



# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) <a href="#">2010/0065(COD)</a> Directive</p>	Procedure completed
<p>Preventing and combating trafficking in human beings, and protecting victims</p> <p>Repealing Decision 2002/629/JHA, Framework Decision <a href="#">2001/0024(CNS)</a> See also <a href="#">2015/2118(INI)</a> See also <a href="#">2020/2029(INI)</a></p> <p>Subject 7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling 7.40.04 Judicial cooperation in criminal matters</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		27/04/2010
		PPE <a href="#">BAUER Edit</a>	27/04/2010
		S&D <a href="#">HEDH Anna</a>	
		Shadow rapporteur	
		ALDE <a href="#">HIRSCH Nadja</a>	
		Verts/ALE <a href="#">SARGENTINI Judith</a>	
		ECR <a href="#">KIRKHOPE Timothy</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
<b>FEMM</b> Women's Rights and Gender Equality		28/09/2009	
	PPE <a href="#">BAUER Edit</a>	28/09/2009	
	S&D <a href="#">HEDH Anna</a>		
Committee for opinion on the legal basis	Rapporteur for opinion	Appointed	
<b>JURI</b> <a href="#">Legal Affairs</a>		08/09/2010	
	Verts/ALE <a href="#">LICHTENBERGER Eva</a>		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">3079</a>	21/03/2011
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3051</a>	02/12/2010
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3018</a>	03/06/2010
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	REDING Viviane	

Key events			
21/04/2010	Committee referral announced in		

	Parliament, 1st reading		
03/06/2010	Debate in Council	<a href="#">3018</a>	Summary
29/11/2010	Vote in committee, 1st reading		Summary
02/12/2010	Committee report tabled for plenary, 1st reading	<a href="#">A7-0348/2010</a>	
14/12/2010	Results of vote in Parliament		
14/12/2010	Debate in Parliament		
14/12/2010	Decision by Parliament, 1st reading	<a href="#">T7-0471/2010</a>	Summary
21/03/2011	Act adopted by Council after Parliament's 1st reading		
05/04/2011	Final act signed		
05/04/2011	End of procedure in Parliament		
15/04/2011	Final act published in Official Journal		

### Technical information

Procedure reference	2010/0065(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing Decision 2002/629/JHA, Framework Decision <a href="#">2001/0024(CNS)</a> See also <a href="#">2015/2118(INI)</a> See also <a href="#">2020/2029(INI)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 083-p1-a1; Rules of Procedure EP 58; Treaty on the Functioning of the EU TFEU 082-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/02676

### Documentation gateway

Legislative proposal		<a href="#">COM(2010)0095</a>	29/03/2010	EC	Summary
Committee draft report		<a href="#">PE442.887</a>	28/06/2010	EP	
Amendments tabled in committee		<a href="#">PE445.701</a>	29/07/2010	EP	
Specific opinion		<a href="#">PE448.899</a>	22/09/2010	EP	
Economic and Social Committee: opinion, report		<a href="#">CES1376/2010</a>	21/10/2010	ESC	
Amendments tabled in committee		<a href="#">PE454.385</a>	24/11/2010	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0348/2010</a>	02/12/2010	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0471/2010</a>	14/12/2010	EP	Summary

Commission response to text adopted in plenary	<a href="#">SP(2011)1477</a>	23/02/2011	EC	
Draft final act	<a href="#">00069/2010/LEX</a>	05/04/2011	CSL	
Follow-up document	<a href="#">COM(2016)0267</a>	19/05/2016	EC	Summary
Follow-up document	SWD(2016)0159	19/05/2016	EC	
Follow-up document	<a href="#">COM(2016)0719</a>	02/12/2016	EC	Summary
Follow-up document	<a href="#">COM(2016)0722</a>	02/12/2016	EC	Summary
Follow-up document	<a href="#">COM(2018)0777</a>	03/12/2018	EC	Summary
Follow-up document	SWD(2018)0473	04/12/2018	EC	
Follow-up document	<a href="#">COM(2020)0661</a>	20/10/2020	EC	
Follow-up document	SWD(2020)0226	20/10/2020	EC	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Directive 2011/36](#)  
[OJ L 101 15.04.2011, p. 0001](#) Summary

## Preventing and combating trafficking in human beings, and protecting victims

**PURPOSE:** to establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings and to repeal [Framework Decision 2002/629/JHA](#) on the same issue.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** trafficking in human beings is considered one of the most serious crimes worldwide, a gross violation of human rights, a modern form of slavery, and an extremely profitable business for organised crime. It is reasonable to estimate from the available figures that every year several hundred thousand people are trafficked into the EU or within the EU area.

