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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

{SEC(2022) 445 final} - {SWD(2022) 425 final} - {SWD(2022) 426 final} -
{SWD(2022) 427 final} - {SWD(2022) 428 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal sets out a series of measures to better prevent and combat trafficking in human beings and to protect its victims under the legal framework in place in the Union, namely Directive 2011/36/EU¹ (“the Anti-trafficking Directive”). The Anti-trafficking Directive provides an overarching EU framework to prevent and combat trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings, and by introducing provisions to strengthen the prevention of this crime and the protection of the victims, while taking into account the gender perspective². The Directive provides EU common rules on: (i) criminalisation, investigation and prosecution of trafficking in human beings, including the definition of offences, penalties and sanctions; (ii) assistance and support to, and protection of, victims of trafficking in human beings; and (iii) prevention of trafficking in human beings³.

The adoption of the Anti-trafficking Directive in April 2011 was a key development towards enhancing EU efforts to prevent and combat trafficking in human beings, and to protect its victims. It was a crucial step towards harmonisation of the relevant rules across the Member States. However, a number of challenges have arisen or gained importance since 2011. These are addressed through this targeted revision of the Directive.

The correct and complete transposition of the Directive and its full implementation remains a priority for the Commission. Following the adoption of the transposition report⁴ the Commission continued the engagement with the Member States and committed to use the powers conferred to it by the Treaties to ensure full transposition and implementation of its provisions. By taking a multi-disciplinary and comprehensive approach, the Commission adopted the EU Strategy on combatting trafficking in human beings 2021-2025⁵ setting out detailed actions aimed at improving the implementation of the relevant provisions of Directive 2011/36/EU. It provides a robust policy response to combatting trafficking in human beings, from prevention through to protection of victims, to prosecution and conviction of traffickers.

The forms of exploitation have evolved since 2011. Sexual and labour exploitation have consistently been the main purposes of trafficking in human beings. Trafficking for sexual exploitation has continuously been the most prevalent form of exploitation in the EU

¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, [OJ L 101](#), 15.4.2011, p. 1–11.

² European Commission, Combined Evaluation Roadmap/Inception Impact Assessment. Ref. Ares(2021)4984017 – 05/08/2021. Available at: [link](#).

³ Survey: Q 38, 2 national competent authorities (FR, LU), 2 National Rapporteurs (EL, RO), 2 law enforcement authorities (EL, IE), 4 others (BG, 2 from ES, MT), 2 civil society organisations (BE, MT).

⁴ European Commission, Report assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1), [COM\(2016\) 722 final](#)

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025, [COM\(2021\) 171 final](#), 14.4.2021.

accounting for over a half of all victims and affecting predominantly women and girls⁶. Trafficking for the purpose of labour exploitation has been the second most frequent form of trafficking in the EU, with the number of victims rapidly increasing and nearly doubling in the last five years⁷. However, trafficking for other purposes has gained more prominence over time both as regards forms of exploitation already included in the Anti-trafficking Directive (begging, exploitation of criminal activities and the removal of organs) as well as forms not explicitly mentioned therein (including forced marriage and illegal adoption). The overall percentage of other purposes of exploitation represents more than 10% of all victims. This proposal seeks to expand the non-exhaustive list of forms of exploitation explicitly mentioned in the Directive as to include forced marriage and illegal adoption, in order to ensure that national legal systems cover an increasing number of trafficking purposes.

The *modi operandi* of traffickers, who often operate in the framework of organised crime, have also evolved resulting in an increased threat of trafficking in human beings. Advances in technology allow traffickers to recruit, advertise and exploit victims remotely, and to widely share exploitative materials online. The same technological means make it more difficult to detect the crime, identify the perpetrators, and track down the money used to commit offences and the profits generated by the crime. This proposal seeks to address the challenges posed by the increasing digitalisation of trafficking in human beings and to enhance the criminal law response to technology-facilitated offences. Especially in recent years, relevant stakeholders, including EU Agencies, law enforcement and judicial authorities, international and civil society organisations, have highlighted the concern of the growing number of trafficking offences committed or facilitated by means of information and communication technologies.

The optional regime of sanctions on legal persons currently in force, as well as the extent to which it is transposed and applied in Member States, does not sufficiently meet the aims of the Anti-trafficking Directive. While still ensuring that sanctions are effective, proportionate and dissuasive, this proposal seeks to enhance the criminal justice response to trafficking offences committed for the benefit of legal persons by replacing the optional regime of sanctions with two different mandatory regimes that apply in case of standard offences and of aggravated offences.

The adoption of the Anti-trafficking Directive in 2011 pre-dates the EU legal framework on freezing and confiscation. Therefore, the Commission proposes to update the reference to tracing, freezing, management and confiscation of proceeds by making explicit reference to the EU rules on these matters.

Substantial room for improvement remains in the early identification and referral practices of Member States, both at the national and cross-border levels. In particular, not all Member States have a national referral mechanism in place and the structure and functioning of such mechanisms varies considerably across Member States. This proposal seeks to ensure that all Member States establish by laws, regulations or administrative provisions national referral mechanism, with a view to streamlining the functioning of relevant national institutions and to bringing further harmonisation in their structures and practices on referral to victims to appropriate assistance and support systems. This will also constitute the first step towards the

⁶ 51% of all victims in the EU in 2019-2020 were trafficked for the purpose of sexual exploitation. The vast majority are female (88%), of which 73% women and 27% girls. European Commission, Report on the progress made in the progress made in the fight against trafficking in human beings (Fourth Report), [Reference to be added, once adopted].

⁷ 28% of victims in the EU in 2019-2020 were trafficked for the purpose of labour exploitation representing a significant increase compared to 2017-2018 (15%). Ibid.

establishment of a European Referral Mechanism.

