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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT REPORT**

*Accompanying the document*

**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**

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## Glossary

Term or acronym	Meaning or definition
AMIF	Asylum, Migration and Integration Fund
CEPOL	European Union Agency for Law Enforcement Training
EU Anti-Trafficking Coordinator (EU ATC)	The EU ATC helps ensuring coordination and coherence among EU institutions, EU agencies, Member States and international actors, contributing to the development of existing or new EU policies and strategies relevant to the fight against trafficking in human beings and reporting to the EU institutions. The EU ATC contributes to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings <sup>1</sup> .
EMPACT	European multi-disciplinary platform against criminal threats: security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime <sup>2</sup> .
EUAA	European Union Agency for Asylum
ELA	European Labour Authority
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Union Agency for Law Enforcement Cooperation
GRETA	Council of Europe's Group of Experts on Action against

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<sup>1</sup> Recital 29 and Article 20 of 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

<sup>2</sup> [EMPACT fighting crime together \(europa.eu\)](#)

	Trafficking in Human Beings
FRONTEX	European Border and Coast Guard Agency
ISF	Internal Security Fund
Judicial winding-up	Proceedings relating to the winding-up or liquidation of legal persons
LGBTIQ	Lesbian, gay, bisexual, trans, non-binary, intersex and queer
National Rapporteurs and Equivalent Mechanisms (NREM)	National rapporteurs and equivalent mechanisms are described in Directive 2011/36/EU as national monitoring systems. Member States have an obligation to establish such mechanisms, as required by Article 19 of Directive 2011/36/EU, in order to carry out assessments of trends in trafficking in human beings, measure results of anti-trafficking actions, including gathering statistics in close cooperation with relevant civil society organisations active in this field, and to report. An EU Network of National rapporteurs or equivalent mechanisms was established by the Council Conclusions on 4 June 2009. The EU Anti-trafficking Coordinator co-chairs the regular meetings of the Network, together with the incumbent Presidency of the Council of the EU <sup>3</sup> .
National Referral Mechanism (NRM)	Mechanism aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society <sup>4</sup> .
Pimping	Act of providing or procuring someone to a customer as a prostitute.

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<sup>3</sup> [Intensifying a coordinated response \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infobox/press-communication-detail?id=14123).

<sup>4</sup> Article 11(4) of Directive 2011/36/EU.

SOCTA	Serious and Organised Crime Threat Assessment
SDG	Sustainable Development Goals
Strategy	EU Strategy on Combatting Trafficking in Human Beings 2021-2025
TFEU	Treaty on the Functioning of the EU
THB	Trafficking in human beings
Transnational Referral Mechanism (TRM)	A TRM is a mechanism, which aims at linking national referral mechanisms to better identify, refer, protect and assist victims, when more than one Member State is affected with a trafficking case, or a Member State and a non-EU country <sup>5</sup> .

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<sup>5</sup> European Commission, *Study on Reviewing Member States' National and Transnational Referral Mechanisms* (2020), Publications Office of the European Union, p.17. Available at: [link](#).

## 1. 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Directive 2011/36/EU on preventing and combating trafficking in human beings, protecting its victims<sup>6</sup> (hereinafter “the Directive”)<sup>7</sup> is the primary legislative instrument to combat trafficking in human beings (THB) in the European Union. It provides for an overarching EU legal 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, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims.”<sup>8</sup> The Directive entered into force on 5 April 2011 and Member States were required to transpose it by 6 April 2013.

According to the 2021 EU Serious and Organised Crime Threat Assessment (herein after 2021 EU SOCTA) published by Europol, trafficking in human beings is a core activity of serious and organised crime in the EU and is set to remain a threat for the foreseeable future<sup>9</sup>. During the COVID-19 pandemic, criminals have seized opportunities to generate significant profits and intensify criminal activities. They have adapted their modus operandi and are increasingly using online platforms and services to identify victims, organise their exploitation, especially for sexual purposes, and advertise their services. At the same time, the threat of trafficking in human beings in relation to Russia’s war of aggression against Ukraine remains high, in particular in the longer-term. The war further increased opportunities for traffickers to exploit the vulnerable situation of people fleeing Ukraine for their financial gain. Therefore, a Common Anti-Trafficking Plan<sup>10</sup> was developed by the EU Anti-trafficking Coordinator (EU ATC) and endorsed by the Solidarity Platform on 4 May 2022 to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine.

Trafficking in human beings was identified as a crime priority in the EU Security Union Strategy<sup>11</sup> and in the Council conclusions of 26 May 2021 setting the 2022-2025 EU priorities for the fight against serious and organised crime through the European multi-disciplinary platform against criminal threats (EMPACT). The conclusions set as a priority “to disrupt criminal networks engaged in trafficking in human beings for all forms of exploitation, including labour and sexual exploitation, and with a special focus on those who exploit minors for forced criminality; those who use or threaten with violence against victims and their families, or mislead victims by simulating to

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<sup>6</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

<sup>7</sup> When the Directive was adopted in 2011, Denmark held an opt-out from EU policies in relation to European Union justice and home affairs policies. Therefore, Denmark is not bound by the Directive.

<sup>8</sup> Article 1 of the Directive.

<sup>9</sup>Europol (2021), *European Union serious and organised crime threat assessment, A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime*, Publications Office of the European Union, Luxembourg. Available at: [link](#).

<sup>10</sup> Available at: [link](#).

<sup>11</sup> Communication from the Commission to the European Parliament, the European council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy (COM/2020/605 final). Available at: [link](#).



officialise the exploitation; those who recruit and advertise victims online, and are serviced by brokers providing digital services”<sup>12</sup>.

The Impact Assessment relates to one of the key actions of the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, presented by the Commission on 14 April 2021 (hereinafter “the Strategy”)<sup>13</sup> together with the EU Strategy to tackle Organised Crime, which sets out the actions to be taken to disrupt the business models and structures of criminal organisations across borders, both online and offline. The EU Strategy on Combatting Trafficking in Human Beings indicated that the Commission would evaluate the Anti-trafficking Directive, and based on the outcome of the evaluation, consider reviewing it. The Commission carried out an evaluation (“Evaluation Staff Working Document”<sup>14</sup>) on the basis of which it concluded to revise the Anti-trafficking Directive. The evaluation feeds into the Impact Assessment for a revision of the Directive. The evaluation and the Impact Assessment also respond to the call of the European Parliament to the Commission to assess the implementation of the legal instrument and to come forward with proposals to revise the Directive<sup>15</sup>.

The Impact Assessment is relevant to three Sustainable Development Goals (SDG), i.e. SDG 5.2 on eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; SDG 8.7 on taking immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms; and SDG 16 on ending abuse, exploitation, trafficking and all forms of violence against and torture of children.

The fight against trafficking in human beings is a cross-cutting policy area and, therefore, is linked to many other initiatives. It is notably addressed in a number of recently adopted proposals for legislative instruments. The Commission’s proposal for a Directive on corporate sustainability due diligence<sup>16</sup> is complementary to Directive 2011/36/EU. It sets out a horizontal framework to foster the contribution of businesses operating in the single market to the respect of human rights and environment through their own operations and through their value chains, by identifying, preventing, mitigating and accounting for their adverse human rights and environmental impacts, including trafficking in human beings.

The proposal for a Directive on combating violence against women and domestic violence<sup>17</sup> acknowledges that the offence of trafficking in human beings for the purpose of sexual exploitation is a form of violence against women specifically covered under Directive 2011/36/EU. The specific prevention, protection and support measures envisaged in the Directive on combating violence

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<sup>12</sup> <https://data.consilium.europa.eu/doc/document/ST-8665-2021-INIT/en/pdf>

<sup>13</sup> EU Strategy on Combatting Trafficking in Human Beings 2021-2025, [COM\(2021\) 171 final](#).

<sup>14</sup> SWD(2022) 427.

<sup>15</sup> European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims, [2020/2029\(INI\)](#).

<sup>16</sup> [COM\(2022\) 71 final](#).

<sup>17</sup> [COM/2022/105 final](#).

against women and domestic violence complement the measures laid down in Directive 2011/36/EU.

The Directive addresses the specific needs of the particular categories of victims of trafficking in human beings. Victims of trafficking are nevertheless entitled to the measures provided under the Victims' Rights Directive that is a horizontal instrument, applicable to all victims of crime. On 28 June 2022, the Commission adopted its evaluation of the Victims' Rights Directive that identified shortcomings related to victims' access to information, justice, support and protection<sup>18</sup>. The Commission is currently preparing an impact assessment of the Victims' Rights Directive and plans to propose a revision of the Directive in 2023.

The Digital Services Act<sup>19</sup> adopted on 19 October 2022 will be a relevant tool in detecting, monitoring and removing online content related to trafficking in human beings, as it introduces a due diligence obligation for providers of intermediary services, such as online platforms, with the aim to reduce illegal and harmful content online.

The new rules proposed by the Commission to address online child sexual abuse<sup>20</sup> are also relevant in cases where the child victim of sexual abuse or sexual exploitation is also a victim of trafficking in human beings, as they require providers and hosting services to make risks assessments, detect and report online child sexual abuse, and remove related material.

The Commission's proposal for a new Directive on asset recovery and confiscation<sup>21</sup> contributes to the fight against trafficking in human beings by providing a new set of rules that addresses asset recovery from tracing and identification, through freezing and management, to confiscation and final disposal of assets.

On 14 September 2022 the Commission presented a proposal prohibiting products made with forced labour on the Union market<sup>22</sup>. The proposal will include products produced by forced labour from victims of human trafficking and will cover both domestic and imported products. Building on international standards and complementing existing horizontal and sectoral EU initiatives, in particular the due diligence and transparency obligations, the Regulation will combine a prohibition with a robust, risk-based enforcement framework.

The coherence with other EU legislative instruments relevant for the area of trafficking in human beings was assessed for the purpose of the evaluation. The evaluation concluded that the Anti-trafficking Directive was overall coherent with those instruments, although the consistency with the

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<sup>18</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU Strategy on Victims' Rights (2020-2025), COM/2020/258 Final.

<sup>19</sup> Regulation 2022/2065/EU of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p.1) See also [EUR-Lex - 32022R2065 - EN - EUR-Lex \(europa.eu\)](#)

<sup>20</sup> [COM/2022/209 final](#).

<sup>21</sup> [COM/2022/ 245 final](#).

<sup>22</sup> [COM\(2022\) 453 final](#).

Employers Sanctions Directive (2009/52/EC) could be further improved. This is addressed in Section 7.3 of the Impact Assessment.

## **2. 2. WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?**

### **2.1. 2.1. Problem overview**

Based on the trends observed over the period 2013-2020<sup>23</sup>, trafficking in human beings has not decreased. The annual number of registered victims did not vary significantly over the evaluation period<sup>24</sup>, although the actual number of victims is likely to be significantly higher than the statistics suggest<sup>25</sup>. The lowest number was recorded in 2015 (6 071 victims) and the highest in 2019 (7 777). While the scale and trends vary across the EU, all Member States are affected. During the period 2013-2020, the five Member States with the largest number of registered victims, in absolute numbers, were the Netherlands (8 967), France (8 652), Italy (6 927), Romania (5 742) and Germany (4 842). However, considering the proportion of victims as compared to the total population of the registering country<sup>26</sup>, the top five Member States were Cyprus (100), the Netherlands (66), Romania (36) and Austria (36) and Malta (35).

Three quarters (75%) of all victims registered in the EU were women and girls. Only two Member States (Belgium and Portugal) registered a majority of male victims (men and boys) during the reporting period. Children represented nearly a quarter (21%) of all victims in the EU.

Trafficking for the purpose of sexual exploitation has consistently remains the main form of exploitation within the EU (65% of all registered victims over the reporting period). The Member States with the highest share of victims of trafficking for sexual exploitation were Slovenia (87%), Bulgaria (82%), France (72%), Estonia and Denmark (70% each). Victims of trafficking for sexual exploitation registered in the EU are overwhelmingly female (93%).

Trafficking for labour exploitation is the second main form in the EU (21%). It was the most prevalent form of exploitation in Malta (74%), Portugal (66%), Belgium (57%) and Poland (53%). Labour exploitation affects mostly male victims (70%), although female victims are increasingly exploited in particular sectors (e.g., domestic work, care activities or cleaning services).

Other forms of exploitation<sup>27</sup> accounted for 14% of all the victims of trafficking in human beings.

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<sup>23</sup> See the evaluation and Annex 5 for a detailed analysis of the quantitative data. The quantitative data provided in this report has been collected by Eurostat from the Member States via the national statistical office and involving the National rapporteurs and equivalent mechanisms (NREM) together with relevant authorities and civil society organisations. It is drawn from administrative sources.

<sup>24</sup> The lowest number of victims was recorded in 2015 (6 071 victims) and the highest in 2019 (7 777).

<sup>25</sup> The reported statistics only include data from administrative sources, i.e. on victims who have come into contact with relevant organisations within each Member States, and it is estimated that many victims remain undetected.

<sup>26</sup> Number of victims per million inhabitants.

<sup>27</sup> Forced begging, criminal activities, removal of organs, benefit fraud and other purposes.

Statistics highlight the cross-border and transnational dimension of the crime. 56% of the victims identified in the EU are EU citizens, including 21% who are citizens of another EU Member States than the one where they were registered. The Member States who registered the highest percentage of EU victims who are citizens of another Member States for the reporting period were Czech Republic (65%), Germany (48%), Ireland (41%), Slovenia (39%) and Austria (37%).

Non-EU citizens accounted for 44% of victims registered within the EU. The Member States with the highest percentages of victims of non-EU citizenship are Sweden (96%), Malta (90%), Finland (86%), Denmark (87%), Belgium and Italy (both 75%). This data indicates that the countries of origin, transit and destination of trafficking victims identified in the EU are both EU Member States and non-EU countries.

The nationality of the traffickers also confirms the cross-border dimension. While EU citizens accounted for more than two thirds of all suspects with known country of citizenship during the 2015-2020 period, the proportion of non-EU citizens among suspects increased steadily during the reporting period, reaching 41% in 2020. EU citizens also represented over two thirds of all prosecuted individuals. Around 25% of those prosecuted were non-EU citizens. Among convicted individuals, the share of EU citizens (51%) and non-EU citizens (49%) is nearly even.

The number of prosecutions and convictions has remained consistently low<sup>28</sup>, especially if compared to the number of registered victims and of suspects. Between 2013 and 2020, 40 028 suspects were recorded for an offence of trafficking in human beings was. During the same period, 21 824 individuals were prosecuted and 11 319 were convicted. The evaluation showed that the limitations of available data hindered the accuracy of these statistics, as Member States have different approaches to reporting data on individuals and cases in their police, prosecution and court systems.

Trafficking in human beings continues to be a low risk, high profit crime, which generates an estimated amount of EUR 29.4 billion<sup>29</sup> per year. The annual revenues produced for trafficking for sexual exploitation are estimated at around EUR 14 billion<sup>30</sup>.

Since the adoption of the Directive, several major developments have affected the socio-economic situation, with significant implications on the trafficking in human beings landscape. Technological developments and the expansion of online social media created new opportunities for traffickers, allowing them to recruit victims online and to reach a much broader audience via online streaming and widespread sharing of exploitative materials. The demand for using the services exploited from trafficking victims is also likely to increase. According to the 2021 EU SOCTA report “*the*

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<sup>28</sup> Between 2013 and 2020, the number of recorded suspects for an offence of trafficking in human beings was 40 028; the number of prosecuted individuals was 21 824 and the number of convicted individuals was 11 319.

<sup>29</sup> Europol, *The trafficking in human beings financial business model* (2015). Available at: [link](#).

<sup>30</sup> This is a high-range estimate, taking into account hidden victims. The middle range estimate is at approximately EUR 7 billion. European Commission, Directorate-General for Migration and Home Affairs, [Mapping the risk of serious and organised crime infiltrating legitimate businesses: final report](#), Disley, E.(editor), Blondes, E.(editor), Hulme, S.(editor), Publications Office, 2021, p. 10.

*sustained demand for sexual services will continue to drive the sexual exploitation of victims”, and “the persistent demand for low-wage workers employed in manual jobs, both seasonable and throughout the year, will ensure opportunities for labour exploitation”.* In 2020, Europol warned that an economic recession in the wake of the COVID-19 pandemic would increase the risks of trafficking in human beings, as criminals have access to a wider pool of individuals in enhanced vulnerability situations or economic distress. At the same time, an increased demand for cheap labour may work as a pull factor, provoking a potential rise in trafficking within the EU<sup>31</sup>. Furthermore, the vulnerability of people who fled Ukraine into the EU following Russia’s unjustified military aggression is expected to increase in the mid- and long-terms. Criminal networks, but also employers, may try to take advantage of the situation of refugees, who may be inclined to accept jobs with poor working conditions or which are undeclared and in turn be more at risk of labour exploitation.

The evaluation found that the Directive contributed to the creation of an EU common framework for the (i) criminalisation, investigation and prosecution of trafficking in human beings offences, including related definition and sanctions; (ii) assistance, support and protection of victims of trafficking in human beings; (iii) prevention of trafficking in human beings related offences. Despite the improvements brought by the Directive, the current legal framework is not fully adapted to the emerging trends and recent challenges posed by trafficking in human beings. Indeed, the evaluation found room for improvement, in particular in making the Directive more effective in dealing with new forms of exploitation and modus operandi of the traffickers, as well as in the area of investigations and prosecutions. Moreover, divergences in the way the Directive has been implemented in the Member States is causing inconsistencies, for instance in the interpretation of trafficking in human beings offences and in the criminalisation of the use of services exacted from victims of trafficking. Shortcomings with regard to the assistance, support and protection of victims mainly stem from gaps in the implementation of the Directive, which can be addressed through further support to the Member States.

One horizontal and three specific problems were identified as part of the evaluation (see **Table 1 – Problem tree**).

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<sup>31</sup> Europol, *The challenges of countering human trafficking in the digital era* (2020). Available at: [link](#).

**Table 1 - Problem tree**

<b>General problem</b>	The current legal framework is not fully adapted to the way trafficking in human beings has evolved since the adoption of the Directive		
<b>Horizontal problem</b>	1 – Trafficking in human beings continues to thrive in the EU		
<b>Drivers</b>	<p>1.1. There are practical obstacles in the detection of cases of trafficking in human beings and in the early identification of victims</p> <p>1.2. Preventive and awareness-raising initiatives at EU and national level do not adequately target individuals and specific groups at higher risk of becoming victims of trafficking</p> <p>1.3. The data collection exercises and the monitoring of trends do not reflect the full scale of trafficking in human beings across the EU</p>		
<b>Specific problems</b>	<b>core</b>	<b>2 – Investigations, prosecutions and convictions numbers are low, leading to the impunity of traffickers</b>	<b>3 – Victims of trafficking in human beings do not always receive an adequate level of assistance, support and protection, adapted to their specific needs</b>
<b>Drivers</b>		<p>2.1. There has been a rise in the forms of exploitation not explicitly covered in the THB definition provided by the Directive</p> <p>2.2. THB increasingly moved online, creating additional challenges for law enforcement and judicial authorities</p> <p>2.3. There are challenges in proving trafficking offences in front of national courts</p> <p>2.4. Legal persons are not (sufficiently) held accountable for trafficking offences</p>	<p>3.1. Existing national and transnational referral mechanisms are not fully effective</p> <p>3.2. Assistance and support services often have limited capacity or are not sufficiently tailored to the specific needs of individual victims</p> <p>3.3. The principles of non-prosecution and non-punishment of the victims for criminal activities they were forced to commit as a direct result of being trafficked, are not consistently implemented</p> <p>3.4. Victims rarely have access to compensation</p> <p>3.5. Measures to protect victims who participate in the criminal proceedings are not consistently applied in the Member States</p>
			<b>4 – The demand that fosters trafficking in human beings remains high</b>
			<p>4.1. The criminalisation of the use of services exacted from victims of THB is not consistent across the EU</p> <p>4.2. Demand-reduction approaches are not widely implemented</p>

**2.2. 2.2. Horizontal problem 1: Trafficking in human beings continues to thrive in the EU**

*2.2.1. 2.2.1. Driver: there are practical obstacles in the detection of cases of trafficking in human beings and in the early identification of victims*

Several stakeholders highlighted that shortcomings in the detection of the crime form a significant obstacle to the early identification of victims and their access to the rights they are entitled to under

the Directive<sup>32</sup>. The systems for, and authorities involved in, the detection and identification<sup>33</sup> of victims of trafficking in human beings are different across the Member States. While many authorities can be competent to detect possible situations of trafficking in human beings, the formal identification of the victims is usually entrusted with a more limited number of entities. Identification is carried out by law enforcement authorities in the majority of the Member States<sup>34</sup>, which are sometimes the only entities competent to formally identify the victims<sup>35</sup>. Victim identification is often closely related to the detection of trafficking cases and the initiation of criminal proceedings. However, victims may be unwilling to come forward and report a crime to the law enforcement authorities, as they might fear secondary victimisation and further trauma or to disclose their situation when they are illegally staying in the territory of a Member State<sup>36</sup>. In addition, victims are often emotionally or economically dependent on the trafficker or fear for their lives and for the life of their family.

Although all Member States have specific measures in place, the detection and identification is often hindered by the lack of resources for training and capacity-building, as relevant stakeholders both at national and local level may not have the necessary skills and abilities to determine whether a person could be a victim, in particular when it comes to specific phenomenon, such as online trafficking in human beings<sup>37</sup>. Moreover, Member States reported that a significant obstacle to identification of victims is the “lack of an overarching identification status, standard criteria or indicators to identify victims, which results in competent authorities with too much discretion in identifying presumed (potential) victims of trafficking”<sup>38</sup>.

The deficiencies in detecting potential victims lead to fragmented detection, identification procedures and case management, both within the Member States and in cross-border cases. The evaluation underlined that there is room for improving the awareness, capacity and training of key professionals who are likely to come into contact with victims to recognise the signs of trafficking in human beings.

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<sup>32</sup> For example during stakeholders interviews carried out by the external contractor, as well as during the meeting of the EU Civil Society Platform against Trafficking in Human Beings organised by the European Commission on 30 November 2021. Challenges in the effective detection and consequent formal identification of victims of trafficking was also identified as a challenge in several Member States in the Commission’s *Study on Member States’ National and Transnational Referral Mechanisms* (2020), p.38, and in *Eurojust Report on Trafficking in Human Beings* (2021), p.22.

<sup>33</sup> The European Migration Network’s *Study on Third country national victims of trafficking in human beings: detection, identification and protection* (2021) defines “**detection**” as “the process of identifying a possible situation of trafficking in human beings”. It may be “followed by **identification**, which is the formal confirmation that the detected person can be considered a presumed victim of trafficking according to the competent authorities of the Member States. This formal identification of the victim often then entitles the victim to different forms of support or to apply for authorisation to remain on the territory of the country where they were identified.” Available at: [link](#), p.20.

<sup>34</sup> AT, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, SE, SI and SK.

<sup>35</sup> BG, ES, IE and MT.

<sup>36</sup> Submissions to the public consultation by Missing Children Europe; two targeted interviews carried out by the external contractors; workshop with the EU Civil Society Platform against Trafficking in Human Beings on 30 November 2021.

<sup>37</sup> European Migration Network, *Study on Third country national victims of trafficking in human beings: detection, identification and protection* (2021), p.25 and p.28.

<sup>38</sup> *Ibid* n°36, p.28, Box 12.



*2.2.2. 2.2.2. Driver: preventive and awareness-raising initiatives do not adequately target individuals and specific groups at higher risk of becoming victims of trafficking*

The evaluation found that prevention strategies and awareness-raising initiatives at both the national and EU level do not sufficiently address societal issues linked to trafficking in human beings, such as gender discrimination, economic inequality, low levels of education, poverty and restrictive migration policies<sup>39</sup>. Awareness-raising initiatives do not always reach their target audience, especially high-risk groups and people in high-risk sectors.

*2.2.3. 2.2.3. Driver: the data collection exercises and the monitoring of trends do not reflect the full scale of trafficking in human beings across the EU*

Persistent gaps in the data collection prevent capturing the full scale of trafficking in human beings in the EU and adequately monitoring the phenomenon. Despite significant progress, statistics are still not systematically collected by all Member States<sup>40</sup>. While all Member States reported data on victims for the latest reporting period (2019-2020), criminal justice data (investigations, prosecutions, convictions or penalties imposed by national courts for trafficking offences) was still missing in eight Member States<sup>41</sup>. Statistics on specific indicators are not always available in some Member States. Other Member States only record statistics on persons who have been prosecuted or convicted, but not on suspects, or collect data on the number of proceedings rather than the number of prosecuted persons. More generally, gaps in the availability and quality of data can result from issues in the functioning of national registration systems and coordination between registering authorities and National Statistical Authorities, which report the data to EUROSTAT. Furthermore, the data collection is affected by widespread underreporting, which also hinders the detection of the crime as described above.

Without a complete overview at EU level, it is impossible to adequately estimate the scale of human trafficking across the EU as well as current trends. In addition, no data is available on the number of seizures, freezing and confiscation of instrumentalities and proceeds from human trafficking, as well as prosecutions and convictions against legal persons. The absence of data collection on the number of victims who receive assistance and support<sup>42</sup>, or who are awarded compensation do not allow to monitor or evaluate the extent to which these rights are enforced in practice. Moreover, statistics collected by the Commission only includes victims who have been registered with the

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<sup>39</sup> Interview (#11); interview (#20). This was also raised by three survey respondents, as well as in the contribution to the public consultation by the Red Cross.

<sup>40</sup> See Annex 5 for a detailed analysis of the data collection on trafficking in human beings in the EU for the period 2013-2020. Information on Member States' data provision and related gaps is also available in the Commission's EU-wide data collection studies, published in [2018](#) (p.28) and [2020](#) (p.128).

<sup>41</sup> BE, CY, EE, DE, IE, IT, NL and RO. The availability of criminal justice data for 2019-2020 depended on the Member States, the year and the indicators (e.g. suspects, prosecuted persons and convicted persons).

<sup>42</sup> Article 11(2) provides that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.



authorities or other organisations<sup>43</sup> of the Member States. The actual number of victims is likely to be significantly higher than the reported data suggests, as these statistics only capture victims that become known to one of the registering entities and many victims remain undetected<sup>44</sup>.

### **2.3. 2.3. Specific problem 2: The numbers of investigations, prosecutions and convictions of traffickers are low, leading to a culture of impunity**

*2.3.1. 2.3.1. Driver: there has been a rise in the forms of exploitation other than those explicitly mentioned in the definition of trafficking in human beings provided in the Directive are often not criminalised in the Member States*

Article 2(3) has been transposed by all Member States, although not all the national legislations include explicit references to certain forms of exploitation, which are explicitly mentioned<sup>45</sup>. However, this lack of compliance with the Directive does not necessarily mean that such conducts are not prosecuted and sanctioned in practice. In fact, the evaluation found that inconsistent criminalisation of conducts qualifying as trafficking offences across the Member States particularly concerns forms of exploitation that are not explicitly mentioned in Article 2(3).

The share of forms of exploitations other than sexual and labour<sup>46</sup> increased from 8% in 2013 to 20% in 2018. Cases with a form exploitation reported by Member States as “other”, which can include forced marriage and illegal adoption, among others, accounted for 11% of all registered cases during the reporting period 2013-2020.

**Forced marriage** is already listed in the recitals of the Directive as another purpose that can be covered by the definition of trafficking in human beings insofar as it fulfils the constitutive elements (conduct, means and objective) of the offence<sup>47</sup>. Some Member States introduced it as a form of exploitation into the national legislation transposing the Directive<sup>48</sup>. The 2021 EU SOCTA

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<sup>43</sup> The number of “registered” victims includes both “presumed” and “identified” victims. Victims are “presumed” when they met the criteria of Directive 2011/36/EU but have not been formally identified by the relevant formal authority as victims of trafficking in human beings or who have declined to be formally or legally identified as trafficked. Victims are considered “identified” for persons who have been formally identified as victims of trafficking in human beings by the relevant formal authority in Member States. See European Commission, *Study on Data collection on trafficking in human beings in the EU* (2018), p.13, Publications Office of the EU. Available at: [link](#).

<sup>44</sup> European Commission, *Study on Data collection on trafficking in human beings in the EU* (2018), p.22, Publications Office of the EU. Available at: [link](#).

<sup>45</sup> Begging (HR, LV, SI); slavery and practices similar to slavery (BE, IT); exploitation of criminal activities (FI, PL, RO).

<sup>46</sup> Forced begging, criminal activities, benefit fraud and “others”, including exploitation for the purpose of forced marriage, illegal adoption, selling of children, slavery, etc.

<sup>47</sup> The European Institute for Gender Equality (EIGE) defines “forced marriage” as situations “where a marriage is entered into without the free and full consent of one or both of the parties because of threats, deceit or coercion”. See *EIGE’s Gender-specific measures in anti-trafficking actions: report* (2018), available at: [link](#).

<sup>48</sup> Five EU Member States (EE, EL, NL, SK, as well as DK) address forced marriages as an aggravating circumstance or as one of the purposes of trafficking in human beings. See Sara De Vido and Lorena Sosa, *Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence* (2021), Directorate-General for Justice and Consumers, European Commission. Available at: [link](#).

report and the Commission's progress reports have highlighted a rise in the number of cases of trafficking for forced marriage, which particularly affects women and children, and is often combined with other forms of exploitation, such as sexual exploitation and/or labour exploitation.