The [Council of Europe Convention on Action against Trafficking in Human Beings](#) provides a comprehensive and coherent framework covering prevention, cooperation between different actors, protection of and assistance to victims, and an obligation to criminalise trafficking in human beings. Implementing such measures would lead to significant improvements. The Convention has been ratified by 16 EU Member States. Another 10 have signed it and are going through the ratification process.

Framework Decision 2002/629/EC on combating trafficking in human beings was adopted in 2002 as a response to a generally perceived need to address the serious criminal offence of trafficking in human beings at EU level. In order to tackle recent developments in the phenomenon of trafficking in human beings, the proposed Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation.

The fight against trafficking in human beings requires coordinated efforts by Member States, as well as cooperation at an international level in order to achieve the aims. Differences in legal treatment in the different Member States hinder coordinated efforts and hamper international law enforcement and judicial cooperation. It is necessary to repeal the 2002 text.

It should be noted that this proposal builds on a Commission [proposal](#) made on 25/03/2009 aiming to repeal the 2002 Framework Decision which has lapsed following the entry into force of the Treaty on the Functioning of the EU (TFEU).

**IMPACT ASSESSMENT:** various policy options were examined in connection with the previous proposal for a Framework Decision of 25 March 2009 with a view to preventing and combating trafficking in human beings more effectively, and better protecting victims. This is valid for the current proposal.

- Option 1: no new EU action.
- Option 2: non legislative measures: Framework Decision 2004/629/JHA would not be amended. Non-legislative measures could be put in place in the areas of victim support schemes, monitoring, prevention measures in countries of destination, prevention measures in countries of origin, training, and law enforcement cooperation.
- Option 3: new legislation on prosecution, victim support, prevention and monitoring. This would incorporate the provision of the

existing Framework Directive, along with certain provisions of the Council of Europe's Convention and additional elements, particularly provisions in the areas of substantive criminal law, jurisdiction and prosecution, victims' rights in criminal proceedings, victim assistance, special protective measures for children, prevention, and monitoring.

- Option 4: new legislation (as in option 3) + non legislative measures (as in option 2). A new legislative act would be adopted, incorporating the existing Framework Directive and including new provisions. The new legislative act would be supplemented by non-legislative measures, and in particular those identified in option 2.

Following the analysis of economic impacts, social impacts, and impacts on fundamental rights, options 3 and 4 present the best approach to the problem and should fully achieve the identified objectives. The preferred option is option 4.

**LEGAL BASIS:** Article 82(2) and Article 83(1) of the Treaty on the Functioning of the European Union. The fight against trafficking in human beings requires coordinated efforts by Member States, as well as cooperation at an international level in order to achieve the aims. Differences in legal treatment in the different Member States hinder coordinated efforts and hamper international law enforcement and judicial cooperation. Action by the EU will better achieve the objectives of the proposal, which will approximate Member States' substantive criminal law and procedural rules more extensively than the current Framework Decision. This will have a positive impact on international law enforcement and judicial cooperation, and on the protection and assistance given to victims. The proposal therefore complies with the subsidiarity principle.

**CONTENT:** the proposal aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims. The new directive, in addition to provisions in the current Framework Decision, would include the following new elements:

Substantive criminal law provisions: these comprise

- definition;
- aggravating circumstances and penalties: the proposal sets out precise level of penalties adapted to the severity of the offences. An offence under this legislation is punishable by penalties of a maximum of at least five years of imprisonment, and ten years for aggravating circumstances;
- non application of penalties to the victim: Member States must provide for the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in text.

Jurisdiction and prosecution

- broader and more binding extraterritorial jurisdiction rule, obliging Member States to prosecute nationals and habitual residents who have committed the crime of trafficking outside the territory of the Member State;
- investigative tools- those responsible for investigating such offences should have access to the investigative tools used in organised crime or other serious crime cases such as interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigations.