The information gathered from recent studies and consultations with relevant stakeholders show that the demand that fosters trafficking has not decreased despite the wealth of relevant education, training and awareness raising activities, and the transposition of Article 18(4) of the Anti-trafficking Directive in a number of Member States. Despite all multi-stakeholder efforts, the demand for sexual services, cheap labour and products persists. This, in turn, fuels trafficking for the purpose of sexual and labour exploitation. This proposal aims to bring further harmonisation across Member States' with a view to reducing demand. The proposal also recognises that criminal law is only part of the demand reduction response, and it should continue to be accompanied by education, training and awareness raising activities, in line with the Anti-trafficking Directive.

Trafficking in human beings is a complex crime. In order to address it appropriately, it is crucial to rely on coherent and reliable data. Similarly to other crime areas, it is estimated that an important part of trafficking cases is not reported. This is one of the factors hampering full understanding of the scope of trafficking in human beings within the EU. In addition, there are important gaps in the data collection on reported cases, and statistics gathered by the Commission are made public with substantial delay after the reporting period. This proposal aims to require Member States to collect and report to the Commission data on trafficking in human beings every year, and to further harmonise data collection, with a view to enhancing its quality and accelerating the publication of data reports.

- **Consistency with existing policy provisions in the policy area**

The Anti-trafficking Directive was adopted on 15 April 2011. It has not been amended or revised since then. The Security Union Strategy⁸ of July 2020 recognises the challenges in identifying, prosecuting and convicting trafficking in human beings and announced a new comprehensive approach to combat this crime. The EU Strategy on Combatting Trafficking in Human Beings 2021-2025 highlighted that the complete transposition and full implementation of the Anti-trafficking Directive remain a Commission priority. It called for an evaluation of the implementation of the Directive and, if necessary, based on the outcome of the evaluation, for its revision.

The legislative measures included in this proposal, and the non-legislative measures that will accompany it, are fully in line with the priorities of the Strategy: reducing demand that fosters trafficking; breaking the criminal model to halt victims' exploitation; protecting, supporting and empowering the victims, especially women and children; and addressing the international dimension of the crime. The proposed amendments concern selected issues. They aim to enhance the efficiency of the framework on preventing and combating trafficking in human beings and on protecting the victims of this crime, and were drafted coherently to supplement it.

This proposal lays down rules that build on the experience of Member States in transposing and implementing the Anti-trafficking Directive. It addresses the developments occurred since 2011 and the newest trends observed in the area of anti-trafficking in human beings, taking into consideration proposals for improvements formulated by a wide range of stakeholders. As such, this proposal provides a framework that should allow the national legal systems of Member States to be up to date and better equipped to face the current challenges.

⁸ COM (2020) 605 final.

The proposal takes stock of the findings presented by the Commission through its biannual reporting on the progress made in the fight against trafficking in human beings, pursuant to Articles 19 and 20 of the Anti-trafficking Directive. It is informed by the meetings of the EU Network of National Rapporteurs and Equivalent Mechanisms on trafficking in human beings and of the EU Civil Society Platform against trafficking in human beings, meetings with the EU Agencies, the evaluation⁹ and Impact Assessment¹⁰ of the Anti-trafficking Directive, and numerous conferences, meetings and exchanges with relevant stakeholders. The proposed amendments also take into account relevant existing studies and reports published by regional and international organisations.

This proposal reflects the Commission's commitment to closely monitor the correct and full transposition of the Anti-trafficking Directive and the effectiveness of the national legislation transposing it. The Commission will build on the information transmitted by Member States upon transposition. With regards to the new rules on the knowing use of exploited services, the Commission will monitor the transposition and the impact of national legislation. Within *[five years after the transposition deadline]*, the Commission will 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 the new rules as well as the impact of such measures.

This proposal is fully in line with the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, to which the European Union and all its Member States are parties.

- **Consistency with other Union policies**

The evaluation of the Anti-trafficking Directive found that the legal instrument is coherent with relevant EU legislative instruments. The proposed amendments are also in line with the policy aims pursued by the Union, and in particular with:

- the framework regulating the standards on the rights, support and protection of victims of crime, in particular Directive 2012/29/EU¹¹;
- the framework concerning sanctions and measures against employers of illegally staying third-country nationals, in particular Directive 2009/52/EC¹²;
- the framework regulating the issuance of a residence permit to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, in particular Council Directive 2004/81/EC¹³;

⁹ SWD (2022) 427.

¹⁰ SWD (2022) 425.

¹¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, [OJ L 315](#), 14.11.2012, p. 57-73.

¹² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, [OJ L 168](#), 30.6.2009, p. 24–32.

¹³ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, [OJ L 261](#), 6.8.2004, p. 19-23.

- the criminal law framework on combating the sexual abuse and sexual exploitation of children and child pornography, in particular Directive 2011/93/EU¹⁴, as well as the framework on combating child sexual abuse envisaged in Regulation (EU) XXXX/YYYY [*proposal for a Regulation laying down rules to prevent and combat child sexual abuse*]¹⁵;
- the framework on asset recovery and confiscation, in particular Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]¹⁶.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal amends the Anti-trafficking Directive. It is therefore based on Articles 82(2) and 83(1) TFEU, which are the legal bases of the amended act.

• Subsidiarity

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on the European Union, the objectives of the proposal cannot be sufficiently achieved by Member States and can thus be better achieved at the Union level. In line with Article 83(1) TFEU and the existing rules in the Anti-trafficking Directive, Member States have the right to adopt or retain measures that are more stringent than those set out in Union law.