**Illegal adoption** is also listed in the recitals of the Directive as an exploitative purpose, which can be covered by trafficking in human beings, insofar as it fulfils the constitutive elements of the offence. The 2021 EU SOCTA report underlines that children are trafficked and sold through illegal adoption schemes<sup>49</sup>. Mothers in vulnerable circumstances can be forced to give their children for adoption outside the legal adoption system for the financial profit of the trafficker.

There are certain emerging trends with regard to the forms of exploitation, which were not as evident at the time of the adoption of the Directive but gained importance since then. Such case is typically the trafficking of women for the purpose of **illegal surrogacy** programmes by coercing women into a pregnancy and selling new-born children. The 2021 EU SOCTA, Eurojust and the Commission's Third progress report<sup>50</sup> have pointed out the threats of illegal surrogacy in the context of trafficking in human beings. As part of the evaluation, Eurojust reported that some Member States encounter difficulties in judicial cooperation and prosecution in cases involving the selling of new-born children, in particular when vulnerable surrogate mothers are exploited by intermediaries and there is a risk of exploitation of the children.

**Social benefit fraud**, which is not explicitly covered by the Directive, was also referred to as an emerging form of exploitation in the 2021 EU SOCTA. Eurojust also reported on cases where traffickers take advantage of vulnerable individuals in difficult financial conditions to commit social benefit fraud for their profit<sup>51</sup>. Because of the lack of legislation on social benefit fraud as an exploitative purpose of trafficking in human beings, the exploited individuals are often regarded as suspects of fraud rather than victims of trafficking<sup>52</sup>.

#### *2.3.2. 2.3.2. Driver: trafficking in human beings increasingly moved online, creating additional challenges for law enforcement and judicial authorities*

The modus operandi and business model of traffickers have evolved to move the offence, or some elements of it, online, in particular as a consequence of the COVID-19 pandemic. This has created new challenges for law enforcement and judicial authorities, making trafficking cases more difficult to detect and investigate<sup>53</sup>. Technology enables traffickers to remain anonymous via common encrypted communication solutions, thus reducing the risks of being detected<sup>54</sup>. It further allows criminals to reach a higher number of potential victims to recruit without any physical interaction.

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<sup>49</sup> Also see Europol's Situation report on criminal networks involved in the trafficking and exploitation of underage victims in the European Union (2018). Available at: [link](#).

<sup>50</sup> Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU preventing and combating trafficking in human beings and protecting its victims; available: [link](#)

<sup>51</sup> See Eurojust, *Report on Trafficking in Human Beings: Best practice and issues in judicial cooperation*, February 2021, available at: [link](#); Eurojust's contribution to the public consultation.

<sup>52</sup> Eurojust's contribution to the public consultation.

<sup>53</sup> See section 4.3.1 of the evaluation for more details.

<sup>54</sup> Europol, *The challenges of countering human trafficking in the digital era* (2020). Available at: [link](#).

Traffickers use the digital space for every phase of the trafficking offence, e.g. for the recruitment and exploitation of the victims, the organisation of their transport and accommodation, their advertising and to reach out to potential clients, to control the victims, to communicate, as well as to hide criminal proceeds.

The internet and other information technology means often only concern one or few elements of the trafficking chain, for example the recruitment or the advertisement of the victim, whereas the rest of the offence (e.g. the actual exploitation) may take place offline. In other cases, information technology means may be used to exert control over the victims (for example tracing them or booking accommodation). The very exploitation may also happen online and be shared through the internet or social media, while the recruitment takes place offline. This wide variety of examples shows that all elements of the offences hardly ever take place completely online or offline. While gathering data at the EU level is difficult, Member States have provided some examples, which highlight the online dimension of the crime. In Germany, 11% of the victims identified were contacted or recruited through the internet, including through the use of social media platforms or advertising portals<sup>55</sup>. French authorities reported that the internet was used by 65% of identified victims of sexual exploitation in 2019, which represented a 16% increase as compared to the previous year<sup>56</sup>.

The growing use of encrypted technology by traffickers makes it more difficult for law enforcement authorities to access and recover data during the investigation, including on communication between the perpetrators and between the perpetrators and the victims, identity of the traffickers and the victims, as well as on the means used to coerce and traffic the victims. Law enforcement and judicial authorities also face obstacles in handling large amounts of electronic data, which may also be linked to lack of capacity, technical equipment, training and technical knowledge. Differences across the Member States in legislation concerning data retention and investigation tools and practices related to offences facilitated by the use of technology can also pose significant challenges in fighting against trafficking in human beings<sup>57</sup>.

### *2.3.3. 2.3.3. Driver: There are challenges in proving offences of trafficking in human beings in front of national courts*

The low level of prosecutions and convictions of trafficking offences, especially compared to the number of victims and of suspects<sup>58</sup>, can be partly explained by the challenges in building effective cases against traffickers. One of these is gathering sufficient and admissible evidence to prove all the elements of the offence, i.e. the intent, the conduct, the means and the purpose of the offence, which is the exploitation of the person. As a consequence, investigations, prosecutions and convictions are often heavily dependent on the victim's testimony. Yet, gathering other evidence,

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<sup>55</sup> Council of Europe Group of Experts on Action against Trafficking in Human Beings, *Online and technology-facilitated trafficking in human beings* (2022), p.32. Available at: [link](#). This information is based on the 2019 National Situation Report on Trafficking in Human Beings compiled by the German authorities.

<sup>56</sup> Ibid n°50, p.33.

<sup>57</sup> Ibid n°50, p.47-50.

<sup>58</sup> See section 2 of the Impact Assessment and Annex 5.

such as financial transactions, surveillance information and digital or physical evidence, would increase the chances of successful prosecution and, at the same time, would reduce any further potential harm suffered by the victims as a result of their participation in criminal proceedings.

Due to insufficient evidence, trafficking in human beings is sometimes re-qualified as other offences, which are easier to prove in national courts, such as pimping, aggravated prostitution, smuggling of migrants, deprivation of liberty, or violation of labour or social security laws. The exploitation element of trafficking in human beings is the most difficult to prove in court, and prosecutors have to produce admissible and sufficient evidence in court to obtain a conviction for trafficking offences. There is no EU definition or indicators of exploitation. Member States have different definitions of exploitation or rely on different indicators to prove it. For instance, some Member States consider that very low wages constitute labour exploitation, whereas others will investigate and prosecute the offence under another qualification (e.g. exploitation of immigrant work)<sup>59</sup>. This may hinder cross-border cooperation, in cases where one Member State considers that a certain conduct amounts to exploitation, while another one does not.

In this context, the evaluation found that Member States do not sufficiently use the support and capacity of coordination of the EU Agencies, in particular Europol and Eurojust, which could help them in overcoming challenges they encounter when investigating or prosecuting human trafficking cases.

#### *2.3.4. 2.3.4. Driver: legal persons are not (sufficiently) held accountable for trafficking offences*

Criminal networks involved in labour exploitation operate in cash-intensive businesses where low-waged, low-skilled, intensive and seasonal work is needed, such as forestry, food processing, assembly lines, hospitality, retail, carwashes, beauty and cleaning services, transportation, housekeeping and domestic work. Organised crime groups specialised in trafficking increasingly establish complex legal structures to hide their exploitative operations<sup>60</sup>.

The Directive provides for the liability of, and sanctions for, legal persons that commit trafficking offences. Although the Commission guidelines on the biannual data collection sent to the National Statistical Authorities of the Member States include the provision of data on the number of legal persons that are subject to prosecution and court judgements, no such data has been reported by the Member States. Consulted stakeholders further reported that prosecutions and convictions of legal persons are extremely rare<sup>61</sup>. This shows that the Directive has not ensured greater accountability of legal persons.

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<sup>59</sup> European Commission, Study on case-law relating to trafficking in human beings for labour exploitation (2016). Available at: [link](#).

<sup>60</sup> European Commission, Directorate-General for Migration and Home Affairs, [Mapping the risk of serious and organised crime infiltrating legitimate businesses: final report](#) (2021), Disley, E.(editor), Blondes, E.(editor), Hulme, S.(editor), Publications Office of the EU.

<sup>61</sup> Interview with an academic expert #24; interview with an academic expert #25.

## **2.4. 2.4. Specific problem 3: victims of trafficking do not always receive an adequate level of assistance, support and protection, which is adapted to their specific needs**

### *2.4.1. 2.4.1. Driver: existing national and transnational referral mechanisms are not fully effective*

All but one Member State have put in place a formal or informal National Referral Mechanism (NRM)<sup>62</sup>. While all coordination mechanisms include identification processes and short-term support and protection measures for victims, their scopes differ across the Member States<sup>63</sup>. The evaluation found insufficient coordination and links between professionals who are involved in the identification of victims of trafficking and organisations providing specialised assistance and support services. The evaluation also noted the limited capacity of shelters for children, and insufficient cooperation between anti-trafficking and asylum services or child protection systems. This negatively affects the victims' willingness or ability to seek help and report cases and fosters re-victimisation (i.e. the victim will be exploited again by traffickers). Moreover, the absence of harmonised procedures at the EU level hampers the effectiveness of the cross-border identification and referral of victims.

### *2.4.2. 2.4.2. Driver: the services providing assistance and support to victims of trafficking often have limited capacity and resources or are not sufficiently tailored to specific needs*

The evaluation<sup>64</sup> found that Member States pay limited attention to, or have limited understanding of, the needs of victims of trafficking with disabilities or other special needs. It also found that often not sufficient national resources are allocated to externalised services, in particular civil society organisations, for the assistance and support to victims. Moreover, female victims and others in vulnerable situation, such as children, in particular vulnerable children (e.g. migrant children) and children with disabilities, members of the Roma community or of the LGBTIQ community, as well as persons with disabilities<sup>65</sup>, do not always have access to available information on available support services and their rights.

### *2.4.3. 2.4.3. Driver: the principles of non-prosecution and non-punishment of victims forced to commit criminal offences as a result of being trafficked, are not consistently implemented*

Article 8 of the Directive requires the non-prosecution and non-punishment of victims of trafficking who were compelled to commit criminal activities as a direct consequence of being trafficked.

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<sup>62</sup> Commission, *Study on Reviewing Member States' National and Transnational Referral Mechanisms* (2020), p.19. Available at: [link](#). Germany is the only Member State, which does not have some cooperation mechanism in place at the national level.

<sup>63</sup> Ibid n°57, p.20.

<sup>64</sup> See section 4.1.1.5 of the evaluation.

<sup>65</sup> According the Anti-trafficking Directive, particularly vulnerable victims include at least all children (Recital 12).

While the vast majority of Member States have transposed this provision into their national legislation<sup>66</sup>, its application is limited in practice<sup>67</sup>. This particularly affects certain categories, such as victims trafficked for forced criminal activities; victims who do not cooperate with the authorities in criminal proceedings; as well as children<sup>68</sup>.

#### 2.4.4. 2.4.4. *Driver: victims rarely have access to compensation*

Pursuant to Article 17 of the Directive, Member States are required to ensure that victims of trafficking have access to existing schemes of compensation available for victims of violent crimes of intent. Access to compensation by victims of trafficking in human beings also falls within the scope of the Victims' Rights Directive (Directive 2012/29/EU)<sup>69</sup> and the Compensation Directive (Directive 2004/80/EC)<sup>70</sup>. The evaluation established that the Directive contributed to increasing access to compensation, as Member States have adopted legislative and policy measures in this area. However, in practice, victims face difficulties in receiving compensation<sup>71</sup> due to administrative obstacles, no access to legal aid, as well as the duration of the criminal proceedings, since compensation is often awarded upon their conclusion. Access to compensation may further be hindered if the victim has returned to his or her country of origin or is an undocumented migrant.

#### 2.4.5. 2.4.5. *Driver: measures to protect victims who participate in the criminal proceedings are not consistently applied*

While Member States ensure access to witness programmes, these are also not used systematically for victims of human trafficking and some of their features are not adapted to the situation of the specific vulnerability of the victims. For instance, victims often experience secondary victimisation during criminal proceedings, as a result of the repeated recounting of their experiences and of being questioned in order to produce or verify evidence. This is particularly problematic considering that the victim's testimony is often central to successful investigations and prosecutions.

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<sup>66</sup> Article 8 has not been transposed by CZ and HR.

<sup>67</sup> European Commission, European Commission, *Third (2020) report on the progress made in the fight against trafficking in human beings*, [COM\(2020\) 661 final](#), and its accompanying Staff Working Document, [SWD\(2020\) 226 final](#); GRETA and EIGE contributions to the public consultation.

<sup>68</sup> European Commission, *Second report on the progress made in the fight against trafficking in human beings*, [COM\(2018\) 777 final](#), and its accompanying Staff Working Document, [SWD\(2018\) 473 final](#); EIGE contribution to the public consultation; GRETA, *Trafficking in Children* (2019), available at: [link](#); RACE (2014), *Trafficking for force criminal activities and begging in Europe*, available at: [link](#).

<sup>69</sup> 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.

<sup>70</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (the 'Compensation Directive'), [OJ L261](#), 6.8.2004, p.15.

<sup>71</sup> European Commission, Staff Working Document accompanying the Third (2020) report on the progress made in the fight against trafficking in human beings third report, SWD(2020) 226 final; Special Advisor J Milquet to the President of the European Commission, *Strengthening Victims' Rights: From compensation to reparation, For a new EU Victims' rights strategy 2020-2025*, (2019), available at: [link](#).



## **2.5. 2.5. Specific problem 4: the demand that fosters trafficking in human beings remains high**

### *2.5.1. 2.5.1. Driver: the criminalisation of the use of services exacted from victims of trafficking is not consistent across the Member States*

Article 18(4) of the Directive requires Member States to consider criminalising the use of services which are the objects of exploitation, with the knowledge that the person is a victim of trafficking. In 2016, the Commission noted that a diverse legal landscape across the EU fails to effectively discourage demand, and that liability linked to direct knowledge that the person is a victim creates a high threshold in prosecutions. Accordingly, the level of knowledge of the user of exploited services requires a close examination<sup>72</sup>.

The use of exploited services concerns the demand for goods or services resulting from the exploitation of victims of trafficking in human beings. In exploitation of the prostitution of others and other forms of sexual exploitation, the users of exploited services are those who engage in sexual activity with trafficked victims. In forced labour, the users of exploited services are those who purchase, or otherwise acquire, goods resulting from labour exploitation. In case of removal of organs, the users are those who obtain the organs of the exploited victim. However, not all forms of exploitation included in the Directive necessarily result in the use of exploited services by a third party. In case of forced begging, the users of the exploited services are the traffickers themselves.

Seven Member States did not use the option provided for by Article 18(4) and therefore have no rules on the use of exploited services<sup>73</sup>. Five Member States criminalised the knowing use of exploited services only related to sexual exploitation<sup>74</sup>. One Member State criminalised the knowing use of exploited services related to sexual exploitation and labour exploitation<sup>75</sup>. Eight Member States criminalised the knowing use of exploited services related to all forms of exploitation<sup>76</sup>. Two Member States criminalised the use of services related only to sexual exploitation when the users had knowledge that the services were exacted from trafficked victims or they should have known based on a reasonable assessment of the circumstances<sup>77</sup> or had cause to suspect it<sup>78</sup>. One Member State criminalised the use of exploited services in relation to sexual exploitation without a knowledge requirement, as well as the knowing use of services for all other forms of exploitation<sup>79</sup>. Two Member States do not have specific rules on the criminalisation of the use of exploited services but both adhere to the “equality model”, which criminalises any use of sexual services without any knowledge requirement, regardless of whether the person is a victim of

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<sup>72</sup> [COM\(2016\) 719 final](#).

<sup>73</sup> AT, BE, CZ, ES, IT, PL, SK.

<sup>74</sup> EE, IE, LU, LV, NL.

<sup>75</sup> EL.

<sup>76</sup> BG, HR, HU, LT, MT, PT, RO, SI.

<sup>77</sup> DE.

<sup>78</sup> FI.

<sup>79</sup> CY.

trafficking<sup>80</sup>. Therefore, exploited services are implicitly included, although there is no specific rule concerning these in those Member States.

Consulted stakeholders have considerably diverging views<sup>81</sup> regarding the effectiveness of the criminalisation of the use of exploited services as a means to reduce the demand that fosters trafficking. There are concerns that criminalising the use of services exacted from victims of trafficking might risk further increasing the dependence of victims on their traffickers or pushing victims of sexual and labour exploitation to places where they are less likely to be identified and provided with adequate protection and support. At the same time, the lack of harmonisation across the Member States means that users will face different consequences depending on where they use the exploited services of victims.

#### 2.5.2. 2.5.2. Demand-reduction approaches are not widely implemented

A particular area where more efforts are needed relates to the growing demand in the society for cheap products and services, especially in times of economic recession, which can foster cheap labour and lead to labour exploitation. Stakeholders consulted reported that there could be a considerable scope for greater responsibility of businesses and corporations<sup>82</sup> in relation to influence consumer and end-user awareness of forced labour, in particular in high-risk sectors, such as agriculture, garments and hospitality. Moreover, awareness-raising approaches are rarely targeted to the demand-side, for example to potential users of the services exacted from victims of trafficking in human beings, in particular for the purpose of sexual exploitation.

### 3. 3. WHY SHOULD THE EU ACT?

#### 3.1. 3.1. Legal basis

**The legal basis for the EU action in the field of trafficking in human beings are Articles 82(2) and, more particularly, 83(1) of the Treaty on the Functioning of the EU (TFEU).** The latter provides that *“the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules on the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”*. Trafficking in human beings is one of the areas which fall within the scope of Article 83(1).

#### 3.2. 3.2. Subsidiarity and proportionality

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<sup>80</sup> FR, SE.

<sup>81</sup> See section 4.1.1.3 of the evaluation. For instance, amongst the respondents to the public consultation who answered that the Directive should criminalise the knowing use of exploited services, 14 were public authorities, 26 were non-governmental organisations and 28 were EU citizens. On the other hand, 2 EU citizens, 2 public authorities and 19 non-governmental organisations considered that the Directive should not criminalise the knowing use of exploited services.

<sup>82</sup> Submissions to the public consultation by (respectively) EIGE; International Labour Organisation; ICAT; and La Strada International.



Under Article 4(2)(j) of the TFEU, **the area of freedom, security and justice is described as a shared competence between the EU and the Member States**. Article 67(3) TFEU empowers the EU to “ensure a high level of security through measures to prevent and combat crime [...] and through measures for coordination and cooperation between police and judicial authorities and other competent authorities”. The fight against trafficking in human beings since 2002 governed by EU law, first by Council Framework Decision 2002/629/JHA on combating trafficking in human beings<sup>83</sup> and subsequently by Directive 2011/36/EU on preventing and combating trafficking in human beings, protecting its victims.

The cross-border dimension of trafficking in human beings is twofold, with an intra-EU cross-border dimension, and an external dimension involving the crossing of EU external borders (section 2.1). Consultations with stakeholders demonstrated the necessity of EU action in the area of trafficking in human beings<sup>84</sup>. Eurojust also reported that all 405 cases referred to the EU Agency between January 2017 and June 2019 were transnational and allegedly committed by organised crime groups<sup>85</sup>. Most of the cases (84) selected for analysis<sup>86</sup> involved EU citizens from Romania, Bulgaria, Slovakia, Hungary and Lithuania, while eight cases involved victims from non-EU countries (Nigeria, Ukraine, Belarus and Moldova). Cross-border law enforcement and judicial cooperation is increasingly based on common EU rules across the Member States, which requires a higher harmonisation of relevant national legislation and systematic exchange of good practices<sup>87</sup>. The cross-border dimension does not only concern the nationality of victims but also the *modi operandi* of the criminal networks perpetrating the crime, which often have ties with other countries than the one of citizenship. Therefore, different elements of the trafficking offence can take place in different Member States and/or non-EU countries. The cross-border dimension of trafficking in human beings brings specific challenges, which require action and coordination at the EU level. These include, but are not limited to, the sharing of information between law enforcement and judicial authorities from different Member States and non-EU countries, identifying whether parallel criminal proceedings are taking place in other countries, acting jointly and quickly in order to make sure that the perpetrators with ties to several countries do not escape justice, gathering evidence that can be admitted in court, taking into account the different national legal systems, conflicts of jurisdiction, as well as identifying and referring victims of trafficking in human beings to assistance and support in the cross-border context.

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<sup>60</sup> 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings, [OJ L 203](#), 1.8.2002, p. 1–4, which was replaced by Directive 2011/36/EU on preventing and combating trafficking in human beings, protecting its victims.. Available at: [link](#).

<sup>84</sup> Eighty-five percent of the respondents to the public consultation considered that it would be more difficult for Member States to tackle trafficking in human beings individually, without the Anti-trafficking Directive and 95% replied that the aim of preventing and combatting trafficking continued to require action at the EU level (Annex 2). Also see section 4.2 of the evaluation.

<sup>85</sup> Eurojust, *Report on Trafficking in Human Beings: Best practice and issues in judicial cooperation* (2021), p.5. Available at: [link](#).

<sup>86</sup> 91 cases were selected by Eurojust for analysis.

<sup>87</sup> Online survey: 3 national competent authority (DE, FR, HU); 1 National Rapporteur (HU); 1 judicial authority (NL); 1 other (NL).

While the transnational nature of trafficking in human beings justified EU action in the first place, the increased relevance of the online dimension of the crime warrants for new EU action in the field. Access to the internet and online platforms gives traffickers the opportunity to recruit, control, transport and exploit the victims, as well as move profits and reach out to users everywhere within the EU and outside without crossing any border. It also provides a shield against the identification of traffickers and victims by the law enforcement authorities. A stronger harmonisation of the EU rules and coordination at the EU-level, in cooperation with the EU Agencies, to fight the crime when it is facilitated by technology would enhance the capacity of national authorities to investigate and prosecute such offences, including in collecting digital evidence, carrying out financial investigations, sharing and exchanging information with other Member States when relevant.

The establishment of the position of the EU Anti-Trafficking Coordinator in the Directive, first proposed by the Stockholm programme<sup>88</sup>, shows the recognition of the added value of stronger coordination at the EU level. EU action proved essential in adopting and implementing anti-trafficking policies across the Member States. The EU Anti-Trafficking Coordinator contributes to improving the knowledge on trafficking at the EU level by providing input to the reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings and on the data collection. Moreover, the EU-level response has proven an effective tool in specific situations, such as in reducing the risks of, and vulnerability to, trafficking among people fleeing the war in Ukraine. The Common Anti-trafficking Plan, developed under the lead of the EU Anti-Trafficking Coordinator in close cooperation with the National Rapporteurs and Equivalent Mechanisms (NREM), the EU Agencies and the EU Civil Society Platform against trafficking in human beings, highlighted the necessity of EU action in preventing and fighting the crime and resulted in a coordinated approach from prevention and awareness raising measures to the law enforcement and judicial responses.

In light of what is described above, the initiative would contribute to the fight trafficking in human beings, which is a serious form of organised crime with a cross-border dimension, in compliance with Article 83(1) TFEU and Article 82(1) and therefore, does not exceed what is necessary to achieve the objectives of the Treaties. This initiative proposes both non-legislative and legislative measures, which respond to the priorities and key actions of the EU Strategy on Combatting Trafficking in Human Beings and remain within the scope of the current Anti-trafficking Directive. It addresses the main issues that were raised in the context of the evaluation (see section 2.1 of the Impact Assessment). The proportionality of the policy options is further described in section 7.5.

#### **4. 4. WHAT SHOULD BE ACHIEVED?**

##### **4.1. 4.1. General objectives**

The general objective of the proposal is to strengthen the EU legal framework against trafficking in human beings to ensure that it adequately addresses the challenges identified above.

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<sup>88</sup> European Commission, *The Stockholm Programme - An open and secure Europe serving and protecting the citizens* (2009). Available at: [link](#).

## **4.2. 4.2. Horizontal and specific objectives**

The horizontal and specific objectives described below aim at responding to the problems identified in Section 2.

### *4.2.1. 4.2.1. Ensuring adequate prevention, detection and improving the monitoring of trafficking in human beings at the EU level (horizontal)*

Strengthening the capacity of all relevant stakeholders to prevent and detect trafficking in human beings through training, exchange of best practices, including on cross-border cooperation between law enforcement and judicial bodies, and reinforcing multi-agency cooperation and coordination at national and transnational level will contribute to improving the fight against the crime. In addition, improving the monitoring and understanding of trafficking in human beings through a better and more systematic collection of data will contribute to having more effective prevention and detection measures, as it will make it possible to adequately assess the full scale of the phenomenon across the EU as well as current trends. This is particularly important for ensuring that policies developed at the national and EU level are tailored to addressing existing challenges and emerging trends in the area of trafficking in human beings.

### *4.2.2. 4.2.2. Reinforcing the criminal justice response to the crime, including in the cross-border context (specific)*

Reinforcing the criminal justice response to the crime will improve the capacity of law enforcement and judicial authorities to fight the crime and adapt to the new *modi operandi* and business model of traffickers, including in the digital environment. It will further harmonise the EU legal framework with a view to facilitating cross-border cooperation in trafficking cases, with the support of the EU Agencies, and address emerging threats, which have changed the security landscape within the past few years.

### *4.2.3. 4.2.3. Ensuring that victims of trafficking in human beings receive adequate assistance, support and protection across the Member States (specific)*

Improving the overall situation of victims and their access to rights will have an impact on success of investigations, hence on the level of security in the EU. Detection and early identification are crucial to ensure that victims are referred to adequate assistance, support and protection services, which are adapted to their needs. The policy intervention intends to improve cross-border cooperation among EU Member States and with non-EU countries for the referral of victims of trafficking, for instance when they return to their country of origin or are identified in a country other than where the exploitation took place.

### *4.2.4. 4.2.4. Reducing the demand for the exploited services of victims that fosters trafficking for all forms of exploitation (specific)*

The use of the exploited services of victims generates high profits for the traffickers and results in long-term physical and psychological harm for the victims. In this context, demand should be addressed in a comprehensive way, from strengthening the criminal response to the use of exploited services to enhancing awareness-raising activities, education and training. The intervention also

aims at developing prevention and awareness-raising activities on the safe use of the internet and social media, especially for children, as well as targeting those who may use of the services exploited in order to mitigate the risks of trafficking in human beings online.

#### **4.3. 4.3. How do objectives relate to the sustainable development goals and the Charter of Fundamental Rights of the EU?**

The objectives relate to the SDGs and relevant targets mentioned in section 1, which set as specific goals to eliminate trafficking in human beings. The general and specific objectives are also consistent with Article 5(3) of the Charter of Fundamental Rights of the EU (the “Charter”), which explicitly prohibits trafficking in human beings.

### **5. 5. WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES?**

#### **5.1. 5.1. What is the baseline from which options are assessed?**

Section 2.1, as well as Annex 5, provide quantitative and qualitative evidence collected as part of the evaluation, which assess the likelihood that trafficking, as a security threat, a serious form of organised crime and a grave violation of fundamental rights, will persist or even worsen within the coming years in the absence of further EU action. As mentioned above, the scale of trafficking in human beings did not reduce since the date of transposition of the Directive. The trends related to the forms of exploitation, sex and age of the victims have remained consistent over the reporting period. Trafficking for labour exploitation has increased. The number of registered victims for this purpose reached 1 914 in 2019 and 1 833 in 2020, whereas the annual average between 2013 and 2018 was 945. At the same time, the number of legal persons, which are the object of investigations, prosecutions or convictions for trafficking offences committed for their benefits is not known.

The number of recorded suspects nearly tripled over the reporting period (from 2 942 in 2013 to 7 924 in 2019 and 7 290 in 2020). The number of prosecuted individuals also increased, although to a much lesser extent (from 1 892 in 2013 to 3 055 in 2020). However, the number of registered convicted individuals overall decreased from 1 455 in 2013 to 1 295 in 2020, despite some peaks in 2017 (1 734) and 2019 (1 724). It also dropped to 693 in 2018. These statistics highlight that a culture of impunity persists within the EU, which allows traffickers to remain undetected and escape justice.

The evaluation found that the Directive was a major milestone in the fight against trafficking in human beings, which provides for an overarching EU legal framework and contributed to creating a common ground at the EU level. Without further actions, the anti-trafficking legal and policy framework currently in place would continue to apply. The minimum rules on the definition of trafficking offences, the penalties, as well as the prevention and protection of the victims established in the Directive would remain in place. The current framework would possibly be strengthened and complemented by ongoing and recent legislative initiatives in related policy areas, such as on victims’ rights, child sexual abuse and exploitation, due diligence, violence against women (see Section 1).

The Commission would continue to focus on the implementation of the Strategy in order to improve the situation, including by further supporting Member States in implementing the Directive, including through dedicated funding<sup>89</sup> and monitoring via the biannual progress reports adopted in line with Article 20, as well as meetings with the EU Network of National Rapporteurs and Equivalent Mechanisms and the EU Civil Society Platform. It would also ensure the effective enforcement of the Directive in the Member States, including through infringements as appropriate. Member States have fully or partially transposed most of the mandatory provisions of the Directive into their national legal systems<sup>90</sup>. The assessment of the transposition of the Directive carried out in the context of the evaluation showed that Member States have taken additional steps to transpose it, as a follow-up to the Commission's 2016 "Transposition" report<sup>91</sup>.