Victim assistance and support

- establishment of mechanisms for early identification and assistance of victims;
- standard of assistance including access to necessary medical treatment, counselling, and psychological assistance;
- special measures for child victims of trafficking.

Protection of victims in criminal proceedings

- special treatment aimed at preventing secondary victimisation;
- protection on the basis of a risk assessment;
- legal counselling and representation, including for the purpose of claiming compensation.

Prevention

- action aimed at discouraging the demand for sexual services and cheap labour;
- regular training for officials likely to come into contact with victims and potential victims;
- criminalisation of users of services exacted from a person, when the user knows that the person has been trafficked.

**Monitoring:** establishment of National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities.

**Territorial scope:** the adoption of the proposal will be addressed to the Member States. The application of the resulting Directive to the United Kingdom, Ireland and Denmark will be determined in accordance with the provisions of Protocols (No 21) and (No 22) annexed to the Treaty on the functioning of the European Union.

**BUDGETARY IMPLICATION:** the proposal has no implication for the Community budget.

## Preventing and combating trafficking in human beings, and protecting victims

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The Council agreed on a general approach regarding a directive aimed at strengthening the fight against trafficking in human beings and the protection of victims.

In March 2010, the Commission adopted its proposal on the file. Once adopted, the new rules will replace framework decision 2002/629/JHA. The goal is to further approximate national legislation and to improve international law enforcement and judicial cooperation. The provisions of the future directive include:

- a definition of the crime, aggravating circumstances and stiffer penalties;

- extraterritorial jurisdiction making it possible to prosecute EU nationals for crimes committed abroad and to use investigative tools such as phone listening and access to financial data;
- special treatment of the victims in criminal proceedings including non-punishment of victims who suffer the consequences of the criminal activities;
- a higher standard of protection and assistance for victims, and in particular special protective measures for children;
- preventive measures aimed at discouraging the demand side of the phenomenon.

## Preventing and combating trafficking in human beings, and protecting victims

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The Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality adopted, under Rule 51 on Joint Committee meetings, the report drawn up by Edit BAUER (EPP, SK) and Anna HEDH (S&D, SE) on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal. The amendments are the result of a compromise agreement between Parliament and Council and are as follows:

**Gender perspective:** the text stresses the gender perspective in its common provisions. It states that the Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender specific where appropriate. The "push" and "pull" factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.

**Seizure and Confiscation:** a new clause states that competent authorities must be entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in the Directive.

**Non-prosecution or non-application of penalties to the victim:** competent national authorities must also be entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts within the scope of the text.

**Assistance and support for victims of trafficking in human beings:** this must not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution and trial, without prejudice to Directive 2004/81/EC or similar national rules.

The compromise text states that assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victims' refusal to assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

**Assistance and support to child victims:** in the application of the Directive the child's best interests shall be a primary consideration. There must be specific actions to assist and support child victims of trafficking in human beings, with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and children of victims, who are given assistance and support. They must appoint a guardian or a representative for the child victim from the moment he/she is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interests between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

The text makes special provision for unaccompanied child victims of trafficking in human beings as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration in the country of origin or the country of return, integration in the host society, granting of international protection status or granting of other status according to national law of the Member States.

**Compensation to victims:** victims of trafficking in human beings must have access to existing schemes of compensation to victims of violent crimes of intent.

**National Rapporteurs or equivalent mechanisms:** the tasks of such persons must include the gathering of statistics. National Rapporteurs or equivalent mechanisms are already constituted in an informal Union Network established by the Council Conclusions of 4 June 2009. An Anti-Trafficking Coordinator would take part in the works of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the National Rapporteurs or equivalent mechanisms.

**Coordination of the Union strategy on trafficking in human beings:** in order to contribute to a coordinated and consolidated strategy of the European Union against trafficking in human beings, Member States shall facilitate the tasks of an Anti-Trafficking Coordinator (ATC), and in particular, transmit to the ATC the information required by the Directive, on the basis of which the ATC shall contribute to a report by the Commission every two years on the progress made in the fight against trafficking in human beings.