The existing legal framework on preventing and combating trafficking in human beings and protecting its victims was set up at Union level, firstly with Council Framework Decision 2002/629/JHA¹⁷ and subsequently by the Anti-trafficking Directive. An improvement of the current framework cannot be achieved by Member States acting autonomously. A thorough check of subsidiarity was performed in the context of the Impact Assessment of this proposal. The cross-border dimension of trafficking in human beings concerns the nationality of victims and the *modi operandi* of the criminal networks perpetrating the crime. The data collection carried out in the context of the evaluation shows that 43% of the victims in the EU was a citizen of a non-EU country, who are often trafficked by third country nationals. The cross-border dimension is also reflected in the increasing number of operations and Action Days supported by Europol and an increase of over 50% since 2015 in the number of trafficking cases registered at Eurojust. Different elements of trafficking offences can take place in different Member States and/or non-EU countries. In order to improve the response to criminal activities, cross-border law enforcement and judicial cooperation require harmonisation of relevant national legislation and systematic exchange of good practices. Accordingly, transnational cooperation is increasingly based on common EU rules in different crime areas, which should continue to include trafficking in human beings.

The increased relevance of the online dimension of the crime also warrants EU action. The internet, social media and online platforms give traffickers the opportunity to recruit, control,

¹⁴ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, [OJ L 335](#), 17.12.2011, p. 1-14.

¹⁵ COM (2022) 209.

¹⁶ COM (2022) 245.

¹⁷ Council Framework Decision of 19 July 2002 on combating trafficking in human beings, 2002/629/JHA, [OJ L 203](#), 1.8.2002, p. 1-4.

transport and exploit victims, to moving profits and reach out to users everywhere without crossing any border and being shielded behind a screen. Union-level action allows the law enforcement authorities of Member States to investigate and prosecute technology-facilitated offences more effectively, by exchanging information and sharing best practices, including on the collection of digital evidence and on financial investigations.

- **Proportionality**

The proposed amendments are limited to what is necessary for reinforcing the EU framework on preventing and combating trafficking in human beings and to protect its victims. They do not go beyond what is necessary to achieve those objectives. The proposal builds on rules already in force, which are in line with the principle of proportionality. The detailed description of alternative measures that could have taken place to attain the objectives of this proposal is given in the accompanying Impact Assessment.

In order to address forms of exploitation which are currently not explicitly mentioned in the Anti-trafficking Directive, it is proposed to explicitly add forced marriage and illegal adoption. The proposed addition of these forms of exploitation, which are already mentioned in the recitals of the Directive, is deemed as a proportionate response to the increase in the percentage of trafficking cases for purposes other than sexual and labour exploitation.

The online dimension of the crime is implicitly already covered in the current provisions of the Anti-trafficking Directive, which do not differentiate between offences committed online or offline. It is proposed to explicitly mention that the intentional acts, means and purpose of trafficking offences should include acts committed by means of information and communication technologies. This modification aims to reinforce the criminal response to one of the most serious changes in the threat landscape of this crime area since the adoption of the Directive. The level of penalties will remain the same as for the standard offences, although Member States are not prevented from adopting a stricter regime.

With regards to the sanctions on legal persons, it is proposed to establish a mandatory regime of sanctions for the standard offences to the exclusion from entitlement to public benefits, aid or subsidies; and the temporary or permanent closure of establishments which have been used for committing the offences. These sanctions are among the optional regime in the current Anti-trafficking Directive. A further mandatory regime of sanctions was set up for offences aggravated by the circumstances in Article 4(2), which includes temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; and judicial winding up. These sanctions were also part of the optional regime of sanctions for legal persons in the current Anti-trafficking Directive. These measures allow to strengthen the judicial response to trafficking offences committed by legal persons, while adopting a proportionate approach to sanctions, which is based on the mandatory transposition of all measures but entails that aggravated offences are addressed with stricter sanctions than those envisaged for standard offences.

The formal establishment of a National Referral Mechanism through national laws, regulations or administrative provisions is considered a minimum measure to enhance the referral of identified victims, as it builds upon the pre-existing obligation under Article 11(4) of the Anti-trafficking Directive, which requires Member States to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations. The formalisation of the referral mechanisms aims to enhance early identification and prompt referral to assistance and support services. In order to enhance the effectiveness of this measure, the Member States are required to appoint

national focal points in charge of identifying competent services and of coordinating the referral of victims at the national and EU level.

The amendment that establishes as a criminal offence the use of services which are the object of exploitation with the knowledge that the person is a victim of a trafficking offence (i.e. the knowing use of exploited services) is a proportionate legislative measure aimed at preventing and combating trafficking in human beings more effectively by discouraging demand, in line with the objectives of the Anti-trafficking Directive. The Member States remain free to adopt stricter approaches on the use of exploited services, while considering that demand reduction measures are not limited to the criminal law response but include non-legislative measures in line with the Anti-trafficking Directive, i.e. education, training, information and awareness-raising campaigns, research and education programmes.

The requirement of an annual data collection is a minimum measure aimed to improve the gathering of information and statistics at the national and Union level. This measure would shorten the reporting periods from two years to one year and ensure an up-to-date monitoring that is not hindered by the time lapse between the end of the reporting period of the data collection and the publication of the report (currently two years). The minimum categories of data collection included in the amendment correspond with those currently collected on a two-year basis by the Commission.

- **Choice of the instrument**

This proposal is an amendment of the Anti-trafficking Directive and, thus, it is a directive.

No alternative means, legislative or operational, can be used to attain the objectives of this proposal, which is to improve the existing framework that enables to prevent and combat trafficking in human beings and to protect the victims of this crime.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission carried out an evaluation of the Anti-trafficking Directive, which was one of the key actions envisaged in the EU Strategy on Combatting Trafficking in Human Beings 2021-2025¹⁸. The evaluation was based on the data collection for the 2013-2020 period carried out by Eurostat, a report on the transposition of the Anti-trafficking Directive at the national level and their implementation in Member States, the Open Public Consultation, exchanges with the EU Agencies, the Member States and other stakeholders, reports and documents published or submitted by International and Regional Organisations.