Many of the legal, policy and operational initiatives announced in the EU Strategy have already been implemented or have significantly advanced. The Commission put forward two legislative initiatives<sup>92</sup>, as well as guidance<sup>93</sup> which address the responsibility of companies and businesses in reducing demand for, and detecting potential cases of trafficking in human beings in their activities and supply chains. The Commission also proposed actions<sup>94</sup> to strengthen the effectiveness of the Employers' Sanctions Directive<sup>95</sup>, which prohibits the employment of irregularly staying third-country nationals, including victims of trafficking in human beings.

Actions and tools developed as part of the Common Anti-Trafficking Plan in relation to Russia's aggression against Ukraine would continue to apply in the broader context of the fight against trafficking in human beings, notably the list of dedicated emergency anti-trafficking helplines to help potential victims, which was compiled and published online<sup>96</sup>. Cooperation with the European Labour Authority and its European Platform tackling Undeclared Work, which started in order to tackle undeclared work, labour exploitation and trafficking in human beings among displaced persons and refugees from Ukraine, would continue.

The advancement of EU policies against criminal groups as set out in the EU Strategy to tackle Organised Crime, including a stronger response to criminal finances upon the adoption of the proposed Directive on asset recovery and confiscation<sup>97</sup>, will limit the capacity to operate of

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<sup>89</sup> Notably through Union actions and shared management under the Asylum, Migration and Integration Fund and the Internal Security Fund.

<sup>90</sup> Annex 6.

<sup>91</sup> 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](#).

<sup>92</sup> See section 1.

<sup>93</sup> [New EU guidance helps companies to combat forced labour \(europa.eu\)](#).

<sup>94</sup> COM(2021) 592 final.

<sup>95</sup> 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

<sup>96</sup> [National hotline numbers for reporting a crime or seeking assistance \(europa.eu\)](#).

<sup>97</sup> Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, [COM/2022/245 final](#)

criminal groups involved in human trafficking. The operational response to the crime at the EU level would continue to take place within existing frameworks, such as the European Multidisciplinary Platform Against Criminal Threats (EMPACT) and its Operational Action Plans (OAP) tackling Trafficking in Human Beings and in cooperation with the EU Agencies.

However, this would mean that no new legal measure is taken in order to reduce the scale of the crime whereas the trends show that the phenomenon is still prevalent in the EU. The level of identification of victims would continue to evolve in a similar way, with many of them likely to remain undetected. Traffickers would continue to make great profits from the exploitation of vulnerable people. Moreover, the rate of prosecutions or convictions<sup>98</sup>, including of legal persons, would probably remain low.

The challenges identified would largely be insufficiently addressed, including in terms of prevention measures and early identification and referral of victims.

The baseline scenario would not change the legislative approach in force for addressing the demand that fosters trafficking. The current text of Article 18(4) gives Member States the choice to introduce, or not, rules addressing the use of exploited services. Member States would continue to be able to adopt a “nuanced approach” (e.g. criminalising the use of exploited services obtained only from some forms of exploitation) or stricter approaches (e.g. criminalising the use of exploited services when the user knew or had reasons to know that they were obtained from a victim, or even without any knowledge element). The lack of harmonisation of the EU rules on the criminalisation of the use of services exacted from victims of trafficking may hamper cross-border cooperation, for instance if the conduct is criminalised in the Member State of citizenship of the user but not in the Member State where the services of the victims were used.

## **5.2. 5.2. Description of the policy options**

The Impact Assessment identified three policy options. The first policy option entails non-legislative measures. The second policy option focuses on legislative measures, i.e. amendments to the Directive. The third policy option is a mix of legislative and non-legislative measures.

Stakeholders were consulted on the different measures that are part of the three policy options as part of seven targeted interviews with EU Agencies, EU civil society organisations and one international organisations, as well as case studies interviews with five Member States (France, Hungary, Italy, Netherlands and Romania), which involved national authorities working in the area of trafficking in human beings, law enforcement and judicial authorities and social services or civil society organisations working with victims<sup>99</sup>.

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<sup>98</sup> See Annex 5.

<sup>99</sup> See Annex 2 – Stakeholder consultations.

**Table 2 – Summary of the problems, objectives and policy options**

<b>Problems</b>	<b>Main problem:</b> The current legal framework is not fully adapted to the way trafficking in human beings has evolved since the adoption of the Directive				
	Trafficking in human beings continues to thrive in the EU	Investigations, prosecutions and convictions numbers are low, leading to the impunity of traffickers	Victims of trafficking in human beings do not always receive an adequate level of assistance, support and protection, adapted to their specific needs	The demand that fosters THB remains high	
	<b>Main objective:</b> Strengthening the EU legal framework against trafficking in human beings to ensure that it adequately addresses the challenges identified				
	Ensuring adequate prevention, detection and improving the monitoring of trafficking in human beings at the EU level	Reinforcing the criminal justice response to the crime, including in the cross-border context	Ensuring that victims of THB receive adequate assistance, support and protection across the Member States	Reducing the demand for the exploited services of victims that fosters trafficking for all forms of exploitation	
<b>P.O.1 – Non legislative measures</b>	Knowledge and Expertise Hub on Combatting THB; guidelines on data collection on THB within the EU; cooperation with technology companies within the EU Internet Forum; awareness raising activities	Focus Group of specialised prosecutors against THB; cooperation with technology companies	Knowledge and Expertise Hub on Combatting THB; guidelines on national referral mechanisms; setting of the European Referral Mechanism	Awareness-raising campaign; cooperation with technology companies	
	<b>P.O.2 – Legislative measures</b>	Obligation to collect and report data on THB in the EU	Introduction of the online dimension in the Directive; including more forms of exploitation in the list of the forms of exploitation; ensuring that legal persons can be subjected to some or all of the currently optional sanctions of the Directive	Obligation to set up formal National Referral Mechanisms and create national focal points for victims' referrals	Criminalisation of the use of services exacted from victims of trafficking in human beings
		<b>P.O.3 – Non-legislative and Legislative measures</b>	P.O.1 + obligation to collect and report data on THB in the EU	P.O.1 + introduction of the online dimension in the Directive; including forced marriage and illegal adoption in the list of the forms of exploitation; ensuring that legal persons can be subjected to some of the currently optional sanctions for standard trafficking offences and to the other sanctions in case of an aggravating circumstance	P.O.1 + obligation to set up formal National Referral Mechanisms and create national focal points for victims' referrals

*5.2.1. 5.2.1. Policy option 1: Non-legislative action at EU level or national level*

**Policy option 1 (P.O.1)** consists of a package of non-legislative measures, which would provide support to the Member States in implementing the Directive and generally contribute to strengthening the EU legal and policy framework against trafficking in human beings. P.O.1 builds on the EU Strategy on Combatting Trafficking in Human Beings, which set out a number of policy measures to improve the EU anti-trafficking action, following a thorough examination of the current trends and challenges and extensive consultations with stakeholders. Although some of the measures presented below are mentioned in the EU Strategy, P.O.1 goes beyond the baseline scenario as it focuses on actions that are not yet in force nor were clearly defined in the Strategy. It also takes into account the findings of the evaluation, which highlighted that some of the main challenges in preventing and fighting against trafficking in human beings, as well as protecting the victims, stem from gaps in the implementation of the Directive.

**Table 3 – Policy Option 1 (non-legislative measures)**

Objectives	Non-legislative and legislative measures
<i>Reinforcing the criminal justice response to the crime, including in the cross-border context</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 2</b> – Setting-up of a Focus Group of specialised prosecutors against trafficking in human beings</li> <li>➤ <b>Non-legislative measure 3</b> – Close cooperation with the technology companies including online platforms</li> </ul>
<i>Ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 1 and 1(ii)</b> – Establishing a Knowledge and Expertise Hub and developing guidelines on National Referral Mechanisms and setting-up of a European Referral Mechanism</li> </ul>
<i>Reducing the demand for the exploited services of victims that fosters trafficking for all forms of exploitation</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 1</b> – Establishing a Knowledge and Expertise Hub</li> <li>➤ <b>Non-legislative measure 3</b> – Close cooperation with the technology companies including online platforms</li> <li>➤ <b>Non-legislative measure 4</b> – Organising an EU-wide awareness raising campaign</li> </ul>
<i>Ensuring adequate detection and monitoring of trafficking in human beings (horizontal)</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 1 and 1(i)</b> – Establishing a Knowledge and Expertise Hub and developing guidelines on data collection on trafficking in human beings in the EU</li> <li>➤ <b>Non-legislative measure 3</b> – Close cooperation with the technology companies including online platforms</li> <li>➤ <b>Non-legislative measure 4</b> – Organising an EU-wide awareness raising campaign</li> </ul>

5.2.1.1.5.2.1.1. Establishing a Knowledge and Expertise Hub on Combatting Trafficking in Human Beings

This measure builds upon the Strategy, which sets out that the Commission would fund and coordinate a set of actions to further improve the policy and operational work to combat trafficking in human beings. This set of actions would *de facto* serve as a knowledge and expertise hub for Member States and other stakeholders. Such actions are aimed at enhancing the exchange of best practices, including on cross-border cooperation between law enforcement and judicial bodies; facilitating advisory services by practitioners to reinforce multi-agency cooperation and



coordination at national and transnational level; helping further enhance support to victims and their referral in Europe and beyond; and promoting awareness-raising, research and data analysis by supporting cooperation between relevant national bodies, for example data institutes and observatories.

The Knowledge and Expertise Hub would act as an umbrella platform for developing policy measures, exchanging best practices and reinforcing cooperation among a community of experts and practitioners in the field of trafficking in human beings. It would focus on the shortcomings identified in the evaluation, especially concerning the collection of reliable and comparable data; early identification of, and referral to assistance and support services for victims, targeted to their specific needs; difficulties for victims to access compensation; insufficient funds for capacity building and training of relevant practitioners, and use of available EU funds by Member States; or the role of the private sectors, including companies, employers and internet and technology companies in preventive and awareness-raising measures.

The Hub would operate via an online platform linked to the Commission's Anti-trafficking website<sup>100</sup> and existing electronic platforms of the EU Network of NREM and the EU Civil Society Platform, as well as meetings and workshops dedicated to specific topics. The activities of the Hub would allow Member States, civil society organisations and EU Agencies to share best practices, and provide them with tools to strengthen their capacity to monitor, detect and combat the crime. It would also support the work of the EU Network NREM and the EU Civil Society Platform against trafficking in human beings, which are key actors in the monitoring of the transposition and implementation of the Directive.

The actions described below would be developed within the framework of the Hub, among others. The establishment of a Knowledge and Expertise Hub was widely supported by all consulted stakeholders. One public authority, notably, considered that it would be highly relevant in centralising available information on trafficking in human beings at the EU level.

*(i) Developing guidelines on data collection on trafficking in human beings within the EU*

**Horizontal problem 1 (driver 3)** highlights that the data collection exercises and the monitoring of trends do not reflect the full scale of trafficking in human beings across the EU. The Knowledge and Expertise Hub would develop guidelines on data collection on trafficking in human beings in the EU, in close cooperation with Eurostat, the EU Network of NREM and the National Statistical Authorities. This would contribute to ensuring harmonised data collection across the Member States. As part of the work of the Knowledge and Expertise Hub on improving data collection and reporting across the Member States, required statistics could be expanded as to include additional indicators, such as the number of persons accessing protection and support; the number of victims accessing compensation; the number and entity of asset confiscations; and the number of financial investigations. The guidelines would also aim at improving the collection of data by the Member States on legal persons.

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<sup>100</sup> [Together Against Trafficking in Human Beings \(europa.eu\)](https://europa.eu).

This measure would improve the knowledge about the crime within the EU and help in ensuring reliable and comparable information to inform evidence-based policies, in line with the Strategy.

*(ii) Development of guidelines on National Referral Mechanisms and setting-up of a European Referral Mechanism*

This measure addresses the challenges identified as part of **specific problem 3**, in particular with regards to the fact that existing formal or informal national referral mechanisms are not fully effective and that victims' support is often not adapted to their specific needs.

The Strategy highlights that the Commission would promote activities such as developing guidelines, toolkits and exchanging best practices among practitioners to improve national structures and cooperation for the identification, assistance and support of victims, including national referral mechanisms. It also sets out that the Commission would contribute towards the establishment of a European referral cooperation mechanism, with the support of relevant EU Agencies.

The European Referral Mechanism would consist of single points of contacts designated by each Member States, which would serve as a single point of reference in case of cross-border victim identification, support and referral. These single points of contact would facilitate and accelerate the communication between Member States authorities in individual cases, ensure a proper follow-up of the victims and provide information about national laws and procedures. They would operate based on guidelines for Member States developed by the Knowledge and Expertise Hub based upon the lessons learnt and best practices of existing Transnational Referral Mechanisms. The guidelines would be developed in close cooperation with the NREM and the civil society organisations in order to identify the minimum standards required for national referral mechanisms.

This measure would contribute to ensuring that victims of trafficking in human beings receive adequate assistance, support and protection across the Member States (**specific objective 3**). Consulted stakeholders agreed on the importance to develop minimum standards across Member States on victims' referral, in order to improve cross-border cooperation.

5.2.1.2.5.2.1.2. Setting-up of a Focus Group of specialised prosecutors against trafficking in human beings

The Focus Group of specialised prosecutors against trafficking is one of the key actions of the Strategy. The objective of the group is to build specialised expertise and intensify judicial cooperation for a more robust criminal justice response to trafficking in human beings. It would provide a forum for practitioners to exchange knowledge, expertise and best practices. It would increase cross-border judicial cooperation and result in more successful investigations, prosecutions and convictions for trafficking offences. The Focus Group would also help in increasing Member States' use of the support and capacity of coordination of the EU Agencies, in particular Eurojust.

The EU Anti-trafficking Coordinator organised, together with Eurojust, a first meeting of the Focus Group<sup>101</sup>. However, the format and activities, location and source of funding, as well as the frequency of the meetings of the group still need to be determined. This measure intends to respond to **specific problem 2**, which highlights that the low levels of prosecutions and convictions contribute to a culture of impunity in the EU. Prosecutors and judges participating in the Focus Group could discuss the main challenges they face in combatting trafficking in human beings, notably those that were identified in the evaluation. These include the important reliance on victims' testimony in criminal proceedings, differences in the interpretation of certain legal concepts or in the legislation of Member States regarding the definition of the trafficking offences<sup>102</sup> and levels of penalties<sup>103</sup>, as well as capacity to conduct financial investigations, seize and confiscate criminal assets and detecting and fighting against trafficking facilitated by the use of technology. As an outcome of these meetings, analytical papers, reports and recommendations could be developed in order to guide and support the work of relevant practitioners.

The Focus Group would generally participate in strengthening the criminal justice response against trafficking in human beings, including in the cross-border context (**specific objective 2**). Stakeholders consulted on the policy options considered that this measure was necessary. Several judicial authorities highlighted the importance of cooperation within the framework of EMPACT where specialised prosecutors already participate.

5.2.1.3.5.2.1.3. Close cooperation with the technology companies including online platforms through the inclusion of trafficking in human beings among the areas of work of the EU Internet Forum

The evaluation found that the online dimension of trafficking in human beings was an important and growing threat. Victims are often recruited online and social media is increasingly used as a means to commit the offence. Nevertheless, technology companies, including online platforms, are not sufficiently involved in the prevention and fight against this crime. Under this non-legislative measure, the Commission would step-up its action to raise awareness with technology companies on the risks of trafficking online and encourage them to monitor, detect, limit the spread or remove

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<sup>101</sup> [Focus group of prosecutors specialised in human trafficking meets for the first time | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#).

<sup>102</sup> For instance, while all Member States have transposed the definition of trafficking in human beings, some national legislations do not explicitly refer to some of the means. EE, FR, LV, HU and FI do not explicitly refer to the means of "abduction" and "fraud". IT and AT do not explicitly refer to the means of "abduction". SI does not explicitly refer to "fraud". EE, HU and SI do not explicitly refer to "giving or receiving of payments or benefits".

<sup>103</sup> All Member States have transposed Article 4(1) of the Directive, although the level penalties may differ across the Member States. For example, the maximum penalty for trafficking offences is of 25 years for sexual exploitation and 15 years for labour exploitation in CY. The maximum penalty for trafficking for all forms of exploitation is of at least 10 years of imprisonment in EL. In Hungary, penalties are between 2 and 8 years of imprisonment for trafficking for forced labour and between 5 and 10 years for trafficking for sexual exploitation. In RO, trafficking in human beings can be punished between 5 and 10 years. Some Member States do not include all the aggravating circumstances of Article 4(2) (BG, DE and EE). Moreover, BG, DE and HU do not have any provisions regarding the maximum penalty of at least 10 years of imprisonment for trafficking offences committed with an aggravating circumstance. Several Member States do not explicitly provide for aggravated penalties when the offence is committed by public officials in the performance of their duties (DE, FI, LV, PL, SE, SI), as required by Article 4(3).

trafficking in human beings related content. These activities would take place within the EU Internet Forum, which recently introduced trafficking in human beings as one its areas of work<sup>104</sup>. This measure would mainly address **specific problem 2, driver 2** through the following activities:

- research of new technical solutions to support companies and national authorities in the detection of tech-facilitated trafficking (e.g. end-to-end encrypted electronic communications);
- prevention and awareness-raising activities on the safe use of internet and social media, which should include reviewing of platforms internal policies;
- partnerships with global online fora and initiatives dedicated to addressing and preventing the dissemination of tech-facilitated trafficking in human beings;
- cooperation with law enforcement: report suspicious cases to law enforcement authorities and to Europol, notably in order to identify new phenomena and emerging trends.

This measure would contribute to **specific objective 2** by addressing the responsibility of technology companies in reinforcing the criminal justice response to the crime, as well as to **specific objective 4**, which highlights the need to develop prevention and awareness raising activities on the safe use of the internet and social media, as well as targeting the users of services that are advertised online as a way to reduce demand.

While some consulted stakeholders highlighted that some technology companies might be reluctant in participating in such cooperation, they all agreed to the importance of this measure in order to improve knowledge of the online dimension and further engage the private sector in the fight against trafficking<sup>105</sup>.

#### 5.2.1.4.5.2.1.4. Organising an EU-wide awareness raising campaign

Articles 18 of the Directive requires Member States to take appropriate preventive actions, such as information and awareness raising campaigns, research and education programmes, in order to discourage and reduce the demand that fosters all forms of exploitation (paragraph 1) and raising awareness and reducing the risks of people, especially children, becoming victims of trafficking (paragraph 2). Therefore, this measure, which addresses both **horizontal problem 1 (driver 2)** and **specific problem 4 (driver 2)**, would also contribute to improving the implementation of the Directive.

Under this non-legislative measure, the Commission would organise an EU-wide awareness-raising campaign on the risks of trafficking, with a specific focus on high-risk sectors and high-risk

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<sup>104</sup> [European Union Internet Forum \(EUIF\) \(europa.eu\)](https://europa.eu).

<sup>105</sup> Among the respondents to the online survey, 7 national competent authorities; 13 NREM; 7 law enforcement authorities; 8 judicial authorities; 1 national authorities responsible for social services; and 15 civil society organisations replied that EU intervention would be necessary to enhance cooperation with online private companies would be necessary to a large or very large extent. Out of 90 respondents to the online survey, 6 stakeholders replied to a small extent and 14 to a moderate extent (including 4 national competent authorities, 1 law enforcement authority, 2 judicial authorities and 4 civil society organisations).

environments, mainly for sexual<sup>106</sup> and labour<sup>107</sup> exploitation. This campaign would be carried out in close cooperation with Member States and civil society organisations and would aim at raising awareness on trafficking within the general public, employers and potential users of services exploited from victims, in line with the Strategy. It would both contribute to ensuring adequate prevention and detection of the crime at the EU level (**horizontal objective 1**) and to reducing the demand for the exploited services of trafficking victims (**specific objective 4**).

While consulted stakeholders considered that this measure would effectively contribute to preventing trafficking and reducing demand that fosters the crime, some suggested that such campaign should be tailored to the specific needs of, and situations in the Member States.

#### 5.2.2. 5.2.2. Policy option 2: Legislative action at EU level

While the evaluation showed that the Directive has made an important contribution to improving the situation on trafficking in human beings in the EU, a revision of the Directive would strengthen the fight against the crime and significantly contribute to addressing some of the shortcomings, which cannot only be addressed through better implementation.

The evaluation found that the Directive insufficiently addressed certain aspects, which notably emerged and/or became more relevant since its adoption. **Policy Option (P.O) 2** presents several possible legislative changes that would contribute to modernising the Directive in order to better address those challenges. It would aim at improving the level of harmonisation of the legislation across the Member States, for instance when it comes to the forms of exploitation to be criminalised, as well as strengthening the sanctions against legal persons and the legal framework related to the criminalisation of the use of exploited services.

**Table 4** provides an overview of **P.O 2**, including different sub-options for some of the legislative measures.

**Table 4 – Policy Option 2 (Legislative measures)**

Objectives	Legislative measures	Possible sub-options as part of the legislative measure
<i>Reinforcing the criminal justice response to the crime, including</i>	<b>Legislative measure 1</b> – Explicitly addressing the digital dimension of trafficking in human beings in the	i. Introducing the online dimension as part of the definition of trafficking in human beings

<sup>106</sup> According to the 2021 EU SOCTA, published by Europol, high-risk sectors and environments for sexual exploitation include “clandestine settings and public environments such as hotels, bars, restaurants, sauna clubs, strip clubs, night clubs, massage parlours and prostitution windows”, as well as online platforms and services.

<sup>107</sup> High-risk sectors and environments for labour exploitation include transportation, construction, agriculture, forestry, food processing, factory assembly lines, hospitality, retail, carwashes, beauty and cleaning services, housekeeping and domestic assistance.

<i>in the cross-border context</i>	Directive	ii. Qualifying the online recruitment, advertisement or exploitation of victims of trafficking as an aggravating circumstance
	<b>Legislative measure 2</b> – Including new forms of exploitation into the definition of trafficking in human beings	i. Including forced marriage and illegal adoption in the list of the forms of exploitation
		ii. Including more forms of exploitation (e.g. forced marriage, illegal adoption, illegal surrogacy, social fraud benefit).
	<b>Legislative measure 3</b> – Ensuring that legal persons may be subject to one or more sanctions listed in the Directive, which are currently optional for Member States to transpose in case of conviction	i. Ensuring that legal persons may be subject to some of the sanctions, which are currently optional in the Directive, for the standard offence and to the other (currently optional) sanctions when the offence is aggravated by one of the circumstances included in the Directive
ii. Ensuring that legal persons may be subject to all the (currently optional) sanctions for the standard offence of THB		
iii. Keeping the sanctions to legal persons optional for Member States to transpose for the standard offence, and mandatory to transpose when the offence is aggravated by one of the circumstances included in the Directive		
<i>Ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States</i>	<b>Legislative measure 4</b> – Making it mandatory for Member States to set up formal National Referral Mechanisms and create national focal points for victims' referrals	N/A
<i>Reducing the demand for the exploited services of trafficked victims</i>	<b>Legislative measure 5</b> – Mandatory criminalisation of the use of exploited services related to trafficking in human beings, with different available options	i. Mandatory criminalisation of the knowing use of exploited services only related to sexual exploitation
		ii. Mandatory criminalisation of the knowing use of exploited services

		related to all forms of exploitation
		iii. Criminalisation of the knowing use of exploited services or if the use of exploited services is committed with serious negligence
		iv. Criminalisation of the use of exploited services without knowledge requirement
		v. Different knowledge element depending on the form of exploitation
<i>Ensuring adequate detection and monitoring of trafficking in human beings (horizontal)</i>	<b>Legislative measure 6</b> – Introducing an obligation for Member States to collect and report data on trafficking in human beings to the Commission every year, including by specifying the indicators for such data collection.	N/A

5.2.2.1.5.2.2.1. Explicitly addressing the digital dimension of trafficking in human beings in the Directive (legislative measure 1)

Currently, the Directive does not explicitly address the digital dimension of trafficking in human beings. The internet is only referred to in a provision on prevention (Article 18(2)), as a means to raise awareness and reduce the risk of people, especially children, becoming victims of trafficking in human beings. This measure would aim at improving the relevance of the Directive, as the evaluation found that the online dimension could be better covered in the EU legislation.

Introducing the online dimension of trafficking into the Directive would allow to better address **specific problem 2**, which highlights that trafficking in human beings increasingly moved online, creating additional challenges for law enforcement and judicial authorities. At the same time, these challenges foster the development of new and innovative methods to fight against this phenomenon, through the monitoring of websites, the use of social media and websites to investigate and collect information that could be used as evidence, or the tracing of the digital footprint of criminals, such as financial transactions. Therefore, this legislative measure would encourage policy makers and national authorities to further focus on addressing the online dimension, to develop technological methods and tools, as well as to enhance the capacity of law enforcement and judiciary to fight the crime in the digital space, including through training or by setting-up specialised units. More broadly, it would contribute to achieving **specific objective 2** to reinforce the criminal justice response to the crime, including in the cross-border context.

74% of the stakeholders who participated in the public consultation were in favour of the introduction of explicit provisions on the online dimension of trafficking in human beings. Nearly all the public authorities (16 out of 19), as well as the majority of civil society organisations (35 out of 58) that responded supported this measure. The impact assessment identified two possible sub-options in this respect.

(i) *Introducing the online dimension as part of the definition of the offence of trafficking in human beings*

This legislative option takes into account the growing threat of the use of online technology for trafficking in human beings and the worrying evolution of the phenomenon. This policy option could be twofold:

- (a) Adding a paragraph under Article 2, which defines the offence of trafficking in human beings, to specifically refer to the online dimension of the crime, including for example the recruitment or advertisement of the victims on dedicated websites or in social media or control over the victim with tracing applications;
- (b) Creating a standalone offence for the use of technology and the internet in the recruitment, advertisement and exploitation of a person for the purpose of exploitation. The level of the penalties would remain the same as for the standard offence of trafficking in human beings.

While the online dimension is de facto covered in the definition of trafficking offences, the explicit inclusion would reinforce the criminal response to one of the most serious changes in the trafficking in human beings landscape since the adoption of the legal instrument.

In addition to strengthening the criminal justice response to this phenomenon, it would contribute to raising awareness, including of online platforms and technology companies, on the prevalence of online content related to trafficking in human beings.

This option would be complementary to, and aligned with, recent legislative initiatives, including the Commission's proposal for a Directive on violence against women and domestic violence (which introduces the offences of cyber harassment, cyber stalking and cyber incitement to violence and hatred), as well as with the Digital Services Act and the Commission's proposal for a regulation on preventing and combatting child sexual abuse (which introduce obligations for online platforms and services to monitor, detect and remove illegal online content and child sexual abuse material).

In particular, the Digital Services Act would cover the detection, monitoring and removal of online content related to trafficking in human beings by introducing a due diligence obligation for providers of intermediary services, such as online platforms, with the aim to reduce illegal and harmful content online.

This sub-option was supported by stakeholders consulted as part of the case studies and targeted interviews who underlined the importance to make it clear in the Directive that the crime can be perpetrated both offline and online.



(ii) *Qualifying the online recruitment, advertisement or exploitation of victims of trafficking in human beings as an aggravating circumstance*

Under this option, Member States would be required to introduce more severe penalties when a trafficking offence is committed in the circumstances laid down in Articles 4(1) and (2) of the Directive. Online technology has facilitated all the steps of the trafficking chain and makes it more difficult to identify traffickers. This resulted in a multiplication of trafficking activities online and the commercialisation and exploitation of victims on a massive scale<sup>108</sup>, due to widespread advertisement, live-streaming in different online platforms, as well as the continued availability and the multiple viewings of online content/material related to the exploitation in the digital space. For these reasons, the use of online technology in the recruitment, advertisement and exploitation of the victim could qualify as an aggravating circumstance. This would lead to more severe penalties as envisaged in Article 4(2).

Stakeholders consulted in the context of the case studies were more divided concerning this sub-option. One public authority, for example, highlighted that higher penalties for when the offence is committed through the use of technology would not necessarily lead to a decrease in the number of cases. Two public authorities mentioned that there was a risk that making it an aggravating circumstance would lead to different interpretations across the Member States. Several stakeholders (one law enforcement authority and two civil society organisations) highlighted that this measure would be establishing more severe penalties when the crime is committed online than when it takes place offline.

5.2.2.2.5.2.2.2. Including new forms of exploitation into the definition of trafficking in human beings (legislative measure 2)

Article 2(3) of the Directive includes a non-exhaustive list of forms of exploitation, which allows Member States to address additional forms of exploitation in their national laws. The minimum forms included in the Directive are prostitution of others or other forms of sexual exploitation; forced labour or services, including begging, slavery or practices similar to slavery, servitude; exploitation for criminal activities; and removal of organs. The transposition assessment carried out in the context of the evaluation of the Directive showed that some Member States transposed the forms of exploitation listed in Article 2(3) as an exhaustive list and chose not to criminalise additional forms. The public consultation indicated that over half (58%) of stakeholders were in favour of including new forms of exploitation in the definition of trafficking in human beings. More specifically, the majority of public authorities (10 out of 19)<sup>109</sup> and non-governmental organisations (32 out of 58)<sup>110</sup> expressed support for this measure.

This legislative measure addresses one of the key findings of the evaluation according to which Member States often transposed into their national legislation only the forms of exploitation explicitly mentioned in the Directive, although the list in Article 2(3) is non-exhaustive (**problem 2**,

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<sup>108</sup> Europol, *The challenges of countering human trafficking in the digital era* (2020). Available at: [link](#).

<sup>109</sup> Including 4 who replied no and 5 who did not know.

<sup>110</sup> Including 15 who said no and 11 who did not know.