**Reporting:** the Commission shall submit a report:

- two years from the deadline for transposition, 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 15(4) (measures to establish as a criminal offence the use of services which are the objects of exploitation) accompanied, if necessary, by legislative proposals;
- three years from the deadline for transposition, assessing the impact of existing national law criminalising the users of services which are the objects of exploitation of trafficking in human beings on the prevention of trafficking in human beings, accompanied, if

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The European Parliament adopted by 643 votes to 10, with 14 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.

It adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

**Replacement of Framework Decision 2002/629/JHA:** this Directive aims to amend and expand the provisions of Framework Decision 2002/629/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety.

**Gender perspective:** the text stresses the gender perspective in its common provisions. It states that the Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender specific where appropriate. The "push" and "pull" factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.

**Penalties:** Member States shall take the necessary measures to ensure that an offence is punishable by penalties of a maximum of at least ten years of imprisonment where it has been committed in any of the following circumstances: (i) the offence was committed against a victim who was particularly vulnerable (including child victims); (ii) the offence deliberately or by gross negligence endangered the life of the victim; (iii) the offence was committed by use of serious violence or has caused particularly serious harm to the victim.

**Seizure and Confiscation:** a new clause states that competent authorities must be entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in the Directive.

**Non-prosecution or non-application of penalties to the victim:** competent national authorities must also be entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts within the scope of the text.

**Assistance and support for victims of trafficking in human beings:** this must not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution and trial, without prejudice to Directive 2004/81/EC or similar national rules.

The compromise text states that assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victims' refusal to assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

**Assistance and support to child victims:** in the application of the Directive the child's best interests shall be a primary consideration. There must be specific actions to assist and support child victims of trafficking in human beings, with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and children of victims, who are given assistance and support. They must appoint a guardian or a representative for the child victim from the moment he/she is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interests between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

The resolution makes special provision for unaccompanied child victims of trafficking in human beings as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration in the country of origin or the country of return, integration in the host society, granting of international protection status or granting of other status according to national law of the Member States.

**Compensation to victims:** victims of trafficking in human beings must have access to existing schemes of compensation to victims of violent crimes of intent.

**National Rapporteurs or equivalent mechanisms:** the tasks of such persons must include the gathering of statistics. National Rapporteurs or equivalent mechanisms are already constituted in an informal Union Network established by the Council Conclusions of 4 June 2009. An Anti-Trafficking Coordinator would take part in the works of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the National Rapporteurs or equivalent mechanisms.

**Coordination of the Union strategy on trafficking in human beings:** in order to contribute to a coordinated and consolidated strategy of the European Union against trafficking in human beings, Member States shall facilitate the tasks of an Anti-Trafficking Coordinator (ATC), and in particular, transmit to the ATC the information required by the Directive, on the basis of which the ATC shall contribute to a report by the Commission every two years on the progress made in the fight against trafficking in human beings.

**Coordination of investigations:** law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including sharing of information and sharing of best practice, as well as continued open dialogue between police, judicial and financial authorities of the Member States is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with

Europol and Eurojust, the setting up of joint investigation teams as well as by the implementation of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings.

Reporting: the Commission shall submit a report:

- two years from the deadline for transposition, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive;
- three years from the deadline for transposition, assessing the impact of existing national law criminalising the users 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.

## Preventing and combating trafficking in human beings, and protecting victims

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**PURPOSE:** to repeal and replace [Framework Decision 2002/629/JHA](#) on combating trafficking in human beings and the fight against this phenomenon as well as the protection of victims.

**LEGISLATIVE ACT:** Directive 2011/36/EC of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

**CONTENT:** at first reading, the European Parliament and the Council adopted a Directive on the fight against trafficking in human beings. The Council adopted EU wide minimum rules concerning the definition of criminal offences and the level of sanctions in the area of trafficking in human beings. The new rules also strengthen the prevention of the crime and the protection of victims of trafficking in human beings. The new directive replaces Framework Decision 2002/629/JHA.

The new directive also constitutes the first agreement between the Council and the European Parliament in the area of substantive criminal law after the entry into force of the

Lisbon Treaty.

**Subject matter:** this Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

**Offences concerning trafficking in human beings:** according to the Directive, 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. 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.