The evaluation found that the Anti-trafficking Directive has been effective in the prevention of, and fight against, trafficking in human beings, and in enhancing protection for the victims of this crime. The Directive was also found to be efficient, in terms of the benefits it brought as compared to the costs entailed by its adoption, transposition and implementation. It was considered coherent with all the relevant EU and international activities. The evaluation highlighted the EU added value in improving cross-border cooperation, including with the EU Agencies. The objectives of the Directive remain relevant. Nevertheless, a number of

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025, [COM\(2021\) 171 final](#), 14.4.2021.

challenges and developments need to be further addressed.

The evaluation noted that several developments that occurred since the adoption of the Directive have had significant implications on the trafficking in human beings landscape. Technological advancements and the expansion of social media created new opportunities for traffickers to recruit victims online, exercise remote control over them and reach a broad audience of users through widespread sharing of exploitative material. The economic downturn caused by the COVID-19 pandemic and the energy crisis could increase the demand for cheap labour and sexual services, which fuel labour and sexual exploitation. Wars, particularly Russia's military aggression against Ukraine, increase opportunities for traffickers to take advantage of the vulnerable situation of people, especially women and children fleeing their country.

Because of the new developments, areas for improvement of the legal framework were identified in the evaluation. These include addressing forms of exploitation not explicitly mentioned in the Anti-trafficking Directive, addressing the online dimension of the crime, increasing the criminal justice response to offences committed by legal persons, improving demand reduction, early identification of victims, and the data collection.

- **Stakeholder consultations**

The combined evaluation roadmap and inception impact assessment for the initiative was published by DG Migration and Home Affairs (DG HOME) on the Commission's 'Have your say' webpage¹⁹ on 5 August 2021 until 16 September 2021. The Commission received feedback from 36 stakeholders.

The Commission has aimed to ensure a wide participation of stakeholders throughout the policy cycle of this initiative, through a series of targeted consultations (bilateral contacts, meetings with stakeholders, written consultations). Consultations were held with Member States and representatives of their public authorities, including in the context of the EU Network of National Rapporteurs and Equivalent Mechanisms on Trafficking in Human Beings; representatives of the European Parliament; the EU Agencies, particularly the European Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Union Agency for Law Enforcement Training (CEPOL), the Fundamental Rights Agency (FRA), the European Union Asylum Agency (EUAA), the European Border and Coast Guard Agency (FRONTEX), the European Institute for Gender Equality (EIGE) and the European Labour Authority (ELA); representatives of relevant regional and international organisations active in the area of anti-trafficking in human beings; representatives of civil society organisations active in the area of anti-trafficking in human beings, including in the context of the EU Civil Society Platform against Trafficking in Human Beings.

The Commission also carried out a Public Consultation with the aim of collecting information, evidence and views on questions related to the implementation and evaluation of the Anti-trafficking Directive. The data was gathered through a questionnaire covering the evaluation of the Anti-trafficking Directive and the possible revision thereof. 124 responses were received, in addition to 75 stand-alone contributions.

- **Collection and use of expertise**

This proposal builds upon evidence gathered as part of the evaluation and Impact Assessment,

¹⁹ [Fighting human trafficking – review of EU rules \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic_fighting-human-trafficking-review-of-eu-rules.pdf).

including consultations with Member States' competent authorities and experts on trafficking in human beings. The consultations involved national rapporteurs and equivalent mechanisms, law enforcement and judicial authorities, national authorities responsible for social services, EU Agencies, International Organisations, civil society organisations, employer associations, and experts, including from the academia.

The proposal takes into consideration relevant exchanges and the findings of studies carried out by Regional and International Organisations, as well as non-governmental organisations active in the area of anti-trafficking, as referred to throughout the explanatory memorandum²⁰.

- **Impact assessment**

The Impact Assessment accompanying this proposal draws on the findings of the evaluation conducted by the Commission. It considered the following options:

- A package of non-legislative measures, which would provide further support to the Member States in implementing the Anti-Trafficking Directive and contribute to strengthening the EU legal and policy framework against trafficking in human beings. Building on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, it would include the setting-up of a Knowledge and Expertise Hub; actions aimed at reinforcing cooperation with technology companies, including social media platforms; the setting-up of a Focus Group of prosecutors specialised in trafficking in human beings; and organising an EU-wide awareness raising campaign.
- A package of legislative changes that would modernise the Anti-trafficking Directive in order to better address challenges that have gained importance since its adoption. It would include addressing the online dimension of the crime; including new forms of exploitation to the definition; strengthening the sanctions regime against legal persons and the legal framework related to the criminalisation of the use of exploited services; establishing formal national referral mechanisms by laws, regulations or administrative provisions and appointing national focal points for referral; requiring Member States to introduce an offence concerning the use of services exacted from victims of trafficking in human beings; and requiring Member States to collect and report data on trafficking in human beings indicators every year.
- A package combining the non-legislative and legislative measures outlined above.

The Impact Assessment found that the third option, a combination of legislative and non-legislative measures would be more effective in enhancing the current framework than measures of only one typology.

In order to reinforce the criminal justice response to trafficking in human beings, including in the cross-border context, three legislative measures have been identified: (i) addressing the online dimension explicitly in the Directive; (ii) explicitly referring to forced marriage and illegal adoption within the list of forms of exploitations; (iii) introducing two mandatory regimes of sanctions on legal persons, one to sanction standard offences and one to sanction aggravated offences. Non-legislative measures were also identified: (i) fostering cooperation between the Commission and internet companies in the context of the EU Internet Forum; and

²⁰ The Commission also commissioned a study to support the evaluation of the Directive on preventing and combating trafficking in human beings and protecting its victims and an impact assessment for a legislative proposal on the topic. The study was carried out by external consultants between 27 October 2021 and 21 July 2022.

(ii) creating a focus group of specialised prosecutors against trafficking in human beings.

In respect of ensuring that victims of trafficking in human beings receive adequate assistance, support and protection, the identified legislative measure concerns requiring Member States to formalise the establishment of National Referral Mechanisms and to create national focal points for the referral of victims to appropriate assistance, support and protection services. This is accompanied by a non-legislative measure, which is the development of guidelines on minimum requirements for National Referral Mechanisms.