**driver 1).** It would generally contribute to reinforcing the criminal justice response to the crime, including in the cross-border context (**specific objective 2**).

Under this option, Member States would have an obligation to expand the list of forms of exploitation within their national law in order to address additional purposes of trafficking, which have evolved since the adoption of the Directive. It would further contribute to harmonising the offence of trafficking in human beings across the Member States, as some Member States already criminalise some of these, while others do not.

Consulted stakeholders were generally in favour of expanding the list of the forms of exploitation that should be included in the Directive. However, some of them pointed to the fact that it would be important to clearly define the conducts that qualify as trafficking offences, even when such conducts relate to forms of exploitation, which are not explicitly covered by the Directive.

*(i) Include forced marriage and illegal adoption in the list of the forms of exploitation, which are criminalised under Article 2(3)*

Forced marriage and illegal adoption are already included in recital (11) of the Directive, as forms of exploitation that can be covered within the definition of trafficking in human beings, in so far as they fulfil the constitutive elements of the crime. This shows that there was broad consensus among Member States already at the time of the adoption of the Directive. Furthermore, these two purposes of trafficking have consistently been mentioned by stakeholders as forms of exploitation that should be criminalised under the Directive. Although ESTAT only collect data on these forms as part of a larger category of “other” forms, the evaluation found that trafficking for forced marriage and illegal adoption have become more prevalent since 2011 and can no longer be considered as “emerging” trends. Finally, 69% of the respondents to the online survey indicated that the revision of the Directive should criminalise forced marriage as an exploitative purpose of trafficking in human beings<sup>111</sup>. 58% of the respondents considered that illegal adoption should be added under Article 2(3)<sup>112</sup>, in so far as the other elements of the crime (i.e. conduct and means) are fulfilled.

*(ii) Include more forms of exploitation under Article 2(3)*

Another option would be adding even more forms of exploitation within Article 2(3): forced marriage, illegal adoption, illegal surrogacy and social benefit fraud. All these forms of exploitation have been identified in reports adopted by the Commission and EU Agencies as emerging and/or evolving trends, which pose a security threat in the EU. Moreover, 52% of the respondents to the

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<sup>111</sup> Overall, 62 respondents to the online survey considered that the Directive should criminalise forced marriage as an exploitative purpose related to trafficking in human beings, including 10 national competent authorities, 11 NREM, 5 law enforcement authorities, 5 judicial authorities, 1 national authority responsible for social services, 20 civil society organisations and 3 other national authorities.

<sup>112</sup> Overall, 51 respondents to the online survey considered that the Directive should criminalise illegal adoption as an exploitative purpose related to trafficking in human beings, including 5 national competent authorities, 9 NREM, 5 law enforcement authorities, 6 judicial authorities, 15 civil society organisations and 3 other national authorities.

online survey indicated that the revision of the Directive should criminalise illegal surrogacy as an exploitative purpose of trafficking in human beings<sup>113</sup>.

5.2.2.3.5.2.2.3. Ensuring that legal persons may be subjected to one or more sanctions, which are currently optional in the Directive, in case of conviction (legislative measure 3)

Member States are required by Article 5 of the Directive to ensure that legal persons are held liable for trafficking offences. Article 6 provides an obligation for Member States to implement effective, proportionate and dissuasive sanctions against legal persons, which shall include criminal or non-criminal fines and may include other sanctions. All the provisions of Article 5 have been transposed by the Member States and all Member States provide for the sanction of at least a criminal or administrative fine for legal persons involved in trafficking in human beings, in accordance with the minimum requirements of the Directive. Moreover, most Member States have transposed at least one of the optional sanctions provided for by Article 6 of the Directive<sup>114</sup>. Progress has been done since the Commission 2016 “Transposition” report<sup>115</sup>. For example, Belgium amended its legislation in order to make sure that persons and companies convicted for trafficking in human beings can be excluded from public benefits (Article 6(a)) and to clarify that the partial or complete closure of the establishments which have been used for committing the offence (Article 6(e)) can be pronounced by a judge for a duration from one to twenty years<sup>116</sup>. Nevertheless, the evaluation found that the optional sanctions against legal persons are not widely transposed and that there is a lack of data regarding the application of the sanctions in practice.

This legislative measure aims at addressing **problem 2**, which highlights that legal persons are not sufficiently held accountable for trafficking offences. 60% of the respondents to the public consultation considered that the Directive has so far contributed to a “small extent” or “not at all” to holding legal persons liable for trafficking in human beings<sup>117</sup>. Moreover, most stakeholders

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<sup>113</sup> Overall, 46 respondents to the online survey considered that the Directive should criminalise illegal surrogacy as an exploitative purpose related to trafficking in human beings, including 8 national competent authorities, 6 NREM, 4 law enforcement authorities, 2 judicial authorities, 1 national authority responsible for social services, 17 civil society organisations and 2 other national authorities.

<sup>114</sup> BG, DE, EE, FI, IE, SK do not have any of the optional sanctions listed in Article 6(a)-6(e). See Annex 6 on the Transposition of the Directive.

<sup>115</sup> 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](#).

<sup>116</sup> See Annex 6 for a more detailed overview of the optional sanctions that were transposed in Member States.

<sup>117</sup> Among public authorities that responded to the public consultation, 7 replied that the Directive had contributed to holding legal persons liable for trafficking in human beings “to a moderate extent”; 6 replied “to a small extent”, 2 “to a high extent” and 1 “not at all”. Only one trade union replied to this question with “not at all”. The majority of non-governmental organisations replied “to a small extent” (26), 8 “to a moderate extent” and 8 “not at all”.

considered that the sanctions on legal persons provided by the Directive were effective (37%)<sup>118</sup>, proportionate (33%)<sup>119</sup> and dissuasive (33%)<sup>120</sup> to a small extent.

Two identified key areas for improvement of the Directive are greater action by legal persons in order to prevent trafficking and reduce demand for trafficked services, and greater action by the authorities in addressing trafficking offences committed by legal persons or as part of the value chain. The limited use of the provision of the Directive laying down other sanctions, which are optional for Member States to transpose (Article 6) hinders the deterrent effect of the liability of legal persons, thereby contributing to their widespread impunity. Requiring the Member States to ensure that legal persons will be subjected to more sanctions upon convictions would strengthen the criminal consequences of trafficking in human beings, increasing the liability of legal persons. This would more generally contribute to reinforcing the criminal justice response to the crime (**specific objective 2**) but also reducing demand that fosters trafficking in human beings (**specific objective 4**).

This measure would reinforce the effectiveness of the Commission's proposal for a Directive on Corporate Sustainability Due Diligence by introducing mandatory criminal sanctions for trafficking offences committed by legal persons.

(i) *Ensuring that legal persons may be subjected to some of the sanctions, which are currently optional in the Directive, for the standard offence and to the other (currently optional) sanctions when the offence is aggravated by one of the circumstances included in the Directive in case of a conviction*

Other legal instruments address sanctions against legal persons. The Employers Sanctions Directive (2009/52/EC) provides for a range of penalties and measures against employers, including legal entities, who employ illegally staying third country nationals. More particularly, Article 7 of the Employers Sanctions Directive requires Member States to take the necessary measures to ensure that employers shall also, if appropriate, be subject to the exclusion from entitlement to some or all public benefits, aid or subsidies; and to the temporary or permanent closure of the establishments that have been used to commit the infringement.

These two measures are among the optional sanctions under Article 6 of the Anti-trafficking Directive<sup>121</sup>. Taking into account the particular gravity of the offence of trafficking in human beings

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<sup>118</sup> Including 3 public authorities and 24 non-governmental organisations. Most of the public authorities (10) considered that penalties were effective “to a moderate extent” or “to a high extent”. The only trade union that replied considered that the sanctions were not effective at all.

<sup>119</sup> Similarly to the effectiveness, public authorities were more equally divided regarding this question: 1 replied “not at all”, 2 “not at all”, 3 “to a small extent”, 5 “to a moderate extent” and 5 “to a high extent”. 23 non-governmental organisations replied “to a small extent”, while only 3 replied “to a moderate extent” and 2 “to a high extent”.

<sup>120</sup> 7 public authorities considered that the sanctions on legal persons in the Directive were dissuasive “to a moderate extent” and 3 “to a high extent”, while 2 said “to a small extent” and 3 “not at all”. 22 non-governmental organisations replied “to a small extent” and 11 “not at all”. The only trade union that replied considered that the sanctions were not dissuasive at all.

and the limited scope of the Employers Sanctions Directive, which only applies to illegally staying third-country nationals while 56% of the victims of trafficking are EU nationals, the two above-mentioned measures could be made mandatory for Member States to transpose under the Anti-trafficking Directive. This would ensure better coherence between the two legislative instruments<sup>122</sup>.

In addition, Member States would have to ensure that legal persons will be subjected to the other sanctions, which are currently optional to transpose (the temporary or permanent disqualification from the practice of commercial activities<sup>123</sup>; placing under judicial supervision<sup>124</sup>; and judicial winding-up<sup>125</sup>), when the offence is committed with one of the aggravating circumstances referred to in Article 4(2).<sup>126</sup> This concerns offences, which are committed in particularly grave circumstances, such as when the victim is a child or the life of the victim has been endangered.

(ii) *Ensuring that legal persons may be subjected to all the (currently optional) sanctions for the standard offence of trafficking*

Under this option, Member States would have an obligation to ensure that legal persons can be subjected to all the sanctions listed in Article 6 for trafficking offences. This means that they would have to transpose all these sanctions in their national law as possible sanctions. This option is the strictest one among the three options proposed under this legislative measure, especially considering that no Member State has transposed all the optional sanctions under Article 6.

(iii) *Keeping the sanctions to legal persons optional for Member States to transpose for the standard offence, and mandatory to transpose when the offence is aggravated by one of the circumstances included in the Directive*

While this option would contribute to strengthening the criminal consequences against legal persons, it would also give more flexibility to the Member States in implementing it, as it would

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<sup>121</sup> The exclusion from entitlement to public benefits or aid (Article 6(a) of the Anti-trafficking Directive) is already in force in 11 Member States (BE, CZ, CY, EL, ES, HU, HR, IT, MT, PL and PT). The temporary or permanent closure of establishments which have been used for committing the offence (Article 6(e)) is in force in (BE, EL, CY, ES, FR, LT, LU, MT, PT and RO) – See Annex 6.

<sup>122</sup> See section 4.1.3.1 of the evaluation on the coherence between the Anti-trafficking Directive and the Employers Sanctions Directive.

<sup>123</sup> The temporary or permanent disqualification from the practice of commercial activities (Article 6(b)) is in force in 18 Member States (AT, BE, CZ, CY, EL, ES, FR, HU, HR, IT, LT, LV, MT, PL, PT, RO, SE, SI).

<sup>124</sup> The placing under judicial supervision (Article 6 (c)) is in force in 7 Member States (CY, ES, FR, IT, MT, PT, RO).

<sup>125</sup> The judicial winding-up (Article 6(d)) is in force in 15 Member States (BE, CY, CZ, EL, ES, FR, HU, HR, LT, LU, MT, NL, PT, RO, SI).

<sup>126</sup> Pursuant to Article 4(2), Member States should punish by a maximum penalty of at least 10 years of imprisonment where the trafficking offence (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims; (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime; (c) deliberately or by gross negligence endangered the life of the victim; or (d) was committed by use of serious violence or has caused particularly serious harm to the victim. The fact that the trafficking offence was committed by public officials in the performance of their duties should also be regarded as an aggravating circumstance.

only concern the gravest cases of trafficking. This option would go less far in terms of holding legal persons accountable for trafficking offences committed for their benefit than option (i).

5.2.2.4.5.2.2.4. Making it mandatory for Member States to set up formal National Referral Mechanisms and create national focal points for victims' referrals (legislative measure 4)

Article 11(4) of the Directive obliges Member States to take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance and support to victims, in cooperation with relevant support organisations. The transposition assessment (Annex 6) shows that all Member States have different types of mechanisms in line with this Article. However, the broad wording of this provision leaves a lot of discretion to Member States to decide on the form, structure and functioning of these mechanisms. For instance, in Germany, the practical implementation of these measures lies within the remit of the different "*Länder*"<sup>127</sup>.

This legislative measure would aim at ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States (**specific objective 3**). Under this option, Article 11(4) would be revised in order to introduce an obligation for Member States to set up formal National Referral Mechanisms. In addition, Member States would be required to create national focal points for the early identification and referral of victims, which would be in charge of identifying the competent services for cases of trafficking in human beings and of coordinating the referral of victims at the national and EU level.

77% of the stakeholders who participated in the public consultation, including the vast majority of public authorities (13 out of 19), of non-governmental organisations (41 out of 58) and of EU citizens (30 out of 32), considered that the Directive should require Member States to establish formal national referral mechanisms. Stakeholders consulted on the policy options as part of the case studies and targeted interviews supported this measure, which would contribute to improving the provision assistance and support to victims, as well as their access to the rights they are entitled to. Several public authorities from Member States suggested to allocate the role of national focal point to the existing NREM in Member States in order to avoid any duplication of efforts and fragmentation of competences.

5.2.2.5.5.2.2.5. Mandatory criminalisation of the use of exploited services related to trafficking in human beings, with different available options (legislative measure 5)

As mentioned in relation to **problem 4 (driver 1)**, the criminalisation of the use of services exacted from victims of trafficking is not consistent across the Member States. Legislative measure 5 aims at strengthening the criminal response to the use of exploited services through the harmonisation of EU rules as a means to reducing the demand that fosters trafficking (**specific objective 4**). This sections presents the different options available in order to criminalise the use of exploited services.

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<sup>127</sup> Commission, *Study on Reviewing Member States' National and Transnational Referral Mechanisms* (2020), p.19. Available at: [link](#).

*(i) Mandatory criminalisation of the knowing use of exploited services only related to sexual exploitation*

This option consists in the most limited change in measures addressing the use of exploited services, as it would only concern sexual exploitation. During the consultations, some Member States and stakeholders expressed themselves in favour of this approach at the EU level, basing their opinion on the need to focus on the main form of exploitation. However, although sexual exploitation is the main purpose of trafficking in statistical terms, the figures of labour exploitation are also very high. The proposed criminalisation of the knowing use of services follows an evidence-based criminological assessment in the light of the principle of proportionality. Accordingly, it continues to adopt an equal approach to the demand that fosters all forms of exploitation, without including a distinction that would result in a different treatment of the demand for cheap labour (which fosters labour exploitation) and the demand for sexual services (which fosters sexual exploitation).

A limited intervention making the knowledge element mandatory avoids any risks of over-criminalisation, as offenders require actual knowledge that the persons was a victim. On the other hand, knowledge remains difficult to prove in court. However, data from the Member States which adopt a negligence or strict liability approach<sup>128</sup> do not lead to conclude that these result in higher numbers of prosecutions or convictions for offences concerning use of exploited services, in a general reduction of trafficking or of the demand fostering it<sup>129</sup>.

*(ii) Mandatory criminalisation of the knowing use of exploited services related to all forms of exploitation*

The Strategy highlights the need to thoroughly analyse the criminalisation of the knowing use of exploited services and products from victims, as part of the evaluation of the Directive. This option would make the optional provision in Article 18(4) mandatory.

Such a change is consistent with the Commission's 2017 Communication reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human being<sup>130</sup>, the European Parliament Resolution<sup>131</sup> and GRETA recommendations, all of which include the knowledge element in relation to all forms of exploitation. This approach limits criminalisation to instances of actual knowledge, not differentiating between the forms of exploitation. It is also supported by 61%

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<sup>128</sup> CY, DE, FI.

<sup>129</sup> In CY, which adopted the stricter approach, there were 2 prosecutions and no convictions since 2019, when the relevant law came into force. This is compared with 14 prosecutions and 4 convictions in 2017, and 26 prosecutions in 2018. DE did not report any prosecution or conviction since 2015. FI reported 2 prosecutions and 2 convictions since 2015.

<sup>130</sup> [COM\(2017\) 728 final](#).

<sup>131</sup> European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims; 2020/2029(INI).

of the respondents to the public consultation. Among those respondents, 14 were public authorities, 26 were non-governmental organisations and 28 were EU citizens<sup>132</sup>.

This option would represent an advancement in the criminal justice response, not entailing over-criminalisation or the de-prioritisation of the demand for cheap labour (which fosters labour exploitation) over demand for sexual services (which fosters sexual exploitation). It would harmonise the EU legal landscape, while allowing Member States to adopt more restrictive measures at the national level.

The new article could include a provision requiring the Commission to assess the impact of the rules criminalising the knowing use of exploited services by submitting a report to the Parliament and the Council five-years after the transposition deadline<sup>133</sup>. The report requirement currently in Article 23(2) was three years after the transposition deadline and the report<sup>134</sup> showed that the timeframe was insufficient to assess the impact of national law.

The provision would not include any minimum penalties, but provide that these shall be effective, dissuasive and proportionate. This would be in line with the rest of the Directive, as it only includes penalties for the main offences and not e.g. for the modes of liability in Article 3 (incitement, aiding and abetting, and attempt).

In consultations, one Member State<sup>135</sup> and some civil society organisations have expressed doubts on the possibility of modifying Article 18(4), as they consider that rules criminalising the use of exploited services may result in increased marginalisation and vulnerability of victims, as they would have to conceal their activities.

Criminalising the knowing use of exploited services for all forms of exploitation is the most proportionate option. It is the one with the least far-reaching implications for Member States, while going beyond the status quo, since the large majority of Member States already have corresponding regulation in place for at least sexual exploitation. It should also be noted that the European Parliament in its 2021 Resolution expressed its views supporting this approach<sup>136</sup>. Proving the knowledge requirement in court will nevertheless remain challenging.

(iii) *Criminalisation the knowing use of exploited services or when the use of exploited service committed with serious negligence*

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<sup>132</sup> 23% of respondents considered that the Directive should not criminalise the knowing use of exploited services, including 3 public authorities, 19 non-governmental organisations and 2 EU citizens.

<sup>133</sup> This could mirror the text of Article 23(2) of the Anti-Trafficking Directive: “*The Commission shall, by [DATE], 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.*”

<sup>134</sup> COM(2016) 719 final.

<sup>135</sup> BE.

<sup>136</sup> European Parliament resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims; 2020/2029(INI).



This legislative change would adopt a stricter approach to the knowledge requirement for the use of exploited services for all forms of exploitation. The difference with sub-option (ii) is the addition of serious negligence.

Two Member States<sup>137</sup> adopt a similar standard only for sexual exploitation and one<sup>138</sup> has an even stricter standard (strict liability), but for sexual exploitation only. Accordingly, all twenty-six Member States to which the Directive applies would have to introduce new rules.

Some Member States and stakeholders consider that lowering or eliminating the knowledge requirement may make it easier to prove the crime in court. However, the data from the Member States, which have adopted this approach does not allow to conclude this.

Serious negligence is currently an exception in EU legal instruments, where conducts are generally criminalised based on intent to commit the offence or of actual knowledge of specific circumstances. Only one EU legal instrument includes the “serious negligence” standard: the EU Directive on the protection of the environment through criminal law<sup>139</sup>.

The serious negligence standard may cause issues of legal certainty, especially in crimes committed by physical persons. Negligence would have to be based on indicators about the founded “reasons to know” the person was a victim and on the seriousness of their negligence. Including detailed indicators in the articles of a Directive is not practical. At the EU level, such a legislative change would have to be accompanied by guidance in the recitals of the Directive and/or guidelines to be adopted after the legislative modification. In absence of indicators, Member States would have to develop them in their legislation or jurisprudence, leading to differing interpretations of this standard and lack of harmonisation.

Identifying indicators is complicated for cases of sexual exploitation and may be even more in cases of labour exploitation, for example, if the buyers of very cheap clothes had founded reasons to know that they were obtained from victims trafficked for labour exploitation (if it is later proven that the supply chain of the brand included victims of trafficking).

*(iv) Criminalisation of the use of exploited services without knowledge requirement*

This legislative change would adopt the strictest approach to the use of exploited services. It would suffice that perpetrators use exploited services even if they did not know and did not have reasons to know that the person was a victim of trafficking. This legal standard corresponds to a requirement of strict liability.

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<sup>137</sup> DE, FI.

<sup>138</sup> CY.

<sup>139</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, [OJ L 328](#), 6.12.2008, p. 28–37.

All twenty-six Member States to which the Directive applies would have to introduce new rules with this approach. One Member State adopts this standard, but only for sexual exploitation.<sup>140</sup> Three Member States<sup>141</sup> adopt the “equality model”, which criminalises any use of sexual services, regardless of whether the person is a victim of trafficking. This model does not focus specifically on trafficking, but it indirectly includes the use of exploited services.

Strict liability is used only exceptionally in criminal law, mostly for minor offences that do not involve imprisonment. Strict liability was never used in an EU legal instrument.

Criminalisation provisions generally require intent, knowledge or, exceptionally at least a form of negligence. It is important to note that the only Member State that adopts a strict liability approach, although for sexual exploitation only, is one of the only two Member States who have a common law legal system<sup>142</sup>.

In consultations, a number of Member States and stakeholders expressed their views not to go beyond the standard of knowledge, as it is not deemed appropriate for criminal law. Some Member States and stakeholders consider the rules on the criminalisation of the use of exploited services at odds with victims’ rights, as they may result in marginalisation, further vulnerability and increased dependence of victims on their traffickers. Although the victims’ activities are not criminalised *per se*, the users of these are breaching the law. Accordingly, victims would have to exercise their activities (e.g. forced prostitution, forced labour) in a concealed manner. This brings them closer to the traffickers, hampering the identification and the provision of protection, assistance and support services.

Some stakeholders and Member States consider that removing the knowledge element may make it easier to prove the crime in court. The data from the only Member State which removed the knowledge element does not allow to come to this conclusion.

*(v) Requirement of different knowledge element depending on the form of exploitation*

This approach would differentiate between different forms of exploitation either:

- Using recklessness (“had reasons to know”) for sexual exploitation and knowing use for other forms of exploitation<sup>143</sup>; or
- Using strict liability (no knowledge requirement) for sexual exploitation and knowing use for other forms of exploitation.

These approaches would avoid the issues related to the use of services resulting from labour exploitation mentioned in sub-option (iii) by keeping the standard for these to knowing use.

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<sup>140</sup> CY

<sup>141</sup> FR, IE, SE.

<sup>142</sup> The other one is IE.

<sup>143</sup> Similarly to DE and FI.

On the other hand, as mentioned in sub-option 1, a different approach based on the forms of exploitation would result in a different treatment of the demand for cheap labour (which fosters labour exploitation) and the demand for sexual services (which fosters sexual exploitation). Moreover, the data collection does not support that standards stricter than knowledge (even only for sexual exploitation) be it under recklessness or strict liability, lead to higher numbers of prosecutions or convictions.

5.2.2.6.5.2.2.6. Introducing in the Directive an obligation for Member States to collect and report data on trafficking in human beings to the Commission every year

Despite improvements, persisting gaps in the data collection prevent statistics from capturing the whole scale of trafficking in human beings within the EU. The evaluation found that there is a lack of data on the number of persons accessing protection and support; the number of victims accessing compensation; and the number of confiscated assets. Furthermore, considerable time lapse between the Commission's biannual data collection and the date of publication of the report (usually two years) hinders an up-to-date monitoring of the evolution of the situation (**horizontal problem 1, driver 4**).

The recitals of the Directive mention that, in order to evaluate the results of anti-trafficking action, the EU should continue to develop its work on methodologies and data collection methods to produce comparable statistics. Article 19 of the Directive further includes gathering statistics among the tasks of NREM. However, the Directive does not include a formal obligation to collect data on a regular basis, or any indication on the type of data that should be collected.

Under this policy option, Member States would be formally required to collect data on trafficking in human beings and report those statistics to the Commission on an annual basis in order to have a more up-to-date overview and monitoring of the scale of the phenomenon, as well as of emerging trends. The amended provision would explicitly mention the categories of disaggregated data that Member States should collect as a minimum, such as the forms of exploitation, sex, age and citizenships of the victims and of the traffickers (suspects, prosecuted and convicted). This legislative measures would contribute to improving the monitoring of trafficking in human beings at the EU level (**horizontal objective 1**).

Stakeholders consulted on the policy options agreed to the effectiveness of this measure. As part of the case studies interviews, they highlighted the importance of having common indicators in order to ensure a systematic data collection. Two public authorities highlighted the need to avoid creating additional burden on Member States to collect data.

It should be underlined that all Member States already collect and transmit data to the Commission every two years. The Commission moved from a biannual to an annual data collection in 2021. Nearly all Member States<sup>144</sup> were able to provide data on all the main indicators by October 2022.

5.2.3. *Policy option 3: Legislative action at EU level in combination with non-legislative measures*

**Policy Option 3** consists in the non-legislative measures of **P.O.1** combined with the legislative measures and selected sub-options of **P.O.2**. This policy option would be in line with the EU comprehensive approach to combating trafficking in human beings through concrete legal, policy and operational initiatives, set out in the EU Strategy.

**Table 5 – Policy Option 3 (non-legislative and legislative measures)**

Objectives	Non-legislative and legislative measures
<i>Reinforcing the criminal justice response to the crime, including in the cross-border context</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 2</b> – Setting-up of a Focus Group of specialised prosecutors against trafficking in human beings</li> <li>➤ <b>Non-legislative measure 3</b> – Close cooperation with the technology companies including online platforms</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ <b>Legislative measure 1, sub-option (i)</b> – Introducing the online dimension as part of the definition of trafficking in human beings</li> <li>➤ <b>Legislative measure 2, sub-option (i)</b> – Including forced marriage and illegal adoption in the list of the forms of exploitation</li> <li>➤ <b>Legislative measure 3, sub-option (i)</b> – Ensuring that legal persons may be subject to some of the sanctions, which are currently optional in the Directive, for the standard offence and to the other (currently optional) sanctions when the offence is aggravated by one of the circumstances included in the Directive</li> </ul>
<i>Ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States</i>	<ul style="list-style-type: none"> <li>➤ <b>Non-legislative measure 1 and 1(ii)</b> – Establishing a Knowledge and Expertise Hub and developing guidelines on National Referral Mechanisms and setting-up of a European Referral Mechanism</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ <b>Legislative measure 4</b> – Making it mandatory for Member States to set up formal National Referral Mechanisms and create national focal points for victims’ referrals</li> </ul>

<sup>144</sup> DE committed to provide data by December 2022. As of October 2022, data was missing on convicted persons for PT and on victims for SE.

<i>Reducing the demand for the exploited services of trafficked victims</i>	➤ <b>Non-legislative measure 4</b> – Organising an EU-wide awareness raising campaign
	➤ <b>Legislative measure 5, sub-option (ii)</b> – Mandatory criminalisation of the knowing use of exploited services related to all forms of exploitation
<i>Ensuring adequate detection and monitoring of trafficking in human beings (horizontal)</i>	➤ <b>Non-legislative measure 1 and 1(i)</b> - Establishing a Knowledge and Expertise Hub and developing guidelines on data collection on trafficking in human beings in the EU
	➤ <b>Legislative measure 6</b> – Introducing an obligation for Member States to collect and report data on trafficking in human beings to the Commission every year, including by specifying the indicators for such data collection.

As for **P.O.2**, the legislative measures under **P.O.3** specifically address the aspects of the Directive, which do not adequately respond to new or emerging trends (such as the online dimension or other forms of exploitation) and considerably hinder the achievement of the objectives of the Directive. These legislative measures also focus on those provisions of the Directive, which left too much discretion to Member States in their transposition, either because they were not sufficiently detailed or because they were left optional. As a result, those measures were transposed in an uneven way across the Member States, which contributed to legal uncertainty and difficulties in cross-border cooperation. The specific sub-options, which are part of **P.O.3** are considered to target the legislative gaps found in the evaluation in the most effective way, taking into account potential trade-offs for Member States and the outcomes of the consultations with stakeholders.

The non-legislative measures described under **P.O.1** would provide support to national authorities in transposing and implementing the amended provisions of the Directive. At the same time, these measures would contribute to improving the general transposition and implementation of the Directive, in particular the provisions that would not be modified.

The introduction of the online dimension in the Directive (**legislative measure 1, sub-option (i)**) was widely supported by stakeholders consulted on the policy options as part of case studies and targeted interviews who considered that it would be important to introduce an explicit reference to the online dimension in the Directive. This measure would be complemented by enhanced cooperation between the Commission and internet companies within the EU Internet Forum, in cooperation with the Member States and the EU Agencies. This would allow to have a comprehensive approach by:

- strengthening the legal framework when the crime is committed with the use of technology;
- enhancing the operational capacity of national authorities to break the digital business model of traffickers; and

- increasing awareness of online companies of the risks of trafficking in human beings on their platforms, with the aim to improving the detection and removal of trafficking in human beings related content.

It should be underlined that the online dimension is a relatively new phenomenon, which has become more important within the past years. Reinforcing the focus on this aspect through legislation as well as prevention and awareness raising measures, in cooperation with the technology companies and national authorities, would also contribute to increasing the knowledge of the phenomenon and how to better address it.

The forms of exploitation would be extended in the definition to include forced marriage and illegal adoption (**legislative measure 2, sub-option (ii)**) as the existing Directive already refers to these criminal conducts in its Recitals but they do not appear explicitly in the definition.