When the conduct involves a child (person below 18 years of age) it shall be a punishable offence of trafficking in human beings even if none of the means set forth above has been used.

**Incitement, aiding and abetting, and attempt:** Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence is punishable.

**Penalties:** an offence shall be punishable by a maximum penalty of at least five years of imprisonment. However, in the following circumstances Member States shall take the necessary measures to ensure that an offence shall be punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

- was committed against a victim who was particularly vulnerable ( a child);
- was committed within the framework of a criminal organisation within the meaning of [Council Framework Decision 2008/841/JHA](#) on the fight against organised crime;
- deliberately or by gross negligence endangered the life of the victim; or
- was committed by use of serious violence or has caused particularly serious harm to the victim.

Member States shall take the necessary measures to ensure that the fact that an offence was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

**Liability of legal persons:** Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences 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. Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences concerned.

**Seizure and confiscation:** Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences.

**Non-prosecution of victims:** the text also includes a provision which will allow national authorities not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit.

**Investigation and prosecution:** investigation into or prosecution of offences referred to in this Directive 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. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence for a sufficient period of time after the victim has reached the age of majority.

Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences are trained accordingly and are able to use effective investigative tools, such as those which are used in organised crime or other serious crime cases.

Jurisdiction: each Member State will have to investigate and prosecute offences committed in whole or in part within its territory or committed by one of its national, even outside of its territory. Member States can chose to go beyond that basic rule by establishing further jurisdiction over an offence committed outside of its territory e.g. where the offence is committed against one of their nationals or against a person who has his or her habitual residence in the territory of that Member State. This is also possible where the offender has his or her habitual residence in the territory of that Member State.

Assistance and support for victims of trafficking in human beings: Member States shall take the necessary measures to ensure that assistance and support 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 this Directive. Granting of assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. The assistance and support measures 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 material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. 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.

Protection of victims of trafficking in human beings in criminal investigation and proceedings: the protection measures shall apply in addition to the rights set out in [Framework Decision 2001/220/JHA](#). 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 free of charge where the victim does not have sufficient financial resources. 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. Without prejudice to the rights of the defence, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, 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.

Assistance, support, protection and compensation for child victims: 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. 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.

Member states shall ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise their rights on the standing of victims in criminal proceedings.

Additional provisions are set out for child victims, such as physical and psycho-social assistance and the possibility to appoint a guardian or a representative for a non-accompanied the child victim.

Protection measures include access to legal without delay to legal counselling and legal representation as well as possible access to witness protection programmes. Child victims should benefit from a number of additional measures including setting conditions for the interviews of the child during the proceedings. The child should, e.g., be interviewed in premises designed or adapted for this purpose, by or through trained professionals and, if possible, by the same persons for all interviews necessary. Member States will also have to ensure that victims of trafficking in human beings have access to existing schemes on compensation to victims of violent intentional crimes.

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

Prevention: prevention measures to be taken by Member States include:

- information and awareness raising campaigns to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings;
- intensifying research on the subject;
- promoting regular training for officials likely to come into contact with victims and potential victims of trafficking in human beings.

Member States shall cooperate with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

National rapporteurs or equivalent mechanisms: Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Coordination of the Union strategy against trafficking in human beings: in order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information provided by ational rapporteurs or equivalent mechanisms, on the basis of which the 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.

Reporting: 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;
- 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.

ENTRY INTO FORCE: 15.04.2011. This Directive replaces and repeals Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

TRANSPPOSITION: 06.04.2013.



APPLICATION: the Directive shall apply to all the Member States except Denmark and the United Kingdom. The latter might still use an opt-in to participate in the new rules at a later stage.

## Preventing and combating trafficking in human beings, and protecting victims

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The Commission presents a report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

The report examines trends in trafficking in human beings, the results of specific anti-trafficking actions, and statistics provided by the Member States. Furthermore, the report examines action taken by the Commission and any other relevant stakeholders under the [EU Strategy](#) towards the eradication of trafficking in human beings 2012-2016.

The report is based on information from three main sources:

- information gathered by the National Rapporteurs or equivalent mechanisms (NREMs) and submitted to the EUs Anti-Trafficking Coordinator by Member States;
- contributions submitted by civil society organisations participating in the EU Civil Society Platform against trafficking in human beings and the EU Civil Society e-Platform; and
- information from the relevant EU agencies, international and regional organisations.