In order to reduce the demand for services that foster all forms of exploitation, the identified legislative measure is the establishment as a criminal offence the use of services which are the objects of exploitation with the knowledge that the person is a victim of a trafficking offence. In line with a comprehensive approach to demand reduction, this will be complemented by a non-legislative measure, an EU-wide awareness raising campaign aimed at discouraging the demand that fosters trafficking.

With regards to the horizontal objective of ensuring adequate prevention and detection, and improving the monitoring of trafficking in human beings in the EU, the legislative measure identified is requiring an annual collection of data on trafficking. This is accompanied by two non-legislative measures: (i) developing guidelines on data collection on trafficking in human beings in the EU; and (ii) establishing a Knowledge and Expertise Hub on Combatting Trafficking in Human Beings.

The preferred option presented above aims at improving the capacity of Member States to combat trafficking in human beings more efficiently, notably in relation to the threats and trends that have emerged or evolved since the adoption of the Anti-trafficking Directive. The common and harmonised rules included in this amendment are expected to enhance cross-border cooperation in investigations, prosecutions, and in assistance and support to victims of trafficking offences. The non-legislative measures accompanying the legislative modifications aim to further support Member States in implementing the Directive and the EU Strategy on Combatting Trafficking in Human Beings 2021-2025.

- **Regulatory fitness and simplification**

In compliance with the Commission's Regulatory Fitness and Performance Programme (REFIT), all initiatives aimed at revising existing EU legislation should seek to simplify and deliver stated policy objectives more efficiently (i.e. by reducing unnecessary regulatory costs and the administrative burden on Member States). The Impact Assessment has concluded that the measures set out in the proposed Directive would have a limited burden, which would be outweighed by the positive impact of the proposed measures.

The proposed targeted amendments to the Directive aim at improving the Member States' capability to fight trafficking in human beings more efficiently, notably in relation to threats and trends that have emerged and evolved since the adoption of the Directive. The initiative will further harmonise the legal landscape addressing trafficking in human beings across the Member States. The new rules are expected to enhance cross-border cooperation, in terms of investigations and prosecutions, as well as victims' assistance and support.

- **Fundamental rights**

Article 6(1) of the Treaty on European Union states that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights. Article 5 of the Charter explicitly prohibits slavery, forced labour and trafficking in human beings.

The proposed measures include legal provisions to adequately respond to the risks relating to this crime and to assist support and protect the victims. The explicit inclusion of further forms of exploitation, the provisions relating to the international dimension of the crime, the regime of sanctions on legal persons and the criminalisation of the knowing use of exploited services aim to tackle trafficking in human beings more effectively. These provisions, and the formalisation of national referral mechanisms, is to broaden the protection to victims of trafficking in human beings. The protection of victims has an impact on other fundamental rights, such as the protection of human dignity, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, and the right to liberty and security.

The legislative measures were duly analysed and assessed positively also in the light of the rights of the child, the prohibition of child labour, the rights of persons with disabilities, the right to asylum, the protection against removal, expulsion or extradition, the principle of non-discrimination, and the equality between women and men.

The provisions introducing new offences or sanctions, or amending the definition of the crime were thoroughly analysed in the light of the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In accordance with Article 2 of this proposal, Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with it by [*two years after the entry into force of the Directive*] at the latest and to communicate to the Commission the text of those provisions.

The Commission will monitor and evaluate the impact of this proposal through mechanisms already operative pursuant to the current Directive. The tasks of National Rapporteurs and Equivalent Mechanisms would remain the same under Article 19 of the Directive: measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting to the EU Anti-Trafficking Coordinator in the context of the reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings. This would include monitoring and evaluating the impacts of this initiative.

The Commission will continue to hold the two-yearly meetings of the Network of National Rapporteurs and of the EU Civil Society Platform against trafficking in human beings, as well as meetings with EU Agencies working against trafficking. These exchanges will also contribute to the monitoring and evaluation.

This proposal introduces new “offences concerning the use of services which are the object of exploitation with knowledge that the person is a victim of an offence concerning trafficking in human beings”. Pursuant to the proposed Article 23(3), the Commission is required to submit

a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with the new rules and the impact of such measures.

- **Explanatory documents**

To ensure the proper implementation of this Directive, the explanatory document, e.g. in the form of correlation tables, would be necessary, as required by the judgement of the Court of Justice in case C-543/17. The legislation transposing the Anti-trafficking Directive is rarely limited to one single legal text, as the provisions are often incorporated in different national instruments. For this reason, it is necessary that the Member States provide an explanatory document communicating to the Commission the text of the provisions adopted in transposing this Directive, how such provisions interact with the provisions adopted to transpose Directive 2011/36/EU and with provisions covered by other relevant Union policies, as referred to in Section 1 of this legislative memorandum.

- **Detailed explanation of the specific provisions of the proposal**

The amendments to the Anti-trafficking Directive target the following items:

- (a) Include forced marriage as a particular form of violence against women and girls and illegal adoption within the list of minimum forms of exploitation

Currently, Article 2(3) sets out a non-exhaustive list of forms of exploitation, which includes 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.

The collected data shows that trafficking offences committed for purposes other than sexual and labour exploitation has steadily evolved since the adoption of the Directive, representing 11% of all victims in the EU in 2020. Moreover, even though the list in Article 2(3) is non-exhaustive as it includes the “minimum” forms of exploitation, and despite the fact that Recital 11 clarifies that the definition covers trafficking in human beings for other behaviour such as illegal adoption or forced marriage, Member States have tended to restrict the transposition of this provision by only mentioning the forms of exploitation explicitly included in Article 2(3).

Taking into account the data collected on purposes of trafficking other than sexual and labour exploitation, the Commission proposes to include forced marriage and illegal adoption explicitly within the non-exhaustive list of forms of exploitation in Article 2(3). This will better equip the legal systems of Member States, as well as its law enforcement and judicial authorities to effectively combat trafficking in human beings for the purpose of these two forms of exploitation.