The sanctions against legal persons would be strengthened by requiring mandatory transposition of the measures, which are currently optional in Article 6 of the Directive, either for the commission of the “standard” trafficking offences, or when the offence is committed with an aggravated circumstance (**legislative measure 3, sub-option (i)**). While some stakeholders expressed doubts regarding the added value of such measure in practice, others, including public authorities, underlined its deterrent effect as legal persons would be less likely to resort to exploitative working conditions. This legislative measure would be complemented and reinforced by various non-legislative measures, such as work with Member States within the newly created European Platform Tackling Undeclared Work within the European Labour Authority or enhanced cooperation with companies from the high risk sectors.

The mandatory establishment of formal National Referral Mechanisms and creation of national focal points for victims’ referrals (**legislative measure 4**) would go hand in hand with the non-legislative measure to develop guidelines on minimum requirements and standards that National Referral Mechanisms would have to meet, and would contribute to harmonising referrals at the EU level. This would also facilitate the setting-up of a European Referral Mechanisms, which is one of the key actions of the Strategy.

The introduction of an obligation for Member States to collect and report data on trafficking in human beings to the Commission every year within the Directive (**legislative measure 6**) would be accompanied with the developing of guidelines in order to support Member States in harmonising their approach to collecting data and possible organisation of workshops within the framework of the Knowledge and Expertise Hub.

Finally, Member States would be required to criminalise the use of services which are the object of exploitation with the knowledge that the person is a victim of trafficking in human beings (**legislative measure 5, sub-option (ii)**). While the stakeholders consulted on the policy options highlighted the difficulties to prove knowledge, they also agreed on the importance to punish the behaviour of those knowingly using the services or goods exacted from victims of trafficking. Some stakeholders mentioned that, from a legal perspective, it was crucial to keep the requirement of “knowledge”. This legislative measure would be accompanied by other measures, including the EU-wide awareness-raising campaign, aimed at discouraging the demand that fosters trafficking.

The Focus Group of specialised prosecutors against trafficking in human beings as a major non-legislative measure would allow Member States to exchange approaches and practices in relation to different legislative measures, in addition to the activities mentioned under **P.O.1**.

### **5.3. Options (legislative measures) discarded at an early stage**

#### *5.3.1. 5.3.1. Equality model*

Some stakeholders consider that the equality model<sup>145</sup> indirectly addresses the use of exploited services. It consists in the criminalisation of the purchase of sexual services regardless of whether the person is a victim of trafficking. It is in force in some Member States<sup>146</sup>, either as stand-alone approach to reducing demand for sexual (not necessarily exploited) services, or in combination with rules criminalising the use of exploited services. It is not considered among the possible legal modifications because it would entail legislating on a different conduct (the purchase of sexual services, prostitution) than trafficking. The higher rates of convictions under the equality model are due to the fact that the elements of trafficking do not need to be proven in court. It suffices that sexual services were purchased from any person, regardless of whether they were trafficking victims, and this is a far less complex conduct to prove in court.

The legal basis of the Directive is Article 83 TFUE, which includes trafficking and sexual exploitation. The purchase of sexual services is beyond trafficking and, hence, the scope of the Directive.

#### *5.3.2. 5.3.2. Other legislative changes discarded at an early stage related to assistance of victims and confiscation*

Some legislative changes were considered as part of the evaluation and impact assessment but discarded at an early stage, including modifications of the provisions referring to the gender-specific aspects of trafficking, the specific vulnerabilities of the victims, including disabilities, to the protection of victims participating in criminal proceedings, as well as to victims' access to compensation. The evaluation found that these aspects are already appropriately addressed in the Directive since Article 11 of the Directive includes a range of measures to ensure assistance and support to victims. Recitals 17 to 22 provide further detail on the assistance and support that Member States should provide to victims of trafficking. Most Member States have transposed the provisions included in Article 11 and have national measures to provide assistance and support. The Directive has contributed to increasing the range of services available in Member States for victims of trafficking. The shortcomings described in the evaluation are mainly linked to the weaknesses in the implementation of the Directive. Therefore, they should be addressed as part of the non-legislative measures proposed by this initiative and as part of the implementation of the Strategy.

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<sup>145</sup> In force in FR, IE, SE and, partly FI.

<sup>146</sup> FI, IE.

Deficiencies in seizure and confiscation of the proceeds of trafficking in human being offences are addressed in new Commission proposal for a Directive on asset recovery and confiscation<sup>147</sup>.

## **6. 6. WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED?**

None of the policy options are expected to have an environmental impact, as already underlined in the Evaluation Roadmap/Inception Impact Assessment<sup>148</sup>. Therefore, this criteria is not addressed in the analysis below.

### **6.1. 6.1. Security impact**

**P.O.1** is expected to contribute to reinforcing the internal security within the EU. The measures proposed as part of this option are generally aimed at enhancing the implementation of the current Directive, which provides for a common framework at the EU level to fight against one of the most serious crime, often committed within the framework of organised crime. The non-legislative measures would increase the capacity of national authorities and involvement of the private sector, in particular technology companies, in order to better prevent and fight against trafficking in human beings. However, **P.O.1** would not address the legislative gaps, which were found in the context of the evaluation and hinder the level of security provided by the Directive.

**P.O.2** is expected to have a stronger impact on security than **P.O.1** due to the fact that Member States would be legally bound by these measures. **P.O.2** would ensure a higher level of harmonisation of the criminal law against trafficking in human beings in Member States and thus, a higher level of security for citizens. The legislative changes related to the criminalisation of trafficking offences when committed online (**legislative measure 1**), of additional forms of exploitation (**legislative measure 2**), sanctions against legal persons (**legislative measure 3**) and the criminalisation of the use of services exploited from victims (**legislative measure 5**) would be the legal basis of law enforcement and judicial response. In addition to fostering more investigations, prosecutions and convictions, those measures would also act as a deterrent and as a result reduce the incidence of the crime.

**P.O.3** is considered to have the highest impact on security as it would combine the separate impacts on security of **P.O.1** and **P.O.2**. While strengthening the criminal law response to trafficking in human beings is essential to reduce the crime, this needs to be accompanied by policy measures, which aim at enhancing cross-border cooperation among law enforcement and judicial authorities and with the private sector.

### **6.2. 6.2. Social impact**

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<sup>147</sup> [COM/2022/ 245 final](#).

<sup>148</sup> [Fighting human trafficking – review of EU rules \(europa.eu\)](#)



**P.O.1** would have a positive impact on society, especially as it would aim at reducing the harm suffered by victims, including children. It would improve the functioning of the referral mechanisms within the Member States and ensure better national coordination among assistance and support services and cross-border cooperation. It would enhance the capacity of stakeholders likely to come into contact with victims of trafficking, to identify victims at an early stage and refer them to adequate services. This would be further reinforced by other activities that could take place within the framework of the Knowledge and Expertise Hub. Such activities would address the gaps in the implementation of the Directive in relation to victims' rights, such as the fact that assistance and support services are not sufficiently tailored to the specific needs of victims, the non-prosecution and non-punishment of the victims, difficulties for victims to access compensation and protection of the victims in criminal proceedings.

Awareness raising campaigns at the EU level and on the safe use of the internet would also benefit to society as a whole. By promoting education and raising awareness of consumers and potential users of services and cheap labour exacted from victims of trafficking, these measures would eventually aimed at changing individuals' behaviours, reducing demand that fosters trafficking, as well as the vulnerability of persons at higher risk of becoming victims.

**P.O.2** would have a positive social impact, as it would contribute to ensuring a higher level of safety of citizens against crime and fight impunity of criminals. The obligation for Member States to establish National Referral Mechanisms (**legislative measure 4**) is the legislative measure with the highest potential in terms of impact on society since it would reinforce the current text of the Directive with a view to improve the assistance and support to victims of trafficking in human beings. However, it would not be sufficient in itself to harmonise practices across Member States. Criminalising the use of exploited services (**legislative measure 6**) would contribute to reducing and discouraging the demand for exploited services of victims of trafficking.

The impact of **P.O.3** on society is expected to be significantly higher than **P.O.1** and **P.O.2**, mainly due to the combination of non-legislative and legislative measures. Developing guidelines, for example, would help national authorities in transposing and implementing the new obligation to establish National Referral Mechanisms. It would allow a higher level of harmonisation of practices across Member States and, therefore, a better protection of the victims, both at the national and transnational levels. Moreover, the social impact of the criminalisation of the knowing use of exploited services would be increased by non-legislative measures, which would aim at changing societal behaviours through education and awareness raising to reduce demand.

### **6.3. 6.3. Economic**

Trafficking in human beings causes significant costs for the economy and the society. In 2016, the estimated total cost was over **EUR 2.7 billion in the EU**. This figure includes assistance and support services to victims, coordination and law enforcement activities as well as the lost economic output of the victims who do not participate in the legal economy and the lost quality of

life for the victims<sup>149</sup>. Stepping up the fight against trafficking in human beings would generally result in reducing the scale of the crime and its costs on society and the economy.

**Table 5 – Summary of costs and benefits for the policy options**

<b>Options</b>	<b>Costs</b>	<b>Benefits</b>
<b>P.O.1</b>	Up to EUR 2 290 000 in one year, including one-off cost for the EU-wide awareness raising campaign (EUR 250 000)	<p>Improved implementation of the EU legal and policy framework.</p> <p>Better coordination of practices for the identification and referral of victims within and across Member States and to collect data</p> <p>Better cross-border judicial cooperation across Member States</p> <p>Increased awareness of the phenomenon and cooperation with the private sector, including technology companies</p>
<b>P.O.2</b>	Approximately EUR 127 235 011 per year	<p>Strengthened legal framework to:</p> <ul style="list-style-type: none"> <li>- Address the legislative gaps of the Directive;</li> <li>- fight against trafficking in human beings, including in the digital space and for additional forms of exploitation; sanction legal persons;</li> <li>- referring the victims to assistance and support;</li> <li>- reducing the demand; and</li> <li>- monitor the situation of trafficking in human beings in the EU</li> </ul>
<b>P.O.3</b>	Approximately EUR 129 275 011 per year	<p>Approximately EUR 1 122 643 213 (maximum estimate).</p> <p>Aggregated and complementary benefits of P.O.1 and P.O.2.</p> <p>Increased implementation of the current Directive and Strategy</p> <p>Strengthened legal framework in order to better respond to new and emerging threats and address the legislative gaps of the Directive</p>

The overall amount of **P.O.1** is estimated to be up to **EUR 2 290 000 a year** to be financed through regular EU funding.

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<sup>149</sup> European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020), p.104. Available at: [link](#).

**P.O.1** would have a limited economic impact on businesses and companies since some of the measures, such as the enhanced cooperation with the Commission within the framework of the EU Internet Forum and the EU-wide awareness raising campaigns would require voluntary engagement of the internet companies, businesses and employers.

Support to the Knowledge and Expertise Hub on Combatting Trafficking in Human Beings for improving the policy and operational work addressing the cross-border and transnational challenges related to trafficking in human beings is already planned through procurement contract the Internal Security Fund Thematic Facility work programme for 2021 and 2022, although no procurement contract has been launched yet. Its budget for the first two years is estimated to be up to **EUR 4 million**.

The work of the Focus Group of specialised prosecutors would mainly concern the organisation of one or two meetings per year and the development of guidelines and handbooks on the specific issues discussed during the meetings. This would require limited additional resources, which would be mainly sustained by the Commission and Eurojust. The cost of the meetings is estimated to be maximum **EUR 40 000 per year**, when these take place in person.

Cooperation with the internet companies, including in the context of the EU Internet Forum, is already ongoing and would not require additional budget. The EU-wide awareness raising campaign would also be financed through EU budget under the Internal Security Fund. The estimated cost for this campaign is **EUR 250 000**.

The economic impact of **P.O.2** would mainly relate to administrative costs linked to the transposition and implementation of new legislative measures. The aggregation of the available estimated costs for Policy Option 2 would amount to an estimate of **EUR 127 235 011 per year**. However, it is not possible to have an overall estimate of the cost of all the individual legislative measures, especially when data is not available.

**Legislative measures 1 and 2** are criminalisation measures, which respectively consist in the introduction of an explicit reference to the use of the internet for the commission of trafficking offences and the addition of further forms of exploitation in the definition of trafficking in human beings. The use of technology to commit trafficking offences already falls within the scope of the Directive. In addition, some Member States have already included some additional forms of exploitation within their legal systems (e.g. forced marriage and illegal adoption) and victims of trafficking for “other forms” of exploitation amount to 11% of the total number of victims registered in the EU. As such, these two criminalisation measures do not imply additional costs for the Member States. However, it is likely that the increased focus on the online dimension and on further forms of exploitation would result in a higher number of investigations, prosecutions and convictions. It is difficult to estimate in concrete terms the extent of such increase, if any, as the number of cases does not just depend on criminalisation measures, but also on the level of criminal activities and the effectiveness of the law enforcement response in Member States. Moreover, it is not possible to estimate how many victims are concerned by the online dimension of trafficking in human beings, including among those registered as the use of technology varies from case to case and often only concerns one or few elements of the trafficking chain. It is however estimated that every additional investigation on top of the current average would cost **EUR 77 711**, each

additional prosecution would cost **EUR 56 379** and each additional conviction would cost **EUR 52 838**<sup>150</sup>.

Statistics from the 2015-2020 reporting period indicate that the average number of victims of trafficking for “other forms” of exploitation, including forced marriage and illegal adoption, per year was 626. Based on this number, the costs of **legislative measure 2, sub-option (i)** can be roughly estimated at **EUR 117 048 083 per year** for national authorities. It should be underlined that this figure represents the maximum amount that this measure could cost, as disaggregation of the specific forms of exploitation covered by the “other forms” category is not available.

These costs would be outweighed by the benefits brought to society as a whole by identifying and protecting victims of trafficking, prosecuting and convicting traffickers and confiscating criminal instrumentalities and proceeds).

**Legislative measure 3** concerns the mandatory transposition of some or all the sanctions on legal persons. This would generate procedural steps to put in place such measures and their enforcement. Three of the optional measures that would become mandatory (exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; and temporary or permanent closure of establishments which have been used for committing the offence) would have negligible costs. Such costs would be by far outweighed by the benefits of reducing the possibilities to infiltrate the legal economy, and of ensuring a fairer economy where companies acting by the rules benefit from the reduction of competition from businesses which take advantage of forced labour. The other two sanctions (placing under judicial supervision and judicial winding up) would imply more resources for procedures and enforcement at the judicial level. This would be justified by the need to step up the criminal justice response to trafficking offences committed for the benefit of legal persons. It is difficult to estimate the costs of making some of the currently optional sanctions on legal persons in the Member States mandatory to transpose. This is mainly because Member States have never reported any data on investigations, prosecutions or convictions of legal persons for trafficking offences. In the absence of figures of conviction of legal persons (and let alone of the sanctions imposed on them), it is not possible to estimate the costs that this measure would entail. Under **sub-option (i)**, Member States which have not yet transposed the optional sanctions of the exclusion from entitlement to some or all public benefit<sup>151</sup> and the temporary or permanent closure of the establishments that have been used to commit the infringement<sup>152</sup> would have to transpose them. All Member States would have to transpose the other optional sanctions in the context of aggravating circumstances, unless these sanctions are already available for standard trafficking offences. However, these sanctions would be applicable in a more

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<sup>150</sup> The estimated cost of police amounts to a total of EUR 623 789 396 or EUR 77 711 per victim in the EU in one year. Prosecution costs for trafficking offences are estimated at EUR 154 196 901 in total, EUR 19 210 per victim and EUR 56 379 per prosecution. Costs of conviction (i.e. the average cost per day and average number of days a court would spend on a trafficking case) are estimated at EUR 71 490 256 in total, EUR 8 906 per victim and EUR 52 838 per conviction. European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020), p.55. Available at: [link](#).

<sup>151</sup> AT, BG, DK, EE, FI, FR, DE, IE, LV, LT, LU, NL, RO, SK, SI and SE.

<sup>152</sup> AT, BG, CZ, DK, HR, EE, FI, DE, HU, IE, IT, LV, NL, PL, SK, SI and SE.

limited number of cases. Additional transposition and implementation costs would be incurred by Member States for **sub-option (ii)**, as they would have to transpose all the optional sanctions on legal persons. None of the Member States have transposed all of the optional sanctions. Finally, the cost related to the transposition of **sub-option (iii)** would be the same as for **sub-option (iii)**, although these measures would only have to be applicable when the offence is committed with an aggravating circumstance.

**Legislative measure 4** concerns the formalisation of National Referral Mechanisms and the appointment of National Focal Points for the referral of victims. All Member States but one have a formal or informal mechanism currently in place. The Member State that does not have a referral mechanism<sup>153</sup> would incur the costs of establishing one. There is no data to estimate the cost of establishing a mechanism. However, as the concerned Member State already carries out decentralised referral and assistance services, the costs incurred would be limited. Member States which have an informal referral mechanism would incur the costs of formalisation<sup>154</sup>. This would result in limited costs, which would be offset by the benefits of harmonised procedures at the EU level, especially in cross-border cases. Three Member States have either recently established (Portugal) or are currently in the process of establishing a formal national referral mechanism (France and Ireland, respectively). This formalisation consists the elaboration and implementation of protocols defining the procedures for the identification and referral of child victims<sup>155</sup>, an official document including indicators for the identification of victims and defining the roles of all relevant stakeholders<sup>156</sup>, or expanding the list of organisations competent for the identification and referral of victims and formally involving designated civil society organisations<sup>157</sup>. These measures are generally accompanied by a modification of the existing legislation (e.g. criminal code). While this does not indicate the cost of the formalisation of the national referral mechanism, Portugal allocates EUR 1 600 000 every year for victim support services, which contributes to the functioning of the national referral mechanism. In France, the National Referral Mechanism is based on based practices and consists in formalising existing cooperation among stakeholders involved in the identification and referral of victims. The appointment of a central focal point would have a limited economic impact on the Member State that does not have a national referral mechanism in place. Moreover, Member States already have designated National rapporteurs and/or equivalent mechanisms who could act as national focal points. These additional resources are by far outweighed by the benefits related to better coordination, which would lead to a more efficient and cost-effective provision of referral and assistance services, as well as facilitate the setting-up of a European Referral Mechanism.

**Legislative measure 5** consists in the criminalisation of the use of services exacted from victims of trafficking. This measure would have an impact on law enforcement and judicial authorities only in

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<sup>153</sup> While Germany has some types of mechanisms in place for the identification and referral of victims, the competences to implement these mechanisms lie with the *Länder* and therefore are not centralised.

<sup>154</sup> This is the case, for example, for Hungary. See European Commission, *Study on Reviewing Member States' National and Transnational Referral Mechanisms* (2020), Publications Office of the European Union, p.19. Available at: [link](#).

<sup>155</sup> Portugal.

<sup>156</sup> France.

<sup>157</sup> Ireland.

the Member States that do not already have a provision on this matter or have one that covers only some forms of exploitation. It is estimated that the incurred cost would be about EUR 10.6 million per year in total<sup>158</sup> for the seven Member States that currently do not have any provision on the use of services<sup>159</sup>. These figures would be lower for countries that already criminalise the use of services limited to some forms of exploitation<sup>160</sup>. Since this measure aims at discouraging demand for exploitation, its effective implementation is expected to reduce the number of trafficking offences and consequently the costs related to the investigation, prosecution and convictions thereof. Demand reduction would also reduce the number of victims and hence the costs related to their support.

**Legislative measure 6** consists introducing an obligation for Member States to collect and report data regarding trafficking in human beings on a yearly basis. The national statistical authorities of all Member States already gather statistics and, since 2021, transmit them every year to the Commission in the context of the EU-wide data collection on trafficking in human beings. Therefore, no significant additional costs are estimated. The EUROSTAT data collection is already budgeted by the Memorandum of Understanding between Directorate General Migration and Home Affairs and EUROSTAT for 2022. As of 2023, it will fall under the EUROSTAT budgeted for criminal statistics.

P.O.3 would amount to an aggregated estimate of **EUR 129 275 011**. **P.O.3** would have a higher economic impact, as it would combine the estimated costs for **P.O.1** and **P.O.2**. The cost related to the legislative measures, which are part of **P.O.3** would be similar to the cost of **P.O.2**. Nevertheless, it is clear from the analysis of **P.O.2** that **legislative measure 2 sub-option (i)** (addition of forced marriage and illegal adoption among the forms of exploitation criminalised in the Directive) would have a lesser cost than **sub-option (ii)**, which would criminalise more forms of exploitation, thereby creating an obligation for national authorities to initiate investigations and criminal proceedings in a higher number of cases. At the same time, the combination of legislative and non-legislative measures would further improve the capacity of law enforcement and judicial authorities to deprive traffickers from the proceeds of their illegal activities and from infiltrating the legal economy. Moreover, improving the fight against trafficking would reduce the costs incurred by the crime for the society, since fewer number of victims would necessitate less interventions from specialised services as well as from law enforcement, health services and social protection<sup>161</sup>.

The benefits of this initiative would mainly consist in reducing the societal cost by ensuring that victims of new forms of exploitation are identified, assistance and supported; enhancing demand reduction; and ensuring more focus on the online dimension and improving the referral of victims to appropriate services. Moreover, the initiative will contribute to ensuring a fairer economy where

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<sup>158</sup> The estimation of costs for this measure is based on the data collected in the context of the evaluation and adapted in proportion to the population of the Member States that currently do not have legislation on the use of services in place. It was made solely for the purpose of this Impact Assessment and should not be considered as official data.

<sup>159</sup> AT, BE, CZ, ES, IT, PL, SK.

<sup>160</sup> EE, IE, LU, LV, NL and EL.

<sup>161</sup> European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#). Also see the evaluation.

legal persons convicted for trafficking offences are deprived from the proceeds of their illegal activities and cannot participate in the EU market, for instance by being prevented from receiving public benefits. This report makes an attempt at quantifying the general benefits of this initiative. However, it not possible to give a disaggregated analysis of the benefits per policy option.

The cost of the lost economic output is estimated at **EUR 59 537 per victim** and **EUR 479 973 675 in total** in the EU per year<sup>162</sup>. These costs are linked to the fact that 100% of the potential economic output is lost to the victim and to economy and society when an adult person is in trafficking or when the victim is in specialised services or helping law enforcement. Some economic output potential is also lost for several years after trafficking, as the prevalence of being unemployed or unable to work due to sickness by the physical violence, sexual violence and threats suffered during the trafficking. Therefore, measures aimed at reducing the scale of trafficking would result in a higher amount of people being able to participate in the economy as a result of not becoming victims of trafficking. In addition, improving the early identification of, and the quality of assistance and support services provided to victims would probably increase the possibility of victims to access the labour market and stay in employment, thus also facilitating their re-integration into society.

Moreover, victims of trafficking are subject to physical violence, sexual violence and threats that reduce the length and quality of life. The cost of the loss of quality of life include physical injuries sustained by the victims and homicides committed during trafficking, fear, depression and anxiety during trafficking and mental health harms post-trafficking. It is estimated at **EUR 80 063 per victim** and **EUR 642 669 538 in total** per year in the EU.

Therefore, by reducing the number of victims of trafficking and increasing the number of persons who can participate in the legal economy, as well as by improving the quality of life of the victims, the benefits brought by this initiative would amount to an estimate of **EUR 1 122 643 213**. This estimate also include to a certain extent lost profits for traffickers, who would not benefit from the exploited labour and services of victims. As **P.O.3** has an incremental character as compared to **P.O.1** and **P.O.2**, its benefits would certainly be maximised as compared to the other policy options. As a result, the costs of P.O.3 for national authorities and the EU (**EUR 129 275 011**) would be outweighed by the quantified benefits.

#### **6.4. 6.4. Fundamental rights**

**All policy options** are expected to have a positive impact on fundamental rights, as they all contribute to preventing and fighting trafficking in human beings, and to protecting the victims of the crime, which is prohibited by the Charter. They also strengthen the protection of other fundamental rights enshrined in the Charter, including the right to human dignity (Article 1), the right to the integrity of the person (Article 3) and in particular the prohibition of making the human body and its parts a source of financial gain (Article 3(c)), the prohibition of inhuman or degrading treatment or punishment (Article 4), prohibition of slavery and forced labour (Article 5), the right to

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<sup>162</sup> Ibid n°141, p.84.

liberty and security (Article 6) and the rights of the child (Article 24). The gender-specific and child sensitive approach is integrated in, and streamlined throughout all the measures proposed in the policy options, which contributes to promoting the principle of equality (Title III of the EU Charter), in particular equality between women and men (Article 23).

Nevertheless, **P.O.2** and **P.O.3** would have a higher impact than **P.O.1**, due to the fact that they are legally binding and impose further obligations on the Member States in criminalising certain conducts, which are particularly harmful for the victims. Moreover, **P.O.2** and **P.O.3** would both keep the gender-specificity of the current text of the Directive and address forced marriage as a form of exploitation that affects mostly women and girls. **P.O.2** and **P.O.3** do not provide for provisions specifically targeting any specific group, such as persons with disabilities or asylum seekers. It is sufficient that groups are not adversely affected by, and that their position is taken into account as part of, the proposed legislative measures.

It could be argued that stricter measures, e.g. to consider the use of technology to commit one of the elements of the offence as an aggravating circumstance (**legislative measure 1, sub-option (ii)**) or to criminalise as many forms of exploitation as possible (**legislative measure 2, sub-option (ii)**), would be more beneficial when it comes to the safeguarding of fundamental rights. However, as mentioned in relation to the analysis of the different options for the criminalisation of the use of exploited services, stricter criminal law approaches do not necessarily result in better protection of fundamental rights, as they are sometimes more difficult to apply in practice. **Legislative measure 5, sub-option (ii)** would increase the protection of victims as compared to the baseline. At the same time, it would not go beyond the threshold of “knowledge” therefore respecting the usual required level of participation under criminal law. Therefore, **P.O.3** is considered to have the highest impact on fundamental rights.

## 7. 7. HOW DO THE OPTIONS COMPARE?

*The assessment of each policy option includes numeric ratings of the magnitude of the expected effects vis-à-vis the baseline scenario in relation to each criterion and impact considered. Whereas the baseline scenario has been, by definition, rated with ‘0’ in relation to each criterion, the other three policy options have been scored on a scale from 1 to 3 where 1= Small extent / 2=Moderate extent / 3=High extent. A score of 0 means that the option would have the same effect as the baseline scenario. The ratings have been based on the triangulation of both qualitative and quantitative data collected throughout the evaluation and Impact Assessment by means of desk research, interviews, focus groups and an online survey with EU bodies and representatives from the Member States and civil society organisations, two technical workshops, and the Public Consultation.*

*Different weights have been allocated to different criteria and impacts based on their relative importance. More precisely, the effectiveness and efficiency criteria were prioritized based on the fact that it was deemed as highly important for the policy options to be effective towards the achievement of the specific objectives, as well as cost-effective (i.e. expected benefits outweigh the costs). Similarly, security and fundamental rights impacts have been prioritised since social and economic impacts are consequences of the positive impacts on the overall security of EU citizens,*



businesses and public authorities. The security, social, economic and fundamental rights impacts of the policy options are described in Section 6.

In the table below, numbers in brackets depict the relative weight of each criterion and type of impact for the Multi-Criteria Analysis. The criteria used to assess the effects have been rated in relation to each specific objective whereas the types of impacts have been rated in relation to each policy option as a whole.

<u>Criteria</u>	<u>Types of impacts</u>
<ul style="list-style-type: none"> <li>• Effectiveness (Weight 4)</li> <li>• Efficiency (Weight 4)</li> <li>• Necessity (Weight 3)</li> <li>• Coherence (Weight 3)</li> <li>• Subsidiarity and proportionality (Weight 4)</li> </ul>	<ul style="list-style-type: none"> <li>• Security (Weight 4)</li> <li>• Social (Weight 2)</li> <li>• Economic (Weight 2)</li> <li>• Fundamental rights (Weight 4)</li> </ul>

**Table 6 – Comparison of policy options**

Criteria and type of impacts	Direction	Weight	Rating			
			BS (PO 0)	PO 1	PO 2	PO 3
<b>Criteria</b>						
Effectiveness	+	4	0	1.75	2	3.75
Efficiency	+	4	0	2.5	3	5.5
Necessity	+	3	0	2.5	2.5	3
Coherence	+	3	0	3	3	3
Subsidiarity and proportionality	+	4	0	3	3	3
<b>Types of impacts</b>						
Security	+	4	0	2	2.5	3
Social	+	2	0	2	2.5	3
Economic	+	2	0	2	2.5	3
Fundamental rights	+	4	0	2	3	3
<b>Total (relative to the weight)</b>			0	69.5	81	100

## 7.1. 7.1. Effectiveness

The effectiveness of each policy option is assessed against each of the specific objectives of this initiative.

### 7.1.1. 7.1.1. Ensuring adequate prevention, detection and monitoring of trafficking in human beings

**P.O.1** is expected to increase the capacity of national authorities to detect trafficking in human beings through measures, which are aimed at reinforcing cooperation among stakeholders, which are likely to come into contact with victims. However, **P.O.1** would go to a smaller degree beyond the baseline scenario since it only contains non-legislative measures, which are linked to the implementation of the Strategy.

**P.O.2** would be more effective than **P.O.1** due to the legal obligations it would include. Notably, making the data collection on trafficking in human beings mandatory and clarifying some aspects of the data collection in the Directive (**legislative measure 6**) would increase the level of legal certainty among national authorities regarding the gathering of statistics. As a consequence, it would increase knowledge about trafficking in human beings.