Main trends: the trends in the statistical data for the period 2013-2014 provided by Member States for this report are consistent with the trends in the previous period (2010-2012). However, given the complexity of the phenomenon, there are solid grounds to expect that the actual numbers of victims of trafficking in the EU are indeed substantially higher.

- In total there were 15 846 registered victims (both identified and presumed) of trafficking in the EU.
- Trafficking for the purpose of sexual exploitation is still the most widespread form (67 % of registered victims), followed by labour exploitation (21 % of registered victims).
- The other forms of exploitation described by Member States (12% of victims) include trafficking for the purpose of forced begging, criminal activity, forced marriage, sham marriage, or organ removal, trafficking of infants and young children for adoption, trafficking of pregnant women to sell their new-born babies, trafficking for the production of cannabis and trafficking for drug smuggling or the selling of drugs.
- Over three quarters of the registered victims were women (76 %). At least 15 % of the registered victims were children.
- 65% of registered victims were EU citizens. The top five EU countries of citizenship for registered victims in 2013-2014 were Romania, Bulgaria, the Netherlands, Hungary, and Poland.
- The top five non-EU countries of citizenship were Nigeria, China, Albania, Vietnam and Morocco.
- There is strong evidence that criminal networks involved in trafficking in human beings have exploited the migration crisis to target the most vulnerable, in particular women and children.
- In total, 4 079 prosecutions and 3 129 convictions for trafficking in human beings were reported in the EU.

Results of action and main challenges: most Member States have highlighted the difficulty of measuring the results and impact of anti-trafficking actions. However, only a few have developed relevant indicators, or have evaluated their national strategies and action plans.

To ensure effective, forward-thinking policies and actions, the Commission considers that systematic evaluations of Member States strategies and action plans and the measuring of the results and impact of the action taken are very important. The main priorities are:

- increasing the number of investigations and prosecutions since the level of prosecutions and convictions remains worryingly low;
- providing unconditional access to assistance, support and protection to victims;
- preventing trafficking to the greatest extent possible by using all available instruments at EU and international level;
- finding solutions for the limited resources available for anti-trafficking measures, victim assistance and prevention measures at national level.

Main conclusions: the contributions to the report from Member States and other stakeholders make it possible to highlight a number of key challenges that the EU and its Member States need to address as a priority, by devoting appropriate efforts and resources:

- address and prioritise tackling all forms of exploitation;
- increase the number and effectiveness of investigations and prosecutions;
- work on improving data collection in the field of trafficking in human beings;
- focus on the early identification of all victims including by putting in place the right mechanisms to do so;
- ensure all victims are offered protection and assistance;
- take gender-specific measures and adopt a child-centred approach in all actions;
- focus on the most vulnerable victims including at-risk children;
- provide adequate support to child victims;
- prevent trafficking in human beings by addressing the demand that fosters all forms of exploitation; systematically evaluate national strategies and action plans;

- allocate adequate resources to address trafficking in human beings; and cooperate meaningfully with civil society.

The report also stresses the importance of:

- encouraging governments and independent bodies to routinely participate in the EU Network of National Rapporteurs or equivalent mechanisms (NREMs);
- the ratification of all relevant international and regional instruments by Member States to promote effectiveness and consistency in joint efforts and strengthen international cooperation;
- the correct and full implementation of the EU Directive, to ensure the prevention of the crime, the prosecution of the perpetrators and most importantly, the protection of victims.

By the end of 2016, the Commission will publish the two further reports required under Article 23 of the anti-trafficking Directive, on compliance and criminalisation, together with a post-2016 Strategy on trafficking in human beings.

## Preventing and combating trafficking in human beings, and protecting victims

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The Commission presented a report to the European Parliament and the Council 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).

As a reminder, a major step in the EU action to address this phenomenon was the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims which replaced the previous EU legal instrument on trafficking in human beings, [Council Framework Decision 2002/629/JHA](#). The Directive applies to all Member States except for Denmark. It sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims. It is based on the human rights approach and gender perspective, to strengthen the prevention of this crime and the protection of and assistance to the victims thereof.