- (b) Explicitly refer to the online dimension within the Directive

The elements of the trafficking offences defined in the Directive comprise the intentional acts and the means in Article 2(1), as well as the forms of exploitation in Article 2(3). The current provisions do not make any reference as to whether such elements are to be carried out online or offline in order to be criminalised and punished.

All stakeholders, including law enforcement authorities, international organisations and civil society organisations are deeply concerned on the increasing number of offences committed or facilitated by means of information and communication technologies. They provide a

platform to carry out the intentional acts (recruitment, organising or conducting the transportation, transfer, harbouring or reception of persons, including the exchange of transfer or control over victims), at least some of the means (coercion, fraud, deception, 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) or some of the forms of exploitation (in particular sexual exploitation).

In this regard, the Commission proposes to add a new Article 2a, which explicitly mentions that the intentional acts and means referred to in Article 2(1), as well as exploitation as defined in Article 2(3) shall include acts committed by means of information and communication technologies. This will ensure that the online dimension of the crime is taken into account for every element of trafficking offences.

- (c) Introduce a mandatory regime of sanctions on legal persons differentiated for standard offence and for aggravated offences

Currently, Article 6 provides that Member States shall take the necessary measures to ensure that a legal person held liable for trafficking offences is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines. Article 6 adds that such sanctions may include five measures that are optional for Member States to transpose: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) judicial winding-up; (e) temporary or permanent closure of establishments which have been used for committing the offence.

The assessment of the transposition of this Article shows that while all Member States have in place criminal or non-criminal fines (in compliance with the mandatory part of the provision), only a minority of Member States have transposed all the optional measures, most Member States have transposed only some, and several Member States have not transposed any. The Commission considers that it is crucial to enhance action against legal persons in the interest of which trafficking offences are committed. The adoption of a mandatory regime strengthens the criminal justice aspect of the response. At the same time, it is necessary to adopt a proportionate approach, in line with current Article 6.

The Commission therefore proposes to amend Article 6 by establishing that, instead of the list of optional sanctions, the effective, proportionate and dissuasive sanction shall, if appropriate, include the exclusion from entitlement to public benefits, aid or subsidies; and the temporary or permanent closure of establishments which have been used for committing the offence. This is the regime that applies when legal persons are held liable for a standard trafficking offence. The addition of subsidies complements and expands the current optional list of sanctions, with a view to preventing that legal persons convicted for trafficking offences receive such forms of public assistance.

Paragraph 2 is added for cases in which legal persons are held liable for an offence aggravated by any of the circumstances set forth in Article 4(2). In such cases, the sanctions on legal persons, if appropriate, include: temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision, judicial winding-up.

With this approach, the Commission seeks to make the regimes of sanctions against legal persons mandatory, with a view to strengthening the criminal justice response against legal persons involved in trafficking offences. It utilises the same measures, which are optional in the current Article 7. This approach ensures proportionality, as it envisages two strict

sanctions for standard offences and three harsher sanctions for aggravated offences. The addition of “if appropriate” before the two sanctions regime ensures respect of the principle of proportionality and the discretion of the judicial authorities of the Member States.

(d) Referring to the legal framework on freezing and confiscation

The current text of Article 7 requires Member States to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3. The adoption of the Anti-trafficking Directive, and hence of this Article, pre-dates the EU legal framework on freezing and confiscation.

Accordingly, the Commission proposes to make explicit reference to the EU rules on tracing, freezing, management and confiscation, particularly to Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]²¹. In accordance with the proposed article, Member States will be required to ensure that their competent authorities are entitled to trace, freeze, manage and confiscate, in accordance with Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]²², proceeds derived from, and instrumentalities used or intended to be used for the commission, or contribution to the commission, of the offences referred to in the Directive as amended. This will allow the Directive provision on freezing and confiscation to be updated as to reflect the recent changes in EU legislation on these matters.

(e) Formal establishment of National Referral Mechanisms and of National Focal Points for the referral of victims

Currently, Article 11(4) requires Member States to take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to, and support for victims, in cooperation with relevant support organisations. These are also called referral mechanisms.

In 2020, the Commission reported that almost all Member States had established such formal or informal mechanisms²³. These take very different forms at the national level. The differences in structure and practices may hamper or slow down the referral of victims to adequate protection, assistance and support services, especially in cross-border context, when victims are identified in a country different than where they were exploited, or when they are exploited in more than one country. The Commission proposes that Member States formalise the establishment of their National Referral Mechanisms through laws, regulations or administrative provisions and to appoint national focal points for the referral of victims. In order to do so, this requirement is included through a modification of Article 11(4).

This proposal is expected to further streamline the practice of national referral mechanisms, with a view to improving the referral of victims in cross-border cases. This will be complemented by the development of guidelines on minimum requirements for National Referral Mechanisms, which will contribute to further harmonise their structure and practice. The modification of Article 11(4) is also the first step towards the establishment of a European Referral Mechanism, in line with the EU Strategy on Combatting Trafficking in Human Beings 2021-2025.

²¹ COM (2022) 245.

²² COM (2022) 245.

²³ Study on reviewing the functioning of Member States’ National and Transnational Referral Mechanisms, 16.10.2020, available at [link](#).

- (f) Establishment of new offences concerning the use of services which are the object of exploitation with knowledge that the person is a victim of trafficking

Currently, Article 18(4) requires Member States to consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is victim of a trafficking offence. This is an optional provision that Member States were not obliged to transpose.

Although this approach granted Member States flexibility, the transposition landscape of this provision ranges from full non-transposition to transposition limited to some forms of exploitation, and from complete transposition to the adoption of stricter measures. Such non-harmonisation may have an impact on cross-border cooperation between Member States that adopt different approaches. In addition, the Impact Assessment considered that action aimed at reducing demand may include a step forward in the criminal justice response. The focus on demand is expected to reduce the number of cases and of victims by addressing the areas that fuel all forms of exploitation. The evaluation of the Directive has shown that 19 Member States have adopted either legislation criminalising the knowing use of services exacted from victims of trafficking for all forms of exploitation²⁴ or legislation that criminalises directly or indirectly the knowing use of services exacted from victims of sexual exploitation²⁵.