**P.O.3** would maximise the effectiveness of **P.O.1** and **P.O.2**, as the non-legislative measures as part of the Knowledge and Expertise Hub would support national authorities in better transposing and implementing the legislative measures.

*7.1.2. 7.1.2. Reinforcing the criminal justice response to the crime, including in the cross-border context*

**P.O.1** would reinforce the criminal justice response to trafficking in human beings, notably through the formal Focus Group of specialised prosecutors. The Focus Group would foster cooperation among judges and prosecutors from different Member States and non-EU countries through the sharing of expertise and best practices. Fostering cooperation with the internet industry in the context of the EU Internet Forum, in cooperation with Member States and EU Agencies, in particular Europol, would also increase the capacity of national authorities to fight the crime online.

The evaluation found that certain aspects of the criminal justice response to the crime are not sufficiently and/or adequately addressed in the Directive. **P.O.2** would aim at addressing these gaps, in particular when it comes to explicitly addressing the digital dimension of the offence, currently only implicitly covered by the Directive (**legislative measure 1, sub-option (i)**). With respect to the criminalisation of additional forms of exploitation (**legislative measure 2**), both **sub-options (i)** and **(ii)** would contribute to a stronger response to the crime. However, the criminalisation of only forced marriages and illegal adoptions as exploitative purposes reflects the most pressing concerns and may be easier to achieve in practice since the recital already mentions that these forms could be covered by the definition of trafficking. The list of the forms of exploitation would remain non-exhaustive, which means that Member States would still have the option to include more purposes of trafficking than those explicitly mentioned in the Directive. Moreover, with a stricter approach to the sanctions against legal persons, **P.O.2** would increase the criminal justice response for cases when trafficking offences are committed for the benefit of companies or businesses. Requiring Member States to ensure that legal persons will be subjected to the sanctions, which are already provided for in Directive 2009/52/EC (**legislative measure 3 sub-option (i)**) is deemed to be the most effective measure. Member States should already have adopted such sanctions in their legal system for cases of illegal employment of third-country nationals. They would only have to expand their application to trafficking offences. At the same time, **sub-option (i)** would go further than **sub-option (iii)** in holding legal persons accountable for trafficking offences, since the introduction

of the remaining optional sanctions would become mandatory when the offence is committed with an aggravating circumstance.

**P.O.3** would combine the effectiveness of **P.O.1** and **P.O.2**, which is why it is considered to be more effective.

*7.1.3. 7.1.3. Ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States*

**P.O.1** would contribute to ensuring that victims have actual access to adequate assistance, support and protection services across the Member States. It includes concrete measures to improve the early identification and referral of victims, which would be developed and implementing in close cooperation with all relevant stakeholders, including national authorities and civil society organisations.

**P.O.2** would formally establish mechanisms for the early identification and assistance, support and protection of victims, in cooperation with relevant support organisations (**legislative measure 4**). Yet, **P.O.3** would be more effective in ensuring that victims of trafficking receive adequate assistance, support and protection across the Member States, as the harmonisation of practices and procedures for the identification and referral of the victims would be considerably limited if Member States do not have guidance at the EU level that would provide them with support in its application at the national level.

*7.1.4. 7.1.4. Reducing the demand for the exploited services of victims of trafficking in human beings*

**P.O.1** would contribute to reducing the demand for the exploited services of trafficked victims through the organisation of an EU-wide awareness raising campaign and through the enhanced dialogue with the online platforms and technology companies. However, the evaluation found that it is very difficult to assess the effectiveness of awareness-raising campaigns and other activities on reducing demand. Moreover, awareness-raising activities at the EU level, whether offline or online, may not sufficiently take into account the circumstances in Member States, for example in terms of vulnerability and high-risk sectors.

**P.O.2** would provide a legal basis for a law enforcement and judicial response to the knowing use of services exacted from victims of trafficking for all forms of exploitation (**legislative measure 5 sub-option (ii)**). Its deterrent effect on potential users of exploited services is expected to effectively reduce the demand that fosters trafficking for all forms of exploitation. Article 18(4) of the Directive already considers that the criminalisation of the knowing use of services would reduce demand and therefore enhance prevention of trafficking. Requiring Member States to criminalise the **knowing** use of services related to all forms of exploitation would not prevent Member States who wish to go further to do so. The effectiveness of this legal option might be hampered by the difficulties to prove the knowledge that the person was a victim of trafficking. The evaluation and

impact assessment have shown that this approach had different degrees of success in the eight Member States which have already adopted it, ranging from high numbers<sup>163</sup> of prosecutions and convictions in some Member States to zero prosecutions in others<sup>164</sup>. However, based on the evaluation and Impact Assessment, it is not possible to conclude that stricter rules (**sub-options (iii), (iv) and partly (v)**) led to higher numbers of prosecutions and convictions for such offences. The criminalisation of the use of services would contribute to holding users and buyers of services equally accountable all over the EU for their role in the trafficking chain. In addition, it would cover the different purposes of trafficking in human beings, i.e. sexual exploitation and labour exploitation, as well as organ removal, as opposed to **sub-option (i)**, which would only address sexual exploitation. Finally, this option would contribute to shifting the focus of investigations to high-risk sectors, environments and groups.

**P.O. 3** is the most in line with the comprehensive approach to prevention and demand reduction envisaged in EU legal and policy instruments, as it includes both non-legislative measures such as awareness-raising, education and training, as well as criminal law measures targeting the users of exploited services.

For all the objectives of the Impact Assessment, **P.O.3** is considered to be the most effective policy option, as it would combine the positive impact of **P.O.1** and **P.O.2**.

## 7.2 Efficiency

All the non-legislative measures of **P.O.1** are considered to be efficient as they would contribute to improving the implementation of the Directive. Moreover, as highlighted in section 6.3 on the economic impact, P.O.1 is not expected to create any costs or additional burden on Member States or businesses as the estimated amount of EUR 2 290 000 a year, including EUR 250 000 as a “one-off” cost for the EU-wide awareness raising campaign, would be covered under regular EU funding.

The Knowledge and Expertise Hub would cover other activities that fall under **P.O.1**, such as developing guidelines on National Referral Mechanisms and on data collection, as well as cooperation within the framework of a European Referral Mechanism and supporting awareness raising campaigns. Accordingly, no additional funding would be required. These measures would be developed in close cooperation with national authorities and other relevant stakeholders, such as civil society organisations, and would aim at facilitating their tasks in the national and cross-border contexts, therefore increasing their efficiency.

The EU-wide awareness raising campaign would be organised by the Commission and financed through the EU budget to fight against trafficking in human beings. Therefore, it would not incur any costs by national authorities, civil society organisations and the private sector. Moreover, the campaign would be fully in line with the objectives of the Directive to discourage and reduce the demand that fosters all forms of exploitation and to reduce the risks of people becoming victims of trafficking.

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<sup>163</sup> Lithuania reported 113 convictions since 2017.

<sup>164</sup> Malta reported 0 convictions since 2017; Bulgaria reported 3 convictions since 2017.

Some of the legislative amendments under **P.O.2** are to a certain extent covered in national legal systems. The added value of EU standard setting would be ensuring harmonisation of the legal systems of all Member States and facilitating cross-border cooperation.

The majority of stakeholders consulted as part of the survey<sup>165</sup> and the public consultation<sup>166</sup> confirmed the cost-effectiveness of the current Directive<sup>167</sup>. The evaluation found that the costs associated to law enforcement and judicial activities did not create an unnecessary burden on the Member States.

A stronger criminal justice response through more harmonised rules at the EU level would overall contribute to increasing the effectiveness of law enforcement and judicial anti-trafficking activities and reduce related costs. The cost of new measures involving criminalisation is expected to be limited, although it is difficult to estimate in precise terms. However, the costs of criminalising harmful conducts (estimated at EUR 127 235 011 per year) are outweighed by the benefits this brings to the victims and society as a whole.

**P.O.3** is generally expected to be more efficient than **P.O.2**. The transposition and implementation of the legislative measures would be supported by a set of non-legislative measures. For example, the efficiency of **legislative measure 4** (obligation to establish a formal national referral mechanism and national focal points) and **legislative measure 6** (formalisation of the data collection on trafficking in human beings) would be improved by the guidelines, which would be developed as part of the Knowledge and Expertise Hub. Moreover, the sub-options that were selected to be part of **P.O.3** are the ones, which would incur the most limited administrative costs by the Member States, while also enhancing the effectiveness of the Directive.

The overall increase in efficiency connected with **P.O.3** allows to consider it as a preferred option despite its higher costs due to the combination of **P.O.1** and **P.O.2** (approximately EUR 129 275 011 per year).

### 7.3 Coherence

The evaluation found that the Directive is overall coherent with other relevant EU legislative instruments. The three policy options are expected to maintain the coherence with other initiatives<sup>168</sup>.

The evaluation found that there was some margin for better alignment with the Employers Sanctions Directive (Directive 2009/52/EC). Both **P.O.2** and **P.O.3** would be in line with this Directive, as they would introduce the sanctions against legal persons included therein. In particular, making some of the optional sanctions under Article 6 of the Directive mandatory for

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<sup>165</sup> 69% of them agreed that the implementation of the Directive did not cause any unnecessary burden.

<sup>166</sup> 56% of them agreed that the implementation of the Directive did not cause any unnecessary burden.

<sup>167</sup> See section 4.1.2 of the evaluation and Annex 2 of the Impact Assessment.

<sup>168</sup> See the section 4.1.3.1 of the evaluation for the assessment of the coherence of the Anti-trafficking Directive with other relevant EU and international instruments.

Member States to transpose (**legislative measure 3 sub-option (i)**) would improve the coherence of the Directive with Article 7(1) (c) of Directive 2009/52/EC.

Requiring Member States to criminalise the knowing use of services exacted from victims of trafficking (**legislative measure 5, sub-option (ii)**) would increase the coherence with Article 9(1) (d) of Directive 2009/52/EC, which prohibits the use by an employer of work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings. This legislative change would fill the remaining gap, i.e. employers who knowingly use the work or services exacted from victims of trafficking who are not illegally staying third country nationals. These would be covered by this legislative option.

#### 7.4 Necessity

The necessity of EU action in the area of fighting trafficking in human beings is demonstrated in Section 3.2 and in the evaluation. All the policy options aim at strengthening the fight against trafficking in human beings and protection of its victims across the EU, either through measures aimed at the implementation of the current Directive and/or through improving and modernising it with legislative amendments. The three policy options address the gaps identified in the evaluation.

#### 7.5 Subsidiarity and proportionality

Section 3.2 explains how this initiative meets the principles of subsidiarity and proportionality. The three policy options would contribute to achieving the objectives of the Treaties, i.e. the fight against trafficking in human beings, which is a particularly serious crime with a cross-border dimension.

**P.O.1** aims at reinforcing the implementation of the current EU legal and policy framework through non-binding measures, which would not affect the scope for national decision-making.

The legislative measures proposed as part of **P.O.2** and **P.O.3** fall within the scope of the existing legislation, since they consist in amendments to the Anti-trafficking Directive. Moreover, these measures target specifically the aspects of the Directive, which do not adequately respond to new or emerging trends (such as the online dimension or other forms of exploitation) and considerably hinder the achievement of the objectives of the Directive. It should be underlined that all Member States have transposed Article 2(1) and Article 2(3) in their national legislation, although some gaps persist with respect to the full transposition of the means, which are part of the definition, and the forms of exploitation. Moreover, these legislative measures focus on those provisions of the Directive, which left too much discretion to Member States in their transposition, either because they were not sufficiently detailed (such as Article 11(4) and Article 19) or because they were left optional (Article 6 and Article 18(4)).

Nevertheless, the level of proportionality of the measures proposed as part **P.O.2** varies depending on the sub-options. **Legislative measure 1, sub-option (i)** would consist in updating the Directive in order to explicitly address a phenomenon which is already covered under the definition of the trafficking offences. Therefore, this sub-option is considered to be more proportionate than **sub-option (ii)**, which would compel Member States to qualify the online recruitment, advertisement or

exploitation of victims of trafficking as an aggravating circumstance. **Legislative measure 2, sub-option (i)**, for example, would only oblige Member States to criminalise two additional forms of exploitation, which are already referred to in the recital of the Directive, instead of four (**sub-option (ii)**). **Legislative measure 3 sub-options (i), (ii) and (iii)** would require Member States to transpose all the sanctions on legal persons, which are currently optional, either for standard trafficking offences or when the offence is committed with an aggravating circumstance. Of all the sub-options proposed for **legislative measure 5, sub-option (ii)** is considered to be the most proportionate. It is the one with the least far-reaching implications for Member States, while going beyond the status quo, since the large majority of Member States already have corresponding regulation in place for at least sexual exploitation.

## **8. 8. PREFERRED OPTION**

### **8.1. 8.1. Policy option 3 – Legislative measures combined with non-legislative measures**

The preferred option is **P.O.3**, which includes targeted amendments to the Directive as well as non-legislative measures in line with the Strategy.

**Legislative measure 1, sub-option 1** will allow to explicitly address one of the main challenges in fighting trafficking in human beings, which is the digitalisation of the crime. It is preferred to **sub-option (ii)** as the online dimension of trafficking already (implicitly) falls within the scope of the definition of trafficking. It is considered to be a facilitator of the constitutive elements of the offence (i.e. the act, the means and the purpose, which is the exploitation of the person) rather than a particularly grave circumstance in which the crime took place. This was confirmed by the consultation with stakeholders on the policy options, who indicated their preference for sub-option (i).

While **legislative measure 2, sub-option (ii)** will increase the range of forms of exploitation that Member States are obliged to criminalise, **sub-option (i)** reflects the most pressing concerns of consulted stakeholders in terms of challenges that need to be addressed in the area of trafficking in human beings. Forced marriages and illegal adoption are already covered in the definition of trafficking under the recitals of the Directive, although Member States had no obligation so far to criminalise them as exploitative purposes. Moreover, this option acknowledges the increasing incidence of trafficking for these purposes in the EU. It will not preclude Member States to criminalise the other forms of exploitation identified in the evaluation and Impact Assessment, as the list in the Directive will remain non-exhaustive. It will also be more in line with the outcome of the consultations with stakeholders, who considered that it is important not to have a too extensive list of forms of exploitation in the Directive, in order to keep some flexibility with respect to what conducts and situations can qualify as exploitation.

With legislative 3, Member States will have an obligation to transpose the (currently optional) sanctions, which are also addressed in the Employers Sanctions Directive and will have some flexibility in transposing the other sanctions for standard trafficking offences (as opposed to sub-option (ii)). This option is preferred to sub-option (iii), as it will increase the range of effective, proportionate and dissuasive sanctions to which legal persons are subject to for committing standard trafficking offences, while ensuring that the other sanctions are available when the crime is committed under aggravating circumstances.

**Legislative measure 4** will contribute to harmonising identification and referral procedures across the Member States and facilitate cross-border cooperation, notably within the framework of a European Referral Mechanism. Moreover, the guidelines on national referral mechanisms will support Member States in implementing this measure in a consistent way at the EU level.

**Legislative measure 5, sub-option (ii)** will allow to harmonise the EU rules on criminalising the knowing use of services exacted from victims of trafficking. It will go one step further than what is currently in the Directive and leave it up to the Member States to adopt stricter approaches, such as the ones presented in **sub-options (iii), (iv) and (v)** for sexual exploitation. This approach allows to avoid any risks of over-criminalisation as offenders require actual knowledge that the person is a victim.

**Legislative measure 6** will further harmonise processes related to the data collection on trafficking in human beings in the EU. It will allow to clarify some aspects of the data collection in the Directive and will increase the level of legal certainty among national authorities regarding the gathering of statistics. As a consequence, it will increase knowledge about trafficking in human beings. This measure was widely supported by stakeholders consulted on the policy option and is already applied in practice in the Member States, at least to a certain extent.

## **8.2. 8.2. REFIT (simplification and improved efficiency)**

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 reduce administrative burden on Member States. The Impact Assessment concludes that the preferred option would have a limited burden, which would be offset by the positive impact of the measures on the prevention and fight against trafficking, and protection of the victims of this crime.

The legislative amendments to the Directive are aimed at improving Member States' capacity to fight the crime efficiently, notably in relation to threats and trends that have emerged and evolved within the past years. The initiative will further harmonise the legal landscape addressing trafficking across the Member States. New common and harmonised rules applicable to the Member States are expected to enhance cross-border cooperation, both in terms of investigations and prosecutions, as well as victims' assistance and support.

The regulatory burden related to the preferred option would be of limited scope, as it mostly consists in improving existing provisions rather than creating completely new obligations. Member States already investigate, prosecute and punish the offence when it is committed online and have put in place specialised cyber-units and/or experts. While the Commission would foster cooperation with the internet industry, the Member States and relevant EU Agencies with respect to the responsibility of online platforms and service providers to detect, monitor and remove trafficking in human beings related content, any related regulatory obligations, such as measures and protection against misuse of online platform services or notification of suspicion of criminal offences by



providers of hosting services, would be covered by other legislative instruments, in particular the Digital Services Act<sup>169</sup>.

Most of the regulatory and administrative burden on Member States would stem from the obligation to criminalise the knowing use of services which are exacted from victims of trafficking and to set-up National Referral Mechanisms and appoint National Focal Points. **Legislative measure 5, sub-option (ii)** would mainly create a regulatory burden on the Member States who have not yet transposed this measure, or measures which go further, in their national law. Eight Member States would already be compliant with it and therefore would not have to undergo any change in their legislation. Eleven Member States would have to expand their rules to all forms of exploitation and nine Member States would have to transpose the new provision.

**Legislative measure 4** is not an entirely new obligation, as under the current text of Article 11(4) Member States already had to establish mechanisms aimed at the early identification, assistance and support of the victims. In fact, all but one Member States already have a formal or informal referral mechanism in place. The legislative change would be accompanied by non-legislative measures, which would make it less burdensome for Member States to adjust their legislation and existing procedures and mechanisms already in place.

Although the current Directive only provides that the tasks of the NREM shall include the gathering of statistics, all Member States already collect data on trafficking in human beings and transmit it to the Commission every year for the purpose of the EU-wide data collection. Therefore, introducing a requirement for Member States to collect data on specific indicators and on a regular basis as part of the Directive (**legislative measure 6**) would not trigger significant additional burden. This legislative change is expected to simplify the work of the National Statistical Authorities and generally improve the quality and availability of the statistics. Moreover, the developing of guidelines, in close cooperation with relevant national authorities, would reduce the regulatory and administrative burden on national authorities.

### **8.3. 8.3. Application of the ‘one in, one out’ approach**

As explained in the above sections, this initiative will not entail neither administrative costs nor savings for the private sector. It will not incur any costs for citizens. However, this initiative will improve the level of security and protection of citizens in the EU, in particular those who are victims of trafficking in human beings or at risk of becoming victims, through better assistance and support measures and prevention. As to adjustment costs, it will mostly concern public authorities.

## **9. 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

The Commission will monitor and evaluate the actual impacts of this initiative through the existing mechanisms under the current Directive. The monitoring of the new legislative provisions will start two years after the entry into force of the Directive at the latest. In addition, the Commission will continue to monitor the transposition and implementation of the provisions of the Directive that will

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<sup>169</sup> See to this end for example Articles 18 and 23 of the Digital Services Act.

not be modified and will use its powers conferred by the Treaties, including infringements as appropriate. The tasks of NREM would remain the same under Article 19 of the Directive, including the national coordination of anti-trafficking actions. They would continue to report to the 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 a monitoring and evaluation of the impacts of this initiative, which should be carried out, in principle not earlier than five years after the deadline for transposition to ensure that there is a sufficiently long period to evaluate the effects of the initiative after it has been fully transposed across all Member States. The results of the monitoring and evaluation of the actual impacts of this initiative will be used by the Commission, Member States, in particular the NREM, civil society organisations, EU Agencies as well as other EU institutions, among other stakeholders.

This initiative aims at improving the collection and reporting of data by Member States, as well as the indicators on which such data is collected. The Commission will work closely with ESTAT, the NREM and National Statistical Authorities, in order to ensure available, reliable and comparable data.

The Knowledge and Expertise Hub would also be useful forum to evaluate the different measures related to these proposed policy option. The Commission will continue to organise the two-yearly meetings of NREM and the EU Civil Society Platform against trafficking in human beings, as well as with the EU Agencies working against trafficking, which will also contribute to the monitoring and evaluation.

As the criminalisation of the knowing use of services exacted from victims of trafficking in human beings is expected to have an impact in the Member States that have not yet adopted this measure, the revised article would include a provision requiring the Commission to assess the impact of the rules criminalising the knowing use of exploited services by submitting a report to the Parliament and the Council five-years after the transposition deadline.

The table below identifies an indicative and non-exhaustive list of operational objectives and corresponding monitoring indicators for the measures identified under the preferred option.

**Table 7 – Operational objectives and corresponding monitoring indicators**

Specific Objectives	Operational Objectives	Indicators	Data Sources
<b>Ensuring adequate prevention, detection and monitoring of THB</b>	<ul style="list-style-type: none"> <li>Improving the data collection on THB at national and EU Level</li> <li>Increasing awareness of, and knowledge of THB</li> <li>Improving the detection and early identification of the victims</li> </ul>	<ul style="list-style-type: none"> <li>Number of Member States collecting data for each THB-related indicators as compared to previous levels</li> <li>Outreach of awareness-raising campaigns on THB</li> <li>Numbers of training on THB organised by the</li> </ul>	<ul style="list-style-type: none"> <li>Contributions from Member States through Eurostat</li> <li>Biannual reporting by Member States and civil society organisations to EU ATC leading to the biannual Commission's</li> </ul>

		EU Agencies (CEPOL, Frontex, EUAA, ELA) and Member States	<p>progress report</p> <ul style="list-style-type: none"> <li>• Commission's annual data collection published on Eurostat's website</li> <li>• Reporting from the EU Agencies through regular meetings and in the context of the progress reports</li> </ul>
<b>Strengthening the criminal justice response to THB, including in the cross-border context</b>	<ul style="list-style-type: none"> <li>• Improving capacity of national authorities to fight THB, especially in the cross-border context</li> <li>• Improve law enforcement and judicial cooperation</li> <li>• Improving the capacity of national authorities to fight the crime online</li> <li>• Improving prosecution and convictions</li> </ul>	<ul style="list-style-type: none"> <li>• Number of investigations, prosecutions and convictions for THB in the EU, including against legal persons</li> <li>• Number of cases referred to Europol and Eurojust</li> <li>• Number of Joint Action Days and Joint Investigation Teams</li> <li>• Number of meetings of the Focus Group of specialised prosecutors against THB and number of instruments produced as a result of these meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Data collection on THB in the EU and progress reports</li> <li>• Reporting from Europol and Eurojust</li> <li>• Feedback received in the context of the meetings of the Focus Group of specialised prosecutors against THB</li> <li>• Discussions and reporting from the meetings and activities of the Focus Group within EMPACT-THB</li> </ul>
<b>Ensuring that THB victims receive adequate assistance, support and protection across the EU, adapted to their specific needs</b>	<ul style="list-style-type: none"> <li>• Increasing the number of victims identified and registered</li> <li>• Improving the early identification and referral of victims to assistance, support and protection services</li> <li>• Improving the identification and referral of victims in the cross-border context</li> </ul>	<ul style="list-style-type: none"> <li>• Number of victims registered in the EU</li> <li>• Number of formal National Referral Mechanisms and National Contact Points set up in the Member States</li> <li>• Use made by Member States of the European Referral Mechanism in order to contact other countries</li> <li>• Number of victims receiving assistance, support and protection</li> </ul>	<ul style="list-style-type: none"> <li>• Data collection on THB in the EU and progress reports</li> <li>• Data collected by the Commission on Member States' allocation and use of EU funding by Member States in the field of THB (e.g. AMIF, ISF and EMPACT).</li> </ul>

		<p>after being identified</p> <ul style="list-style-type: none"> <li>• Use of EU funding by Member States for actions aimed at the assistance, support and protection of victims of THB</li> </ul>	
<p><b>Reducing the demand that fosters THB for all forms of exploitation</b></p>	<ul style="list-style-type: none"> <li>• Reducing the demand by criminalisation of the knowing use of services exacted from victims of THB</li> <li>• Increasing the level of awareness of end users of the services exploited from victims of THB</li> </ul>	<ul style="list-style-type: none"> <li>• Number of Member States who criminalise the knowing use of services exacted from victims for THB</li> <li>• Number of cases for the offence of the knowing use of services exacted from victims of THB</li> <li>• Number of awareness-raising activities aimed at reducing the demand for exploited services</li> <li>• Outreach of these activities</li> </ul>	<ul style="list-style-type: none"> <li>• Data collection on THB in the EU and progress reports</li> <li>• Evaluation report monitoring the extent to which Member States have criminalised the knowing use of services exacted from victims of THB</li> </ul>

## ANNEX 1: PROCEDURAL INFORMATION

### 1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

DG Migration and Home Affairs (DG HOME) is the lead DG. The agenda planning (Decide) reference assigned to the evaluation and impact assessment is PLAN/2021/11112. There is no reference to the evaluation and impact assessment in the Commission Work Programme 2022.

### 2. ORGANISATION AND TIMING

The Terms of Reference for carrying out an external 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 were launched on 9 July 2021 with a deadline on 6 August 2021. An evaluation committee consisting of staff from DG HOME selected an external contractor to conduct the study on 30 September 2021<sup>170</sup>. The kick-off meeting of the contract for the study took place on 27 October 2021. The contract ended on 21 July 2022 (following an extension of approximately one month, as the contract was initially planned to terminate on 16 June 2022).

The combined evaluation roadmap and inception impact assessment for the initiative was published by DG HOME on the Commission's "Have your say" webpage<sup>171</sup> on 5 August 2021 until 16 September 2021. The Commission carried out a public consultation from 14 December 2021 to 22 March 2022, which was also published on "Have your say" webpage.

The Inter-Service Group (ISG) on Trafficking in Human Beings, which already existed, was composed of several Directorate-Generals within the Commission<sup>172</sup>. The meetings of the ISG were chaired by DG HOME. The steering group was regularly consulted over the course of the evaluation and impact assessment, in particular on the draft reports of the contractor responsible for carrying out the external study. The following list provides an overview of the work of the ISG:

- The ISG was consulted in June 2021 in order to provide feedback on the draft Terms of Reference for the external study.

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<sup>170</sup> The call for service was issued via framework contract HOME/2020/ISFP/FW/EVA2/0074. Three contractors submitted an offer to carry out an evaluation and impact assessment study. The evaluation committee considered a number of criteria, namely: compliance with the technical specifications described in the Terms of Reference; demonstrated understanding of the objectives and tasks; the quality of the preliminary assessment of difficulties and expected results; the quality of the proposed methodology; and the quality of the project management and team organisation. The Commission awarded the contract to EY/RAND.

<sup>171</sup> [Fighting human trafficking – review of EU rules \(europa.eu\)](https://europa.eu).

<sup>172</sup> Secretariat-General (SG); Legal Service (LS); Justice and Consumers (JUST); Education, Youth, Sport and Culture (EAC); European Civil Protection and Humanitarian Aid Operations (ECHO); European External Action Service (EEAS); Employment, Social Affairs and Inclusion (EMPL); Internal Market, Industry, Entrepreneurship and SMEs (GROW); Mobility and Transport (MOVE); Neighbourhood and Enlargement Negotiations (NEAR); Regional and Urban Policy (REGIO); Health and Food Safety (SANTE); TRADE; International Partnerships (INPTA); Eurostat (ESTAT).

- On 27 October 2021, the ISG was invited to the kick-off meeting of the external study with the contractor.
- In November 2021, the ISG was consulted on the open public consultation questionnaire.
- On 19 January 2022, the ISG was invited to participate in the meeting to discuss the interim report of the study, drafted by the contractor. The report was subsequently accepted after revisions were made to reflect the comments of the ISG.
- On 4 April 2022, DG HOME invited the ISG to discuss the contractor's first final report of the study.
- The ISG, as well as DG HOME relevant units, were consulted in writing throughout the evaluation and impact assessment process and their comments to the external study were duly taken into account.
- A written informal consultation with the ISG on the Staff Working Documents on the Evaluation and Impact Assessment took place between 22 July 2022 and 2 August 2022 and ISG met on 29 August to discuss the changes.

On 24 July 2022, the final second report of the study was re-submitted by the contractor to DG HOME for revisions and subsequently accepted.

### **3. CONSULTATION OF THE RSB**

The Regulatory Scrutiny Board examined the Staff Working Document on the Evaluation and Staff Working Document on the Impact Assessment through written procedure and provided a positive opinion with comments on 12 October 2022.

DG HOME addressed the RSB comments by including more information on the scale of the problem and the extent to which it varies between Member States, notably by including more data on the number of victims in the EU and across the Member States, the main forms of exploitation, as well as the sex, age and citizenship of the victims. Data was also added in order to better illustrate the cross-border and transnational dimension of trafficking in human beings. The challenges encountered by Member States in reporting and collecting data on trafficking in human beings were further elaborated.

Examples from the "Transposition" assessment were added to the main report in order to show where the problems identified in the evaluation stem from gaps in the transposition of the Directive or from the flexibility given to the Member States by the Directive in transposing some of its provisions. Moreover, the description of the problem linked to the digital dimension of trafficking in human beings was reinforced with more concrete examples of data on the use of technology to commit trafficking in human beings offences, as well as challenges faced by law enforcement authorities in order to address it.