Main conclusions of the report: the report made the following conclusions:

- state of transposition and implementation: complete and correct transposition of the Directive, followed by its meaningful implementation, is not only compulsory but also necessary in order to make a substantial progress on national level in addressing trafficking in human beings. The ultimate aim is to make a real difference in the lives of victims and step up the fight against this crime by increasing the number of prosecutions and convictions. This report, which should be read in conjunction with [COM\(2016\) 719](#) of the Directive (refer to the corresponding summary in the procedure file), is part of the process of ensuring its correct application and implementation. This overview shows that substantial efforts have been taken by the Member States to transpose this comprehensive instrument;
- room for progress: the report noted that there still remains significant room for improvement in particular as regards:
  - specific child protection measures,
  - presumption of childhood and child age assessment,
  - the protection before and during criminal proceedings,
  - access to unconditional assistance,
  - compensation,
  - non-punishment (for instance, some Member States make an explicit reference to non-prosecution trafficking victims, while others foresee the non-prosecution of a person who was compelled, threatened or coerced to commit a criminal act,
  - assistance and support to the family member of a child victim,
  - prevention.

Next steps: in its conclusions, the Commission stated that it is ready to provide further support to Member States to ensure a satisfactory level of the implementation of the Directive in view of the European Agenda on Security, which highlights trafficking in human beings as a form of serious and organised crime.

If necessary, guidelines on the practical implementation of the Directive could also be drawn up for specific provisions requiring it.

The Commission will continue to monitor the implementation of the Directive by Member States in accordance with its powers under the Treaties and may take the appropriate action, including, where necessary, the initiation of infringement procedures.

## Preventing and combating trafficking in human beings, and protecting victims

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The Commission presented 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, in accordance with Article 23 (2) of the Directive 2011/36/EU.

As a reminder, a major step in the EU action to address this phenomenon was the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims which replaced the previous EU legal instrument on trafficking in human beings, [Council Framework Decision 2002/629/JHA](#).

The report provides a description of existing national legislation that criminalises the use of services of victims of trafficking and an assessment of the impact of any such legal measures. It should be read in conjunction with the "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](#) (refer to the corresponding summary in the procedure file).

The ultimate aim of this Report is to contribute to meeting the objectives of the Directive 2011/36/EU on reducing demand and prevent trafficking in human beings, in order to ensure that criminal groups are not benefiting from the diverse legal treatment of users of victims of trafficking.

Main conclusions of the report: as stipulated in Article 18(4) of the Directive 2011/36/EU, in order to make the preventing and combating of trafficking in human beings more effective, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation of victims of trafficking.

But the analysis made in this report demonstrates a rather diverse legal landscape which fails to effectively contribute to discouraging demand of such services.

The issue of criminalisation: the report noted that Member States follow rather diverse approaches and practices. In all Member States where there are national measures establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, the personal scope of those provisions is limited only to those who directly use services or labour provided by the victims. However, restricting criminal liability only to the situation where the user has direct and actual knowledge that the person is a victim of human trafficking creates a very high threshold for achieving prosecutions. In this respect, consideration of the level of knowledge that should be required for this offence should be a matter for close examination.

In the complete absence or inadequate criminalisation of the use of such services in the context of trafficking in human beings, the activity of traffickers which by definition includes exploitation of their victims, may not only be less discouraged, but adversely may be even fostered including through a culture of impunity.

The report stated that the challenge of discouraging demand implies to focus more on those who actually use the services of different forms of trafficking with the knowledge that the person is victim of an offence.

Currently, several Member States' legal systems do not, or only partially, outlaw those who make use of such services with relevant knowledge, impacting on legal uncertainty with regards, for example, the criminal liability linked to the relation of the user with the victim, the legal treatment of those who profit from or enable and facilitate such exploitation, the distinction between a user and an exploiter, the liability of intermediaries, as well as the broader supply chains.

According to the Commission, Member States should step up their efforts to ensure a more unified and dissuasive action against this element of the cross-border crime of trafficking in human beings. It stated that it will further examine potential options and consider in the future, if necessary, appropriate legislative proposals, as per Article 23 (2) of the Directive 2011/36/EU.

