commission shall, by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals.
2. The Commission shall, by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.
3. The Commission shall, [by five/three years after transposition deadline], submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including Article 18a and the impact of such measures.