The dynamic baseline was strengthened by adding some data on the scale of trafficking in human beings and how it has evolved over the reporting period, as well as ongoing and recently adopted initiatives related to the area of trafficking in human beings, including in the context of the implementation of the EU Strategy on Combatting Trafficking in Human Beings (2021-2025), and transposition of the Directive.

DG HOME added more information with respect to the views of different stakeholders regarding the policy options and introduced a visual intervention logic, which establishes the links between the problems, the objectives and the policy options. The incremental character of the policy options was improved. The report was revised in order to make it clear that Policy Option 1 goes beyond the baseline scenario as it focuses on actions that are not yet in force nor were clearly defined in the Strategy, and takes into account the findings of the evaluation, which highlighted that some of the main challenges stem from gaps in the implementation of the Directive. DG HOME introduced tables in order to present the proposed measures for each policy option and how they relate to the objectives of the initiative. The presentation of the non-legislative measures in Policy Option 1 was revised (e.g. the guidelines on National Referral Mechanisms and on data collection were moved under the Knowledge and Expertise Hub) and the description of some measures further elaborated. The report was further developed in order to clearly present which sub-options from Policy Option 2 are part of Policy Option 3 and explain why it is the preferred option.

The RSB considered that the cost benefit analysis should be further improved, especially as it did not provide overall estimates of costs and benefits for each options. The parts on the economic impact and benefits of the initiative were considerably revised. The costs estimates included in the section on the efficiency and the annex of the costs and benefits were moved to the section on the economic impact of the initiative. The overall estimated cost of each policy option was added in a table and in the text of the report. DG HOME also made additional efforts to quantify the estimated benefits brought by this initiative, based on the findings of the Commission's Study on the economic, social and human costs of trafficking in human beings (2020). Evidence, sources and quality

The main sources for the evaluation and Impact Assessment are the Commission's biannual reports on the fight against trafficking in human beings and Studies on data collection on THB in the EU, as well as other reports and studies published by the Commission, the European Parliament and EU Agencies. The Evaluation and Impact Assessment are also based on the stakeholder consultations (Annex 2). They rely on the feedback received from the consultation on the Evaluation Roadmap/Inception Impact Assessment, the public consultation, the organisation of two workshops, one with the EU Network of National Rapporteurs and Equivalent Mechanisms (NREM) on 6 December 2021 and the other with the EU Civil Society Platform against Trafficking in Human beings 30 November 2021, as well as the meetings and joint meeting of the NREM and EU Civil Society Platform on 16-18 May 2022.

The Evaluation and Impact Assessment also take into account the findings of the "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", which was commissioned by DG HOME and developed by the contractor based on desk research and the following stakeholder consultation methods: scoping interviews, desk research, online survey, interviews and case studies.

## ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

This Annex presents the synopsis report of the consultation activities undertaken for the evaluation and impact assessment of the Anti-Trafficking Directive.

### 1. CONSULTATION ON THE ROADMAP/INCEPTION IMPACT ASSESSMENT

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' webpage<sup>173</sup> on 5 August 2021 until 16 September 2021. The Commission received feedbacks from 36 stakeholders.

### 2. MEETINGS OF THE EU NETWORK OF NATIONAL RAPORTEURS AND EQUIVALENT MECHANISMS AND THE EU CIVIL SOCIETY PLATFORM

On 30 November 2021, the Commission organised a virtual meeting of the EU Civil Society Platform against trafficking in human beings in order to inform the evaluation and impact assessment of the Anti-trafficking Directive. On 6 December 2021, a virtual meeting was organised with the EU Network of National Rapporteurs and Equivalent Mechanisms (NREM). The meetings focused on the challenges that affect the implementation of the Anti-trafficking Directive and its possible amendments, in order to inform its evaluation and impact assessment.

The topics of the criminalisation of the use of exploited services and levels of penalties in the Directive were discussed during the meeting of the EU Network of NREM on 16 May. On 18 May, the EU Civil Society Platform discussed the topics of the criminalisation of the use of exploited services, as well as national and transnational referral mechanisms. The NREM and Civil Society Platform gathered on 17 May in a joint meeting, where the digital dimension of trafficking in human beings as well as trafficking for the purpose of labour exploitation were addressed. All these discussions informed the evaluation and impact assessment.

### 3. CONSULTATION IN THE CONTEXT OF THE EVALUATION

#### 3.1. Consultation strategy

##### 3.1.1. Public consultation

The Commission carried out an **open public consultation** targeting the general public with the aim of collecting information, evidence, and views on the issues at stake and to feed into the evaluation questions. The questionnaire was available in all official languages of the EU institutions<sup>174</sup> and remained open on the Commission's public consultation website from 14 December 2021 to 22 March 2022. In total, 124 responses were received. In addition, 75 contributors submitted a standalone written response.

Of the 124 contributions received, 58 (47%) were submitted by non-governmental organisations (NGOs). Thirty-two (26%) were submitted by EU citizens. Public authorities were the third largest group, accounting for 19 (15%) of responses. This was followed by two academic/research

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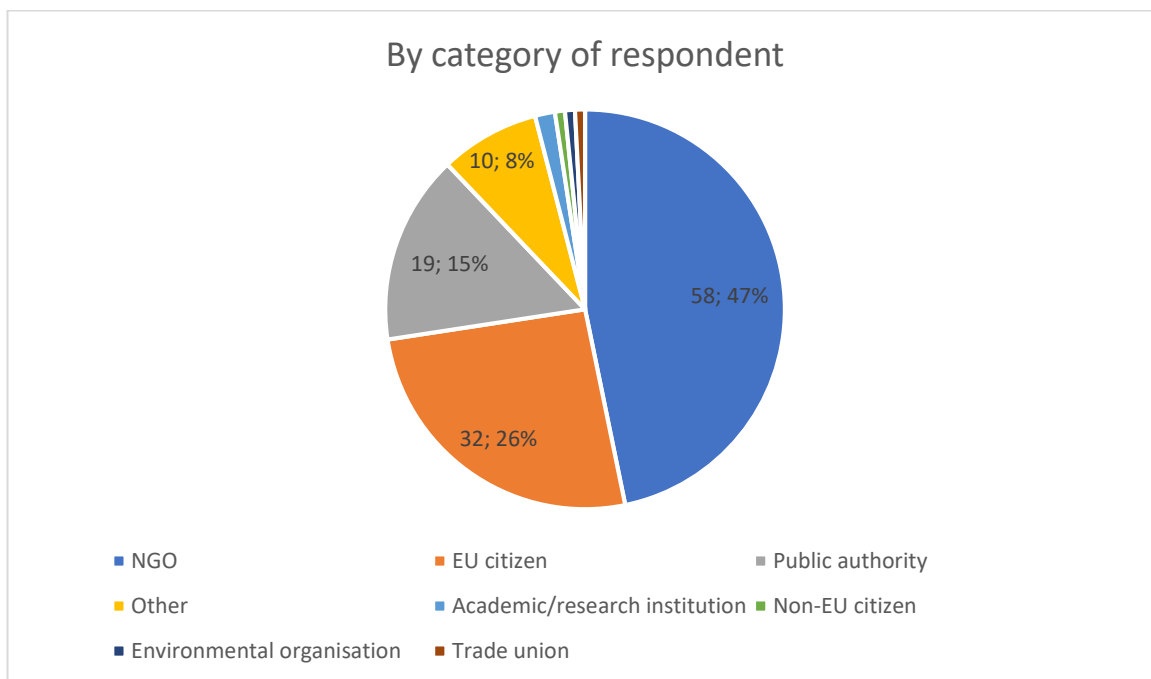
<sup>173</sup> [Fighting human trafficking – review of EU rules \(europa.eu\)](#).

<sup>174</sup> Except Gaelic.



institutions (n=2, 2%), one non-EU citizen, one environmental organisation and one trade union (Figure 1).

**Figure 1: Public consultation responses by type of respondent**



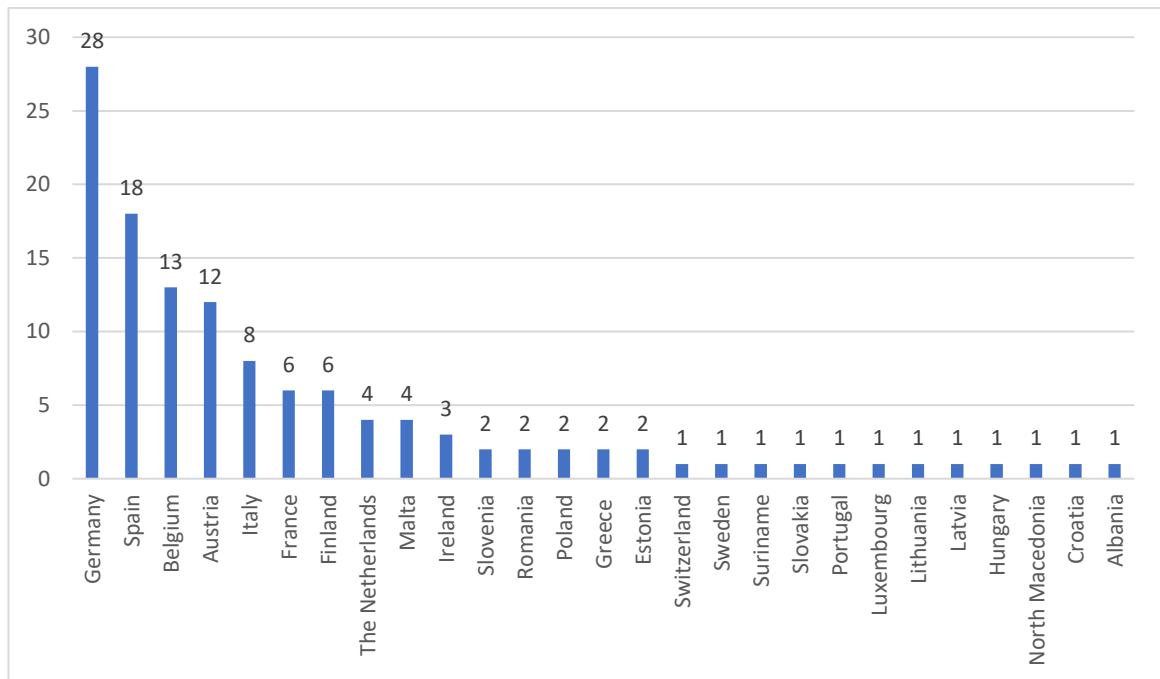
*Source: European Commission, About this Consultation<sup>175</sup>*

Almost a quarter of responses came from Germany (23%, n=28). The second largest number of contributions came from Spain (15%, n=18), followed by Belgium (10%, n=13) and Austria (10%, n=12). This was followed by Italy (6%, n=8), France (5%, n=6), Finland (5%, n=6), the Netherlands (3%, n=4), and Malta (3%, n=4). 18 countries had three or fewer contributions (Figure 2).<sup>176</sup>

<sup>175</sup> European Commission, Have your Say – Fighting Human Trafficking: Review of EU rules. Available [here](#).

<sup>176</sup> European Commission, Have your Say – Fighting Human Trafficking: Review of EU rules. Available [here](#).

**Figure 2: Responses to public consultation by country**



Source: *European Commission, Have your Say*<sup>177</sup>

### 3.1.2. Online survey

Within the framework of the 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 external contractor launched an online survey, which aimed at collecting both comprehensive and specific information on stakeholders' views regarding the impact of the Anti-trafficking Directive and some of the remaining challenges in preventing and combatting trafficking in human beings. It allowed to collect information from a large number of stakeholders, and to gather specific contributions that would not be possible to obtain from interviews alone. Specifically, the online survey was targeted at the following categories of stakeholders:

- National competent authorities (16 responded);
- National Rapporteurs and Equivalent Mechanisms (14 responded);
- National law enforcement authorities concerned with THB-related crimes (9 responded);
- National judicial authorities concerned with THB-related crimes (12 responded);
- National authorities responsible for social services (1 responded);
- Relevant civil society organisations (24 responded);
- Other national authorities (4 responded).

In total, 90 replies to the online survey were received. The survey was launched on 29 November 2021 using the EY on-line survey tool Qualtrics, and remained open until 21 January 2022.

### 2.1.3. Stakeholder interviews

<sup>177</sup> European Commission, *Have your Say – Fighting Human Trafficking: Review of EU rules*. Available [here](#).

The contractor carried out **interviews** with 29 stakeholders from 41 organisations across six main stakeholder groups, as summarised in Table 1. Topic guides and the content of interviews were tailored to the expertise of the interviewee. Stakeholders were identified through suggestions from the Commission, a stakeholder mapping process, recommendations from the interviewees, and recommendations from members of the study’s expert panel. Key information was coded into an evidence grid, in relation to each evaluation question.

**Table 1: Number of organisations consulted by stakeholder group**

Stakeholder group	Number of organisations consulted
EU Agency <sup>178</sup>	9
EMPACT	1
International organisation	6
European civil society organisation <sup>179</sup>	5
Business/employer association or representative	2
Experts/academics	6
<b>Total:</b>	<b>29</b>

## 3.2. Results of the consultation activities

### 3.2.1. Public consultation

A summary of the key findings from the public consultation, grouped by evaluation criterion, is provided below. It should be noted that this summary is not exhaustive and rather presents some of the key results of the public consultation.

#### 3.2.1.1. Effectiveness

Most respondents to the public consultation considered that the Directive contributed to a small or moderate extent to reducing demand.<sup>180</sup>

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<sup>178</sup> One of the stakeholders preferred to send a written response to the interview questionnaire, rather than participate in an interview.

<sup>179</sup> One of the stakeholders preferred to send a written response to the interview questionnaire, rather than participate in an interview.

<sup>180</sup> Question #3 of the public consultation asked respondents to what extent, in their view, the Directive contributed to reducing demand in trafficking in human beings related to sexual exploitation, labour exploitation, exploitation for criminal activities, removal of organs and forced begging. More than 40% (44%, n=54) of respondents reported that the Directive made either a ‘moderate’ (21%, n=26) or ‘small’ (23%, n=28) contribution to reducing the demand for sexual exploitation, almost 20% (n=24) of respondent said the Directive did not at all contribute. Almost one third of respondents (32%, n=40) stated that the Directive made a small contribution to reducing the demand for labour exploitation. A large portion of respondents did not know whether the Directive contributed to reducing the demand for THB in relation to the exploitation for criminal activities (44%, n=55), the removal of organs (56%, n=69) or forced begging (47%, n=58).

61% of the respondents considered that the Directive should criminalise the knowing use of services exploited from victims of trafficking. However, respondents had more diverging views with respect to the extent to which existing national laws criminalising the knowing use of exploited services had contributed to reducing the demand for such services<sup>181</sup>.

Almost 60% of the respondents to the public consultation considered that the Directive had only contributed to holding legal persons liable for THB offences to a ‘moderate’ or a ‘small extent’.<sup>182</sup>

The majority of the respondents (67%) replied that the Directive had contributed to allowing victims of trafficking to effectively report a case to a “small extent”.<sup>183</sup>

### *3.2.1.2. Efficiency*

Almost half of the replies highlighted the cost-effectiveness of the Anti-trafficking Directive (43%, n=53). The majority of the respondents considered that the implementation of the Directive had not caused unnecessary administrative burden (56%, n=69).

### *3.2.1.3. Relevance*

70% (n=83) of the respondents to the public consultation agreed that the gender dimension, in particular the protection of women and girls, should be more prominently articulated in the Directive. Twenty-three per cent (n=29) of respondents disagreed.<sup>184</sup>

Almost two thirds of respondents (74%, n=92) agreed that the Directive should introduce specific provisions to address the online dimension of trafficking in human beings, including online recruitment, advertisement and exploitation of the victims. Almost 20% (19%, n=24) disagreed.<sup>185</sup>

### *3.2.1.4. Coherence*

Most of the respondents (69%, n=86) considered that the Anti-trafficking Directive was coherent with the Victims’ Rights Directive (2012/29/EU). Nearly half of the respondents said that the Anti-trafficking Directive was coherent also with the Employer Sanctions Directive (2009/52/EC) (43%, n=53) and the Child Sexual Abuse Directive (2011/93/EU) (39%, n=48). Almost half of the respondents (42%, n=52) were of the view that the Anti-trafficking Directive was **not** coherent with the Residence Permit Directive (2004/81/EC).

Respondents to the public consultation mostly found that the Anti-trafficking Directive was coherent with the UNTOC and its supplementing Protocol (69%, n=85), the ILO Forced Labour Convention, 1930 (No.29) (58%, n=72), the CEDAW (51%, n=63) and the UNCRC (43%, n=53).

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<sup>181</sup> Only one respondent (1%), who was from an NGO, responded to a ‘very high extent’. Five (n=6) per cent of respondents said to a ‘high extent’, 15% (n=19) to a ‘moderate extent’ and 21% (n=26) to ‘a small extent’. Forty per cent of respondents (n= 49) reported that existing national laws criminalising the knowing use of exploited services of victims did “not at all” contribute to reducing the demand for such services. Nineteen per cent (n=23) responded ‘I don’t know’

<sup>182</sup> One respondent (1%) answered to a ‘very high extent’, 4% (n=5) of respondents answered to a ‘high extent’, 15% (n=19) answered to a ‘moderate extent’, 44% (n=54) answered to a ‘small extent’, 16% (n=20) answered ‘not at all’ and 20% (n=25) answered ‘I don’t know’.

<sup>183</sup> ‘High extent’: 10% (n=13), ‘Moderate extent’: 17% (n=21), ‘Small extent’: 54% (n=67), ‘Not at all’: 8% (n=10), ‘I do not know’: 10% (n=13).

<sup>184</sup> About 10% (n=12) states ‘I don’t know’.

<sup>185</sup> Six per cent (n=8) replied ‘I don’t know’.

### 3.2.1.5. Added value

The vast majority of the replies underlined the added value brought by the Anti-trafficking Directive. Ninety-eight percent (n=122) considered that EU-wide cooperation was necessary to effectively combat trafficking in human beings. Eighty-two percent (n=102) considered that the Anti-trafficking Directive continued to bring an added value in the Member States in combatting THB. 85% (n=105) replied that, without the Anti-trafficking Directive, it would be more difficult for Member States to tackle trafficking in human beings individually. Finally, 95% (n=118) agreed that the aim of preventing and combatting THB continued to require action at the EU level.

### 3.2.2. Online survey

#### 3.2.2.1. Effectiveness

Respondents to the online survey considered that prevention measures targeting victims were effective either to a 'moderate' extent (30%, n=27) or to a 'large' extent (32% of respondents, n=29). Prevention measures targeting child victims were also considered relatively effective, but less so than for adults. Thirty per cent (n=27) of respondents claimed they were effective to a 'moderate' extent, 23% (n=21) stated they were to a 'large' extent, and 10% (n=9) to a 'very large' extent. However, 22% (n=20) of respondents said that preventive measures targeting child victims were effective to a small extent.

Some survey respondents considered that preventive measures targeting potential offenders were relatively less effective than measures targeting victims. 24% (n=22) of the respondents claimed that they were effective to a 'small' extent and 13% (n=12) claimed they were not effective at all.

22% (n=20) of the respondents answered that measures targeted at marginalised Roma people and LGBTIQ people were effective to a 'large extent' and 28% (n=25) to a 'moderate extent'.<sup>186</sup>

Most online survey respondents reported that compensation schemes in their Member State had been effective to a 'small' or 'moderate' extent for victims of trafficking.<sup>187</sup>

Stakeholders had different views when it comes the effectiveness of witness protection programmes in supporting victims of THB.<sup>188</sup> 34% of the respondents said such programmes were effective either to 'very large' or a 'large extent', while 20% said to a 'moderate extent' or to a 'small extent'.

More than half of respondents considered that the Directive contributed towards an increased number of convictions against THB for labour exploitation to a 'moderate' (30%, n=27) or to a

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<sup>186</sup> Six per cent of respondents (n=5) answered that measures to assist, support and protect vulnerable groups, such as marginalised Roma people and LGBTIQ people had been effective in their Member State to a 'very large extent'. Nineteen per cent of respondents (n=17) answered to a 'small extent'. Seven per cent of respondents (n=6) answered 'not at all'.

<sup>187</sup> The majority of respondents suggested compensation schemes had been effective, although the largest percentage (29%, n=26) of respondents answered that this was to a 'small extent'. Ten per cent (n=9) of respondents answered, 'to a very large extent', the same percentage who answered, 'not at all' (n=9).

<sup>188</sup> Eighteen per cent (n=17) respondents said that witness protection programmes in their country had been effective in terms of protecting, assisting and supporting victims of THB to a 'very large extent', 16% (n=14) said to a 'large extent', 19% (n=17) said 'to a moderate extent', 13% (n=12) said to a 'small extent', 8% (n=7) said 'not at all' and 25% (n=23) of respondents answered 'I don't know'.

‘small extent’ (30%, n=27).<sup>189</sup> More than one third (37%, n=33) of respondents said that the Directive contributed towards increased numbers of convictions against THB for sexual exploitation to a ‘moderate extent’.<sup>190</sup> 19% (n=17) said the Directive contributed to a ‘large extent’ and 17% (n=15) said to a ‘small extent’.

Nearly a quarter of respondents (23%, n=21) said that the Directive contributed towards an increased number of confiscations of THB-related proceeds to a ‘moderate extent’.<sup>191</sup>

### 3.2.2.2. Efficiency

The majority of survey respondents agreed on the cost-effectiveness of the Anti-trafficking Directive. 27% (n=24) of the respondents considered that the costs of implementing it did not outweigh its benefits at all, 17% (n=15) said that the costs outweigh benefits only from a ‘small’ to a ‘moderate’ extent and only 12% (n=11) replied that the costs outweigh benefits from a ‘large’ to a ‘very large’ extent.<sup>192</sup> The highest increases in resources, dedicated to the prevention and fight against THB at the national level, are associated with training and awareness-raising campaigns.

However, the survey found that available funding remained insufficient in relation to prevention measures, the fight against the crime, as well as the assistance and support to victims of trafficking.<sup>193</sup> The need to increase the allocation of national funding to externalised services was also highlighted.

Although survey respondents considered that the implementation of the Anti-trafficking Directive did not entail a significant burden, some of them suggested some ways to further simplify it, notably by increasing asset seizures and confiscation of assets from the proceeds of trafficking offences, which could be used to feed compensation schemes; improving inter-agency cooperation as well as focusing resources on prevention in order to address the root causes of trafficking.

### 3.2.2.3. Relevance

Overall, survey respondents considered that the Directive was still fit for purpose and addressed the main concerns related to trafficking in human beings, notably in relation to the prevention and

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<sup>189</sup> Four out of 90 respondents stated that the Directive contributed towards an increased number of convictions against THB for labour exploitation to a ‘very large extent’, 12 respondents stated to a ‘large extent’, seven respondents said the Directive ‘did not all’ contribute. Thirteen respondents said ‘I don’t know’.

<sup>190</sup> Five out of 90 respondents (6%) stated that the Directive contributed towards an increased number of convictions against THB for labour exploitation to a ‘very large extent’, six (7%) respondents said the Directive did not contribute ‘at all’. Fourteen (16%) said ‘I don’t know’.

<sup>191</sup> Only two respondents though the Directive contributed towards an increased number of confiscations of THB related proceeds to a ‘very large extent’. Fourteen per cent (n=13) responded to a ‘large extent’. Thirteen per cent (n=12) said the Directive did not contribute ‘at all’.

<sup>192</sup> Twenty-seven per cent of respondents (n=24) said ‘not at all’, 6% (n=5) said ‘to a small extent’, 11% (n=10) said ‘to a moderate extent’, 9% (n=8) said ‘to a large extent’, 3% (n=3) said ‘to a very large extent’, 44% (n=40) said ‘I don’t know’.

<sup>193</sup> Nine percent (n=8) of respondents said that funding was ‘not at all’ sufficient with respect to the criminalisation of the crime; 18% (n=16) said it was sufficient ‘to a small extent’, while 29% (n=26) replied ‘to a moderate extent’, 13% (n=12) ‘to a large extent’, 7% (n=6) ‘to a very large extent’, 24% (n=22) ‘I don’t know’. With respect to the assistance and support to victims of trafficking, the replies were: ‘not at all’ 3% (n=3), ‘to a small extent’ 14% (n=13), ‘to a moderate extent’ 36% (n=32), ‘to a large extent’ 22% (n=20), ‘to a very large extent’ 7% (n=6), ‘don’t know’ 18% (n=16). With respect to prevention, 4% (n=4) of respondents said that funding was ‘not at all’ sufficient, while 22% (n=20) said it was ‘to a small extent’, 38% (n=34) ‘to a moderate extent’, 10% (n=9) ‘to a large extent’, 4% (n=4) ‘to a very large extent’ and 21% (n=19) ‘I don’t know’.

criminalisation of the offence, as well as the protection of victims. in the EU.<sup>194</sup> 39% of the respondents stated that the Directive is fit for purpose to a ‘large extent’. 33% per cent stated that it is fit for purpose to a ‘moderate extent’.

The vast majority of respondents said that the Directive did not sufficiently address the online dimension of trafficking. The digitalisation of the crime was the most commonly identified challenge for the next 5 to 10 years among respondents.<sup>195</sup>

65% of the respondents said that EU intervention would be necessary ‘to a very large extent’ (38%, n=35) or to a ‘large extent’ (27%, n=25) in order to enhance cooperation with online private companies to fight against trafficking.<sup>196</sup> No respondent said that the EU intervention would not be necessary for this purpose.

Trafficking in human beings in high-risk sectors was perceived as a significant issue that needs to be addressed. Most respondents considered that trafficking of people in high-risk sectors is a problem in the EU to a ‘large’ or ‘very large’ extent. None of them said that it was ‘not at all’ relevant.

#### 3.2.2.4. Coherence

Respondents had diverging views regarding the coherence of the Anti-trafficking Directive with Directive 2004/81/EC (Residence Permits Directive). While 37% of them agreed that the two instruments were coherent from a ‘large’ to a ‘very large’ extent, 38% said that the two directives were ‘not at all’ coherent or coherent to a ‘moderate extent’.<sup>197</sup>

49%e percent (n=44) of the survey respondents considered that the Anti-trafficking Directive and Directive 2011/93/EU (Child Sexual Abuse Directive) were coherent to a ‘large’ or a ‘very large’ extent.<sup>198</sup>

The Anti-trafficking Directive and the EU Asylum acquis were deemed to be coherent to a limited extent.<sup>199</sup>

#### 3.2.2.5. Added value

The survey underlined the added-value of the Anti-trafficking Directive, mainly in creating a common intra-EU playground, which encouraged Member States to take action against THB; discouraged traffickers to choose some Member States to others as countries of destination for the

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<sup>194</sup> Nineteen per cent of respondents said the Directive is fit for purpose to a ‘very large extent’, 39% said to a ‘large extent’, 35% said to a ‘moderate extent’ and 5% said to a ‘small extent’. No respondent answered that the Directive is ‘not at all’ fit for purpose. Four per cent answered ‘I don’t know’.

<sup>195</sup> 25 respondents mentioned this as one of the main challenges in relation to the fight against HB in the next 5-10 years.

<sup>196</sup> Fifteen per cent (n=14) of respondents answered to a ‘moderate extent’, 7% (n=6) answered to a ‘small extent’, and 9% (n=10) answered ‘I don’t know’.

<sup>197</sup> ‘Not at all’ 10% (n=9), ‘to a small extent’ 10% (n=9), ‘to a moderate extent’ 18% (n=16), ‘to a large extent’ 27% (n=24), ‘to a very large extent’ 10% (n=9), ‘I don’t know’ 26% (n=23).

<sup>198</sup> ‘Not at all’ 1% (n=1), ‘to a small extent’ 4% (n=4), ‘to a moderate extent’ 19% (n=17), ‘to a large extent’ 36% (n=32), ‘to a very large extent’ 13% (n=12), ‘I don’t know’ 27% (n=24).

<sup>199</sup> ‘Not at all’ 7% (n=6), ‘to a small extent’ 17% (n=15), ‘to a moderate extent’ 18% (n=16), ‘to a large extent’ 14% (n=13), ‘to a very large extent’ 3% (n=3), ‘I don’t know’ 41% (n=37).

victims; and enhanced cross-border cooperation and the exchange of good practices between Member States.

### 3.2.3. Stakeholders interviews

#### 3.2.3.1. Effectiveness

One interviewee from an international body<sup>200</sup> and one academic/expert were in favour of criminalising the knowing use of services exacted from victims of trafficking.<sup>201</sup>

Three interviewees stressed that the Directive had contributed towards enhancing victims' access to support and protection, especially for female victims.<sup>202</sup> Several interviewees underlined the need for increased attention and resources addressing the vulnerabilities of LGBTIQ people, and that more could be done to ensure that victims whose experiences do not correspond to common perceptions of victims (e.g. female victims and victims of trafficking for sexual exploitation) receive adequate support.<sup>203</sup>

Several interviewees considered that, although victims are in principle not obliged to cooperate with law enforcement authorities, cooperation is sometimes necessary in practice for victims to be recognised as victims and receive assistance, support and protection.<sup>204</sup>

Interviewees highlighted that the risks of punishment of victims who are exploited for the purpose of criminal activities is an issue in several Member States.<sup>205</sup> Two interviewees mentioned that irregular migrants or persons who are under asylum procedures often fear to be forcibly returned.<sup>206</sup>

Some interviewees mentioned that the concept of "forced labour" could be further clarified<sup>207</sup>, as its interpretation is often left to national law or courts, which can lead to different interpretations across the Member States<sup>208</sup>.