The Commission proposes to make it mandatory for Member States to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is victim of a trafficking offence. This is achieved by deleting Article 18(4) and adding a new Article 18(a) with the same text of the current Article 18(4), but without the option that allows Member States to “consider” criminalisation.

It is expected that this legislative change will result in further harmonisation in the criminal justice response to demand reduction, including by requiring Member States to apply the new rules to all forms of exploitation, and will positively impact cooperation in cross-border cases.

Paragraph 2 requires Member States to take the necessary measures to ensure that offences relating to the knowing use of exploited services are punishable by effective, proportionate and dissuasive penalties and sanctions.

- (g) Introducing a reporting requirement for the new Article 18a

The proposed Article 23(3) introduces a requirement for the Commission to 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 the new rules on the knowing use of exploited services, as well as on the impact of such measures. The report shall be submitted [by five years after transposition deadline]. This will ensure adequate assessment and reporting on the measures proposed by the Commission after an adequate time span that allows the possibility to analyse the transposition and impact of the new rules.

- (h) Requirement for yearly data collection and reporting on indicators in the area of trafficking in human beings

Currently, Article 19 provides that National Rapporteurs and Equivalent Mechanisms carry out tasks including the gathering of statistics and reporting in the context of the biannual reporting carried out by the European Commission on the progress made in the fight against

²⁴ BG; HR; HU; LT MT PT RO SI. In addition, EL legislation covers sexual and labour exploitation.

²⁵ DE, EE, FI, FR, IE, LV, LU, NL, SE, EL, CY.

trafficking in human beings. An EU-level data collection is carried out every two years as per Articles 19 and 20.

The evaluation of the Directive, however, showed that there are still important gaps in the data collection, particularly on criminal justice indicators and on offences concerning the use of exploited services, and that the publication of relevant statistics often arrives substantially after the end of the reporting period (usually around two years).

Therefore, the Commission proposes to introduce a requirement for Member States to collect and report data on trafficking in human beings to the Commission every year, through a new Article 19a, which specifies the indicators for such data collection. Its first paragraph sets forth the obligation for Member States to collect data to monitor the effectiveness of their systems to combat trafficking offences. Paragraph (2) specifies the minimum set of indicators that should be part of it (number of registered victims; number of persons suspected, prosecuted and convicted for offences referred to in Article 2 and in the proposed Article 18(a)) and the level of disaggregation.

Paragraph (3) establishes that Member States shall transmit annually to the Commission by 1 July each year, the statistical data referred to in paragraph 2 for the previous year in a standard format provided by the Commission. In order to accelerate the availability of statistics Article 19a should become applicable on the date of the entry into force of the amending Directive.

This measure is expected to improve the completeness, coherence and comparability of data across different reference periods and Member States. It will also improve the EU-level data collection. This will contribute to enhancing the understanding of the full scope of trafficking in human beings within the EU. The reduction of the recurrence of the data collection from two to one year will also ensure that publicly available data is more up to date and closer to the reference period at the time of publication.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

[Having regard to the opinion of the European Economic and Social Committee²⁶,

Having regard to the opinion of the Committee of the Regions²⁷,]

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings remains a priority for the Union and the Member States.
- (2) Directive 2011/36/EU of the European Parliament and the Council²⁸ constitutes the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework to address trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen prevention and protection of victims, taking into account the gender perspective.
- (3) The EU Strategy on Combatting Trafficking in Human Beings 2021-2025²⁹ sets out a policy response adopting a multi-disciplinary and comprehensive approach from prevention through protection of victims, to prosecution and conviction of traffickers. It included a series of actions to be implemented with the strong involvement of civil society organisations. In order to address evolving trends in the area of trafficking in human beings, as well as shortcomings identified by the Commission, and to further step up efforts against this crime, it is necessary, nevertheless, to amend Directive

²⁶ OJ C , , p. .

²⁷ OJ C , , p. .

²⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, [OJ L 101](#), 15.4.2011, p. 1–11.

²⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021–2025, [COM\(2021\) 171 final](#), 14.4.2021.

2011/36/EU. Identified threats and trends, which require the adoption of new rules concern in particular regarding the *modi operandi* of traffickers, including the commission or facilitation of offences concerning trafficking in human beings by means of information and communication technologies. Identified shortcomings of the criminal law response requiring an adaptation of the legal framework relate to offences concerning trafficking in human beings committed in the interest of legal persons, to the data collection system, and to the national systems aimed at the early identification of, assistance to and support for victims of trafficking.

- (4) In order to tackle the steady increase of the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, it is necessary to include forced marriage and illegal adoption in the forms of exploitations explicitly listed in the Directive and to ensure that the Member States address within their national legal systems the widest range of forms of exploitation, insofar as these fulfil the constitutive elements of trafficking in human beings.
- (5) An increasing number of offences concerning trafficking in human beings is committed or facilitated by means of information or communication technologies. Traffickers use the internet and social media *inter alia* to recruit, advertise or exploit victims, exercise control and organise transport. Internet and social media are also used to distribute exploitative materials. Information technology also hampers timely detection of the crime and identification of the victims and perpetrators. It is therefore important to explicitly include the online dimension of the crime into the legal framework.
- (6) In order to enhance the criminal justice response to offences concerning trafficking in human beings committed for the benefit of legal persons and to deter the commission of those offences, it is necessary to strengthen the sanctions regime against legal persons with a proportionate mandatory approach. Therefore, the optional sanctions regime set out in Directive 2011/36/EU is replaced with a mandatory sanctions regime applicable when a legal person is held liable pursuant to Article 5(1) and (2).
- (7) In combatting trafficking in human beings, full use is to be made of existing instruments on the freezing and confiscation of proceeds and instrumentalities of crime, such as Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]³⁰. The use of frozen and confiscated instrumentalities and proceeds from the offences referred to in Directive 2011/36/EU to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged.
- (8) In order to enhance the national capability to identify victims at an early stage, and to refer them to the appropriate protection, assistance and support services, it is necessary to establish by laws, regulations or administrative provisions National Referral Mechanisms in the Member States. Establishing formal national referral mechanisms and appointing national focal points for the referral of victims are essential measures to enhance cross-border cooperation.
- (9) In order to further reinforce and harmonise the criminal justice efforts on demand reduction across Member States, it is important criminalise the use of services which are the objects of exploitation with the knowledge that the person is a victim of an