## Preventing and combating trafficking in human beings, and protecting victims

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The Commission presents its second report on the progress made in the fight against trafficking in human beings. Whilst continuing to monitor how Member States implement Directive 2011/36/EU on preventing and combating trafficking in human beings (the Anti-Trafficking Directive), the Commission notes that it implemented the [2012-2016 EU Strategy](#) towards the eradication of trafficking in human beings. In addition, in December 2017, the Commission identified further concrete actions to improve prevention of trafficking in its Communication reporting on the follow-up to the EU Strategy.

This report, together with its accompanying staff working document, presents emerging patterns based on data and trends, actions taken under the EU Strategy and the progress in implementing the 2017 Communication, in line with the commitment undertaken therein. The report also analyses statistical data provided by Member States and presents an update on the implementation of Directive 2004/81/EC7 on residence permits for victims of trafficking.

The main points are as follows:

Emerging trends: the data for 2015-2016 show similar patterns among registered victims and traffickers in contact with the police and criminal justice system to those found in previous reporting periods:

- there were 20 532 registered victims of trafficking in the EU. However, the report states that the actual number is likely to be significantly higher as many victims remain undetected;
- children were almost one quarter (23%) of the registered victims;
- 5979 prosecutions and 2927 convictions for trafficking in human beings were reported, which is low;
- EU citizens made up (44%) of registered victims, the main countries of citizenship being Romania, Hungary, the Netherlands, Poland and Bulgaria. These are the same countries as in 2010-2012 and in the first Commission progress report;
- the top five non-EU countries of citizenship of registered victims were Nigeria, Albania, Vietnam, China and Eritrea;
- 56% of trafficking in human beings was for the purpose of sexual exploitation, and this remains the most widespread form. Around one quarter (26%) was trafficking for labour exploitation, while other forms (such as forced begging, organ removal) (18%) made up the remainder. The majority (61%) of the registered victims of trafficking for labour exploitation are found in the UK, so data from the UK significantly changes the proportion of trafficking for labour exploitation at the EU level.

The report also highlights an increase in trafficking within Member States and targeting of younger victims and persons with disabilities. The use of Internet and social media to recruit victims is also noted as well as the heightened risk of trafficking in the context of migration.

The Commission states that there have been certain improvements. Generally, cross-border cooperation through Europol and Eurojust channels has increased. In 2014-2015, a large number of joint investigation teams were set up within Eurojust. Furthermore, Member States report that they are cooperating more closely with civil society organisations. The Commission cites the use of financial investigations, setting up joint investigation teams, and developing national and transnational referral mechanisms.

Nevertheless, trafficking in human beings remains a crime characterised by impunity for the perpetrators. The findings of this report do not indicate that trafficking has decreased. Further, the analysis of the data reveals a tendency to identify victims of prioritised forms of exploitation, with certain categories of victims placed at the forefront of action, while others receive less attention. Information from the Member

States reveals persisting complexities and a lack of progress in key areas. As a result, the Commission outlines a number of priority areas for Member States to focus on to combat trafficking in human beings, inter alia:

Improved data collection: Member States should improve the recording and registration of data particularly on gender, age, forms of exploitation, citizenship of victims and perpetrators, as well as on assistance and protection.

Increasing the effectiveness of prosecutions and convictions: EU rules already allow for the criminalisation of those who knowingly use services provided by victims of trafficking and the Commission encourages the Member States to implement those provisions in their national laws. The Commission actively supports national authorities to focus on improving the effectiveness of investigations and prosecutions through measures allowing them to follow the money and the profits from trafficking, and criminalising those who use the services of victims.

Promoting a coordinated response: Member States should continue enhancing transnational law enforcement and judicial cooperation while at the same time promoting cooperation with non-EU countries.

Ensuring victims' access to justice: Member States are encouraged to give effect to national legislation by ensuring tools are in place for early identification of victims, providing access to compensation, and promoting appropriate training and capacity building of relevant professionals.

Awareness-raising: raising awareness and training measures should be targeted at achieving concrete results, especially to prevent the crime. Member States are encouraged to better measure impact. Upholding accountability towards the victims also means ensuring that businesses are held accountable for their actions or inaction.

The Commission states that it has implemented many of the concrete actions of the 2017 Communication and will continue to assist in every possible way, including by financially supporting the development of policy and operational measures.