³⁰ COM (2022) 245.

offence concerning trafficking in human beings. Establishing this as a criminal offence is part of a comprehensive approach to demand reduction, which aims to tackle the high levels of demand that fosters all forms of exploitation.

- (10) The collection of accurate and coherent data and the timely publication of collected data and statistics are fundamental to ensure full knowledge on the scope of trafficking in human beings within the Union. Introducing a requirement for Member States to collect and report to the Commission statistical data on trafficking in human beings every year in a harmonised way is expected to constitute a relevant step to enhance the general understanding of the phenomenon and to ensure the adoption of data-informed policies and strategies. Due to the importance of having up-to-date statistical data as soon as possible it is appropriate to determine the date of the application of the article on data collection at the earliest point in time, which is the entry into force of this Directive.
- (11) Since the objectives of this Directive, namely preventing and combating trafficking in human beings and protecting the victims of this crime, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effect of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (12) The Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the respect and protection of human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the equality between women and men, the rights of the child, the rights of persons with disabilities, and the prohibition of child labour, the right to an effective remedy and to a fair trial, the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for these rights and principles, which are to be implemented accordingly.
- (13) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application. [Or] In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.
- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

- (15) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents³¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (16) Directive 2011/36/EU should therefore be amended accordingly,
HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2011/36/EU

Directive 2011/36/EU is amended as follows:

- (1) in Article 2, paragraph 3, “or forced marriage, or illegal adoption” is added at the end of the paragraph.
- (2) the following Article 2a is inserted:

“Article 2a

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

Member States shall take the necessary measures to ensure that the intentional acts and means referred to in Article 2(1), and exploitation as set out in Article 2(3) shall include acts committed by means of information and communication technologies.”

- (3) Article 6 and 7 are replaced by the following:

*“Article 6
Sanctions on legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to criminal or non-criminal fines and, if appropriate, to the following sanctions:
 - (a) exclusion from entitlement to public benefits, aid or subsidies;
 - (b) temporary or permanent closure of establishments which have been used for committing the offence.
2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) for an offence aggravated by any of the circumstances set forth in Article 4(2) is subject, if appropriate, to the following sanctions:
 - (a) temporary or permanent disqualification from the practice of commercial activities;

³¹ OJ C 369, 17.12.2011, p. 14.

- (b) placing under judicial supervision;
 - (c) judicial winding-up.
3. Member States shall ensure that sanctions referred to in paragraphs 1 and 2 are effective, proportionate and dissuasive.”

Article 7
Freezing and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to trace, freeze, manage and confiscate, in accordance with Directive EU/XX/YY of the European Parliament and of the Council [*Proposed Directive on asset recovery and confiscation*]³², the proceeds derived from, and instrumentalities used or intended to be used for the commission, or contribution to the commission, of the offences referred to in this Directive.”

(4) in Article 11, paragraph 4 is replaced by the following:

“4. Member States shall take the necessary measures to establish by laws, regulations or administrative provisions, national referral mechanisms aimed at the early identification of, assistance to, and support for victims, in cooperation with relevant support organisations, and to appoint a national focal point for the referral of victims.”

(5) Article 18, paragraph 4 is deleted.

(6) the following Article 18a is inserted:

“Article 18a

Offences concerning the use of services which are the object of exploitation

with knowledge that the person is a victim

of an offence concerning trafficking in human beings

1. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall take the necessary 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.

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 and sanctions.”

(7) the following Article 19a is inserted:

³² COM (2022) 245.

“Article 19a

Data collection and statistics

1. Member States shall collect statistical data to monitor the effectiveness of their systems to combat offences referred to in this Directive.
2. The statistical data referred to in paragraph 1 shall include, at least, the following:
 - (a) the number of registered victims of offences referred to in Article 2, disaggregated by registering organisation, sex, age groups (child/adult), citizenship, and form of exploitation;
 - (b) the number of suspects of offences referred to in Article 2, disaggregated by sex, age groups (child/adult), citizenship, and form of exploitation;
 - (c) the number of persons prosecuted for offences referred to in Article 2, disaggregated by sex, age groups (child/adult), citizenship, form of exploitation, nature of the final decision to prosecute;
 - (d) the number of prosecution decisions (charge for offences referred to in Article 2, charge for other criminal offences, decision not to charge, other);
 - (e) the number of persons convicted for offences referred to in Article 2, disaggregated by sex, age groups (child/adult), citizenship;
 - (f) the number of court judgments (acquittal, convictions, other) for offences referred to in Article 2, for first instance, second instance and final court (or high court) decisions;
 - (g) the number of suspects, persons prosecuted and convicted for offences referred to in Article 18a, disaggregated by sex and age groups (child/adult).
3. Member States shall transmit annually to the Commission, by 1 July each year, the statistical data referred to in paragraph 2 for the previous year.

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

“3. The Commission shall, [*by five 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 Article 18a and the impact of such measures.”

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by one year after the entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Point (7) of Article 1, which inserts Article 19a into Directive 2011/36/EU shall start to apply on the day referred to in Article 3.

Article 3

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

Article 4

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President