#### 3.2.3.2. Efficiency

Interviewees pointed to the fact that the lack of funding can be a constraint to the implementation of the Anti-trafficking Directive. They highlighted that limited funding – both at the EU and national levels - hinders Member States' capacity to deliver effective prevention measures, including awareness raising initiatives and training targeted at professionals likely to come into contact with THB victims.

#### 3.2.3.3. Relevance

According to one interviewee from an international body, the gender-specific approach to the fight against trafficking is not always put into practice. Moreover, it often only concerns the assistance,

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<sup>200</sup> Interviewee #14.

<sup>201</sup> Interviewee #27.

<sup>202</sup> Interviewees #17, #18, and #24.

<sup>203</sup> Interviewees #3, #6, #8, #17, and #12.

<sup>204</sup> Interviewees #8, #20, #27; submission to the OPC by LEFÖ.

<sup>205</sup> Interviewees #8), #14, #21, #25, #28, #29.

<sup>206</sup> Interviewees #8 and #11.

<sup>207</sup> Interviewees #20 and #28.

<sup>208</sup> However, it should be noted that there is a vast, existing guidance provided by the ILO's Committee of Experts on the Application of Conventions and Recommendations.



support and protection of the victims, while failing to be taken into account in the context of prosecutions and investigations.<sup>209</sup>

#### 3.2.3.4. Coherence

Some interviewees underlined that it is not always clear, which of the assistance and support measures included in the Anti-trafficking Directive and those provided for by EU Asylum *acquis* should prevail when it comes to victims of trafficking who are international protection applicants or beneficiaries.

#### 3.2.3.5. Added value

Interviewees highlighted the added value of the Anti-trafficking Directive in ensuring coordination at the EU level, as well as regarding its contribution to the creation of transnational referral mechanisms.

### 3. Consultation in the context of the impact assessment

The external contractor carried out individual interviews and case study group interviews in order to assess the potential impacts of the proposed policy options. The organisations and type of stakeholders consulted as part of this process is included in Table 2.

**Table 2: Interviewees consulted on potential impacts of policy options**

Individuals/Organisations consulted	Types of stakeholders
Council of Europe (CoE)	International body
European Labour Authority (ELA)	EU Agency
European Union Agency for Asylum (EUAA)	EU Agency
European Union Agency for Law Enforcement Training (CEPOL)	EU Agency
Frontex	EU Agency
La Strada International	EU civil society organisation
Red Cross EU	EU civil society organisation
Swedish expert on criminalisation of use of exploited services	Expert/academic
Victims Support Europe	EU civil society organisations

In addition to individual interviews, the external contractor carried out group interviews with national stakeholders in five selected Member States – France, Italy, Hungary, the Netherlands, and Romania. The criteria for selection were described in detail in the study’s inception report delivered to the European Commission and included:

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<sup>209</sup> Interviewee #3.

- Number of registered victims of THB in the Member State;
- Geographical position (Central, Southern, Northern and Eastern Europe);
- Common types of exploitation found in the Member State;
- Whether the Member State is a typical country of origin or destination for victims of THB.

National stakeholders invited to participate in the case study group interviews included national competent authorities working on THB, national law enforcement authorities, national judicial authorities and social services working with victims of THB.

Prior to the interviews, stakeholders had been asked to fill in a written questionnaire, in which they were asked to provide:

- Quantitative scores on the social, security, economic and fundamental rights impacts of each policy measure;
- Quantitative scores on the necessity, effectiveness, coherence, subsidiarity, proportionality and EU added value of each policy measure;
- Quantitative estimation of the expected cost of implementing each measure.

## **ANNEX 3: WHO IS AFFECTED AND HOW?**

### **1. PRACTICAL IMPLICATIONS OF THE INITIATIVE**

The practical implications of the initiative for the Member States and the European Commission are summarised below:

National authorities:

- Revise their legislation in order to refer to the digital dimension of trafficking in human beings in the definition of the offence;
- Criminalise forced marriages and illegal adoptions as exploitative purposes of the trafficking offence;
- Ensure that legal persons upon conviction will be subjected under national law to the exclusion from entitlement to some or all public benefits, aid or subsidies and temporary or permanent closure of the establishments that have been used to commit the trafficking offence, and to temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision; and judicial winding-up, when the offence has been committed with an aggravating circumstance.
- Criminalise the use of services which are the objects of exploitation, with the knowledge that the person is a victim of trafficking in human beings.
- Establish or adjust existing formal National Referral Mechanisms and create National Contact Points, on the basis of relevant guidelines.
- Formalise the data collection on trafficking in human beings at the national level to collect data every year on the indicators specified in the Directive, as a minimum.
- Participate in the activities of the Knowledge and Expertise Hub on Combatting Trafficking in Human Beings and the Focus Group of specialised prosecutors against trafficking in human beings.

Practical implications for the European Commission:

- Support Member States in, and monitor the transposition and implementation of the revised provisions of the Anti-trafficking Directive, in addition to continuing the monitoring of the implementation of the provisions, which remain unchanged.
- Establishing a Knowledge and Expertise Hub on Combatting Trafficking in Human Beings, which will be managed by an external contractor with an expertise in the field of anti-trafficking in human beings.
- Carrying out several activities as part of the Knowledge Hub, including setting-up a European Referral Mechanisms and developing guidelines on the establishment of National Referral Mechanisms; and organising workshops to improve the data collection on THB in the EU and developing guidelines.

- Organise, together with Eurojust, the meetings of the Focus Group of specialised prosecutors against trafficking in human beings.
- Organise meetings with the internet companies, in cooperation with the Member States and EU Agencies, within the EU Internet Forum.
- Organising an awareness-raising campaign targeting the demand for exploited services of victims, in particular in high-risk sectors and high-risk environments, in cooperation with Member States, civil society organisations and the private sector (e.g. employers and internet companies).

## 2. SUMMARY OF COSTS AND BENEFITS

**Table 1: Overview of benefits for the preferred option**

<b>I. Overview of Benefits (total for all provisions) – Preferred Option</b>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Strengthened criminalisation of trafficking in human beings and higher level of harmonisation of EU rules across Member States	No data available. It is not possible to provide quantified estimates for the direct benefits brought by criminalisation.	<p>The inclusion of the use of the internet for the commission of trafficking offences and the addition of two additional forms of exploitation within the Directive will bring benefits to society as a whole by strengthening the identification and protection of victims of trafficking, as well as the detection, prosecution and conviction of traffickers and confiscation of the criminal instrumentalities and proceeds.</p> <p>Reinforcing the sanctions regime on legal persons will contribute to stepping up the criminal justice response to trafficking offences committed for the benefit of legal persons.</p> <p>Measures aimed at strengthening the criminalisation of trafficking in human beings and increasing the level of harmonisation of EU rules across Member States will provide a stronger legal basis of the law enforcement and judicial response and as a result will reduce the incidence of the crime and number of victims.</p>
Improving the functioning and coordination of mechanisms aimed at the early identification and referral to assistance and support of victims of trafficking, both at the national and EU level	N/A	Requiring Member States to establish formal National Referral Mechanisms and create National Contact Points will have a direct impact on the situation of victims. It will ensure better coordination among relevant stakeholders and services, which will lead to a more efficient and cost-effective provision of referral and assistance services, as well as will facilitate the setting-up of a European Referral Mechanism. It is not possible to estimate in concrete terms what will be the economic benefit of this measure. However, it can be expected that the harmonisation of

		procedures at the national and cross-border level will reduce the costs related to assistance and support of victims.
Criminalisation of the knowing use of services exacted from victims of trafficking in human beings	N/A	The criminalisation of the knowing use of exploited services will contribute to discouraging the demand that fosters trafficking by holding buyers and users equally accountable all over the EU for their role in the trafficking chain. The effective implementation of this measure is expected to reduce the number of trafficking offences and consequently the costs related to investigations, prosecutions and convictions. Effective demand reduction would also cause a decrease in the number of victims and hence of the costs related to support and assistance.
Introducing an obligation in the Directive for Member States to collect and report data on trafficking in human beings to the Commission every year	N/A	This measure is aimed at improving the monitoring of THB-related trends and, as a result, increasing knowledge about trafficking in human beings in order to make better informed policies. The yearly-data collection will contribute to more accurate and up-to-date reporting, as the reporting period will be closer to the date of the publication of the data.
<b>Indirect benefits</b>		
Strengthen the fight against trafficking in human beings in the EU and improving the protection of its victims	<p>Total costs of THB for one year in the EU amount to over <b>EUR 2.7 billion</b> for the coordination of anti-trafficking activities, prevention, specialised services, as well as law enforcement, health services and social protection and over <b>EUR 300 000 per victim</b><sup>210</sup>.</p> <p>Overall, by reducing the number of victims of trafficking and increasing the number of persons who can participate in the legal economy, as well as by improving the quality of life of the victims, the benefits brought by this initiative would amount to an estimate of <b>EUR 1 122 643 213</b>.</p> <p>The cost of the lost economic output is estimated at <b>EUR 59 537 per victim</b> and <b>EUR 479 973 675 in total</b> in the EU per year<sup>211</sup>.</p> <p>The cost of the loss of quality of life is estimated at <b>EUR 80 063 per victim</b> and <b>EUR 642 669 538 in total</b> per year in the EU.</p>	<p>The benefits of this initiative would mainly consist in reducing the societal cost by ensuring that victims of new forms of exploitation are identified, assistance and supported; enhancing demand reduction; and ensuring more focus on the online dimension and improving the referral of victims to appropriate services. Moreover, the initiative will contribute to ensuring a fairer economy where legal persons convicted for trafficking offences are deprived from the proceeds of their illegal activities and cannot participate in the EU market, for instance by being prevented from receiving public benefits.</p> <p>These costs of the lost economic input are linked to the fact that 100% of the potential economic output is lost to the victim and to economy and society when an adult person is in trafficking or when the victim is in specialised services or helping law enforcement. Some economic output</p>

<sup>210</sup> European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#).

<sup>211</sup> Ibid n°204, p.84.

		<p>potential is also lost for several years after trafficking, as the prevalence of being unemployed or unable to work due to sickness by the physical violence, sexual violence and threats suffered during the trafficking. Therefore, measures aimed at reducing the scale of trafficking would result in a higher amount of people being able to participate in the economy as a result of not becoming victims of trafficking. In addition, improving the early identification of, and the quality of assistance and support services provided to victims would probably increase the possibility of victims to access the labour market and stay in employment, thus also facilitating their re-integration into society.</p> <p>Moreover, victims of trafficking are subject to physical violence, sexual violence and threats that reduce the length and quality of life. The cost of the loss of quality of life include physical injuries sustained by the victims and homicides committed during trafficking, fear, depression and anxiety during trafficking and mental health harms post-trafficking.</p>
Reinforce the criminal response against legal persons	Traffickers' revenues for trafficking in human beings for the purpose of sexual exploitation in the EU are estimated at about <b>EUR 14 billion</b> in one year <sup>212</sup> . While there is no available estimate for other forms of exploitation, including <b>labour</b> , the proceeds from the crime are estimated to be <b>high</b> .	<p>Reinforcing the sanctions against legal persons will contribute to improving the capacity of law enforcement and judicial authorities to deprive traffickers from the proceeds of their illegal activities. It will reduce the possibilities for traffickers to infiltrate the legal economy, and of ensuring a fairer economy where companies acting by the rules benefit from the reduction of competition from businesses which take advantage of forced labour, thus benefiting the EU economy.</p> <p>Generally speaking, traffickers will make less profits from the exploitation of people, if the number of victims is reduced.</p>
Reducing the demand for the exploited services of victims of trafficking	N/A	The criminalisation of the knowing use of services, combined with other measures aimed at reducing the demand, in particular awareness-raising campaigns, in cooperation with the Member States, the private sector and civil society organisations, will benefit both the society

<sup>212</sup> This is a high estimate, taking into account the estimated number of hidden victims. European Commission, Directorate-General for Migration and Home Affairs, [Mapping the risk of serious and organised crime infiltrating legitimate businesses: final report](#), Disley, E.(editor), Blondes, E.(editor), Hulme, S.(editor), Publications Office, 2021, p. 10.

		and the economy, as it will likely reduce the demand for cheap labour and goods resulting from the exploitation of the victims, as well as for sexual services, among others.
<b>Administrative cost savings related to the 'one in, one out' approach</b>		
The preferred option would generally contribute to strengthening the fight against trafficking in human beings and, in return, reduce the costs incurred by the crime for the society and the chances for traffickers to profit from the proceeds of the crime, which are also lost costs for the legal economy in the EU.	N/A	N/A

The costs associated with the preferred option are presented in Table 2.

No costs are identified for citizens/consumers and businesses since the costs associated with the policy measures are directly impacting administrations at national level. It should be noted that the initial proposal for the Anti-trafficking Directive did not contain a financial statement, as the Directive was not deemed to have an impact on EU budget. The evaluation showed the cost-effectiveness of the Anti-trafficking Directive, which did not entail substantial costs on Member States.

### 3. Table 2: Costs for the preferred option

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Explicit introduction of the online dimension of trafficking in human beings in the definition of the offence	Direct costs	N/A	N/A	N/A	N/A	The use of technology to commit trafficking offences already falls within the scope of the Directive. Member States would have an obligation to explicitly address it in their legislation, which will require some limited adjustments in national law.	Member States already investigate, prosecute and punish the offence when it is committed online and a number of them have put in place specialised cyber-units and/or experts. However, the enhanced focus on the online dimension may lead to increase the number of investigations and prosecutions on trafficking offences committed through, or facilitated by, the use of internet. It is difficult to estimate in concrete terms the extent of such

							increase, if any, as the number of cases does not just depend on criminalisation measures, but also on the level of criminal activities and the effectiveness of the law enforcement response in Member States. It is however estimated that every additional investigation on top of the current average would cost EUR 77 711, each additional prosecution would cost EUR 56 379 and each additional conviction would cost EUR 52 838 <sup>213</sup> . The overall estimated cost of this measure would be EUR 186 928.
	Indirect costs	N/A	N/A	N/A	N/A	N/A	This measure is expected to further encourage national authorities to step up their efforts in developing the technological tools to fight this growing trend. As a result, there may be indirect costs linked to the need for possible additional resources to fight the crime online (e.g. creation of specialised units, developing of tools and new technology, training of law enforcement and other stakeholders, etc.).
Criminalisation of forced marriages and illegal adoptions as exploitative purposes of the trafficking offence	Direct adjustment costs	N/A	N/A	N/A	N/A	Forced marriages and illegal adoptions are already implicitly covered in the definition of THB in the Directive, in so far as the constitutive elements of	The enhanced focus on trafficking for the purposes of forced marriages and illegal adoption may lead to an increase in the number of investigations and

<sup>213</sup> The estimated cost of police amounts to a total of EUR 623 789 396 or EUR 77 711 per victim in the EU in one year. Prosecution costs for trafficking offences are estimated at EUR 154 196 901 in total, EUR 19 210 per victim and EUR 56 379 per prosecution. Costs of conviction (i.e. the average cost per day and average number of days a court would spend on a trafficking case) are estimated at EUR 71 490 256 in total, EUR 8 906 per victim and EUR 52 838 per conviction. European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#).



						<p>the offence are fulfilled. Moreover, some Member States have already included these forms of exploitation within their legal systems, either as a purpose of the trafficking offence or as stand-alone offences, or they address it under other offences<sup>214</sup>. Therefore, the regulatory and administrative costs of this measure would be limited.</p>	<p>prosecution. As explained above in relation to the online dimension, it is difficult to estimate in concrete terms the extent of such increase, if any, as the number of cases does not just depend on criminalisation measures, but also on the level of criminal activities and the effectiveness of the law enforcement response in Member States. It is however estimated that every additional investigation on top of the current average would cost EUR 77 711, each additional prosecution would cost EUR 56 379 and each additional conviction would cost EUR 52 838<sup>215</sup>.</p> <p>Statistics from the 2015-2020 reporting period indicate that the average number of victims of trafficking for “other forms” of exploitation, including forced marriage and illegal adoption, per year was 626. Therefore, by multiplying the number of average cases of “other forms” of exploitation with the estimated costs of</p>
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<sup>214</sup> For instance, five EU Member States (EE, EL, NL, SK, as well as DK) address forced marriages as an aggravating circumstance or as one of the purposes of trafficking in human beings. Fifteen Member States (AT, BE, BG, CY, DE, ES, FR, HR, IE, IT, LU, MT, PT, SI, SE) have specific provisions on forced marriages as a specific offence. Seven Member States only rely on civil law or on general provisions of criminal law without any reference to forced marriages, e.g. coercion and trafficking in human beings (CZ, FI, HU, LV, LT, PL and RO). SE specifically included “child marriages” as a separate crime. See Sara De Vido and Lorena Sosa, *Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence* (2021), Directorate-General for Justice and Consumers, European Commission. Available at: [link](#).

<sup>215</sup> The estimated cost of police amounts to a total of EUR 623 789 396 or EUR 77 711 per victim in the EU in one year. Prosecution costs for trafficking offences are estimated at EUR 154 196 901 in total, EUR 19 210 per victim and EUR 56 379 per prosecution. Costs of conviction (i.e. the average cost per day and average number of days a court would spend on a trafficking case) are estimated at EUR 71 490 256 in total, EUR 8 906 per victim and EUR 52 838 per conviction. European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#).

							additional individual investigations, prosecutions and convictions that the introduction of new forms of exploitation would bring, the costs of legislative measure 3, sub-option (i) can be roughly estimated at EUR 117 048 083 per year for national authorities. It should be underlined that this figure represents the maximum amount that this measure could cost, as disaggregation of the specific forms of exploitation covered by the “other forms” category is not available.
	Indirect costs	N/A	N/A	N/A	N/A	N/A	
Sanctions on legal persons	Direct costs	N/A	N/A	N/A	N/A	Member States will have to transpose into their national law sanctions against legal persons, which were currently optional for them to transpose. All Member States have already made available at least one of these sanctions in their legislation. Moreover, two of these sanctions are provided for in the Employers Sanctions Directive. This means that Member States should already have at least these two sanctions available in their national law for the employment of illegally staying third-country nationals. Therefore, adjustment costs would be limited.	<p>This measure will generate procedural steps to put in place such sanctions and their enforcement. Three of the optional measures that would become mandatory (exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; and temporary or permanent closure of establishments which have been used for committing the offence) would have negligible costs. The other two sanctions (placing under judicial supervision and judicial winding up) would imply more resources for procedures and enforcement at the judicial level.</p> <p>The lack of data on the number of convictions of legal persons and the consequent lack of figures on the costs incurred for the enforcement of the</p>

							corresponding sanctions, together with the fact that the issuance of sanctions depends on the discretion of judges, make it difficult to provide a realistic estimation of how many sanctions would be issued under the mandatory regime and, consequently, of the overall costs related to the legislative measure.
	Indirect costs	N/A	N/A	Legal persons would be subject to penalties with an economic impact only after a conviction for a trafficking offence committed for their benefit.	N/A	N/A	N/A
Criminalise the use of services which are the objects of exploitation, with the knowledge that the person is a victim of trafficking in human beings	Direct costs	N/A	N/A	N/A	N/A	Direct costs of this measure relate to the obligation for Member States to criminalise the knowing use of services exacted from victims of trafficking. Eight Member States would already be compliant with it and therefore would not have to undergo any change in their legislation. Eleven Member States would have to expand their rules to all forms of exploitation and seven Member States would have to transpose the new provision.	This measure would have an impact on law enforcement and judicial authorities only in the Member States that do not already have a provision on this matter or have one that covers only some forms of exploitation. Based on the data collected by five Member States which already have a provision criminalising the knowing use of exploited services, it is estimated that there would be about 200 additional convictions per year and that the incurred cost of this measure would be about EUR 10.6 million per year in total for the seven Member States that currently do not have any provision on the use of services <sup>216</sup> .

<sup>216</sup> The estimation is calculated on the data provided by BG, HU, LT, MT and RO, which reported a total of 171 convictions in four years (2017-2020). This amounts to just under 43 convictions every year in total for these five

							These figures would be lower for countries that already criminalise the use of services limited to some forms of exploitation.
	Indirect costs	N/A	N/A	N/A	N/A	N/A	
Establish or adjust existing formal National Referral Mechanisms and create National Contact Points, on the basis of relevant guidelines	Direct costs	N/A	N/A	N/A	N/A	All Member States but one have a formal or informal mechanism currently in place. The Member State that does not have a referral mechanism would incur the costs of establishing one. There is no data to estimate the cost of establishing a mechanism. However, as the concerned Member State already carries out decentralised referral and assistance services, the costs incurred would be limited. Moreover, the Member States that have an informal referral mechanisms would have to formalise it and those which have a formal mechanism already in place would need to make some adjustments. Three Member States have either recently established (Portugal) or are currently in the process of establishing a formal national referral mechanism (France and Ireland, respectively). This formalisation consists the elaboration and implementation of protocols defining the procedures for the	N/A

Member States. When put in relation to the overall population of the five Member States (roughly 39 million), this amounts to almost one conviction for every 907 000 people each year. When put in relation to the population of the seven Member States that would have to introduce new legislation (180 700 000 in total for AT, BE, CZ, IT, ES, PL, SK), this amounts to a total of roughly 200 new convictions every year in such Member States. Multiplying the estimated cost of each conviction (EUR 52 838, see footnote 45) for the 200 new convictions, the total yearly cost would be just under EUR 10.6 million. The estimation of costs for this measure is based on the data collected in the context of the evaluation and adapted in proportion to the population of the Member States that currently do not have legislation on the use of services in place. It was made solely for the purpose of this Impact Assessment and should not be considered as official data.

						identification and referral of child victims <sup>217</sup> , an official document including indicators for the identification of victims and defining the roles of all relevant stakeholders <sup>218</sup> , or expanding the list of organisations competent for the identification and referral of victims and formally involving designated civil society organisations <sup>219</sup> . These measures are generally accompanied by a modification of the existing legislation (e.g. criminal code). While this does not indicate the cost of the formalisation of the national referral mechanism, Portugal allocates EUR 1 600 000 every year for victim support services, which contributes to the functioning of the national referral mechanism. In France, the National Referral Mechanism is based on based practices and consists in formalising existing cooperation among stakeholders involved in the identification and referral of victims.	
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A
Introducing an obligation in the Directive for Member States to collect and report data on trafficking in human beings to the Commission every year	Direct adjustment costs	N/A	N/A	N/A	N/A	Member States will have to formalise their processes to collect data on THB, which may require some level of adjustment in some Member States. They will have to transmit data on a minimum set of indicators to the	N/A

<sup>217</sup> Portugal.

<sup>218</sup> France.

<sup>219</sup> Ireland.

						Commission every year. However, Member States already gather statistics on THB and transmit them to the Commission every two years and, since 2021, every year through Eurostat via their National Statistical Authorities. This measure will not change Member States' existing practices to a significant extent. The cost will probably remain the same than the one that is already planned through national budget for such a task.	
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A
Engagement in the activities of the Knowledge and Expertise Hub on Combatting THB	Direct adjustment costs	N/A	N/A	N/A	N/A	N/A	Member States' participation in the Knowledge and Expertise Hub will be non-constraining. It would mainly involve the National Rapporteurs and Equivalent Mechanisms and relate to their tasks within the Directive, notably 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. Therefore, this measure will not incur any costs, which would not be covered under the dedicated EU budget.
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A
Engagement in the activities of the Focus Group of specialised prosecutors against THB	Direct adjustment costs	N/A	N/A	N/A	N/A	N/A	The level of engagement of judicial authorities will depend to each Member States' willingness to get involved. Costs related to the organisation of meetings and other activities will be covered by the Commission (and/or Eurojust for the

							focus group of prosecutors). There will be one or two meetings of the Focus Group of prosecutors per year of one or two days each, which limits the amount of resources needed to participate.
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A
<b>Costs related to the 'one in, one out' approach</b>							
<b>Total</b>	Direct adjustment costs	N/A	N/A	N/A	N/A		
	Indirect adjustment costs	N/A	N/A	N/A	N/A		
	Administrative costs (for offsetting)	N/A	N/A	N/A	N/A		

#### 4. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

<b>III. Overview of relevant Sustainable Development Goals – Preferred Option(s)</b>		
<b>Relevant SDG</b>	<b>Expected progress towards the Goal</b>	<b>Comments</b>
SDG 5.2 – Eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation	<p>Strengthened fight against trafficking in human beings within the EU, in particular when it is facilitated by the use of technology, including for the recruitment, advertising and exploitation of the victims online, as well as to criminalise additional forms of exploitation, which particularly affect women and girls (forced marriages).</p> <p>Strengthened criminal law response to the knowing use of services exploited from victims of trafficking for all forms of exploitation, including sexual exploitation.</p> <p>Reduced demand for exploited services of victims, including sexual services, through an EU-wide awareness raising campaign and enhanced cooperation with online platforms and services.</p>	N/A
SDG 8.7 – Taking immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour,	Strengthened criminal justice response to trafficking in human beings for all forms of exploitation, including for forced labour, through enhanced cross-border cooperation among Member States and further harmonisation of EU rules, notably in terms of available sanctions against legal persons.	N/A

<p>including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.</p>	<p>Strengthened criminal law response to the knowing use of services exploited from victims of trafficking for all forms of exploitation, including labour exploitation.</p> <p>Reduced demand for exploited services of victims, including cheap labour, through an EU-wide awareness raising campaign and enhanced cooperation with online platforms and services.</p> <p>Increased awareness of, and action by companies and businesses to discourage the demand for, and detect trafficking in their value chains.</p>	
<p>SDG 16.2 – Ending abuse, exploitation, trafficking and all forms of violence against and torture of children</p>	<p>Strengthened fight against trafficking in human beings within the EU, in particular when it is facilitated by the use of technology, including for the recruitment, advertising and exploitation of the victims online, as well as to criminalise additional forms of exploitation, which may particularly affect children (forced marriages and illegal adoption).</p> <p>Increased awareness of, and action by internet companies to monitor, detect and remove THB-related content, and awareness-raising activities on the safe use of the internet by children to avoid the risks of them falling victims of trafficking online.</p>	<p>N/A</p>



## ANNEX 4: ANALYTICAL METHODS

### 1. EVALUATION QUESTIONS AND METHODOLOGY

#### 1.1. Evaluation questions

In accordance with the Terms of Reference drawn up by the European Commission, RAND Europe in collaboration with Ernst & Young (EY) conducted 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 (request for service No 29 - HOME/2020/ISFP/FW/EVA2/0074).

The methodological approach derived from a careful analysis of the **37 evaluation questions** presented in Table 1 and the production of evaluation grids separated by each of the five evaluation criteria as they are stipulated by the Better Regulation Guidelines (effectiveness, efficiency, relevance, coherence and EU Added Value). Building on the evaluation questions, the evaluation grids included:

- a. **Judgment criteria:** statements that need to be confirmed or disconfirmed by the analysis.
- b. **Analytical approach:** the type of analysis used to answer the evaluation question. The proposed analysis informed the type of information collected.
- c. **Indicators:** quantitative and qualitative measures supporting the analysis and informing the judgement criteria.
- d. **Data sources:** quantitative and qualitative sources of indicator variables used in the analysis.

The evaluation grids have been treated as a ‘live’ document throughout the research process. This means they have undergone revisions throughout the early research process to ensure that the questions were phrased in a manner that supports the aims of the evaluation in best way possible.

In this report, the evaluation criteria are addressed according to the order of the Better Regulation Guidelines. The evaluation questions are arranged by criterion in Table , along with cross-references to the section of this report where each is addressed.

**Table 1: Evaluation questions (EQ)**

Number	EQ
<b>Effectiveness</b>	
<b>Prevention and reducing risk of victimisation</b>	
4	What is the contribution of the Directive to preventing THB?
7	To what extent has the Directive contributed to ensuring adequate training of law enforcement officials, judges and prosecutors, legal councillors and officials likely to come into contact with victims or potential victims of THB, including child victims of trafficking?
<b>Demand reduction and criminalising knowing use</b>	
5	To what extent has the Directive contributed to discouraging and reducing the demand that fosters all forms of exploitation? To what extent the concrete measures taken to reduce the risk of people becoming

Number	EQ
	victims of THB, including research, information, awareness-raising, and education have been effective?
6	What measures have been put in place in national laws to establish as a criminal offence the use of services of victims, with the knowledge that the person is a victim of trafficking in human beings? To what extent such measures have been effective to reduce demand for exploited services of victims?
<b>Protection, assistance and support to address needs</b>	
9	To what extent the mechanism established under the Directive have contributed to ensuring access to assistance, support, and protection measures, in particular women and girls trafficked for the purpose of sexual exploitation? To what extent have mechanisms for referral of trafficked victims worked efficiently in cross-border cases?
10	To what extent has the Directive contributed to the assistance, support and protection of child victims of trafficking? To what extent have mechanisms and child-sensitive assistance and support measures been effective? Have they contributed to integrated services having been made available to child victims?
11	To what extent has the Directive contributed to attending to victims of trafficking with special needs, including related to disability and/or psychological, physical or sexual violence?
12	To what extent has the Directive contributed to the assistance, support, and protection of other relevant groups of victims of trafficking in human beings, including people with disabilities, marginalised Roma people and lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) people?
15	To what extent do victims need to cooperate in the criminal proceedings to access assistance and support?
8	To what extent has the Directive contributed to the protection of trafficked victims in cross-border cases and within Member States?
<b>Protection, assistance and support to victims involved in the criminal justice system</b>	
17	To what extent has the Directive contributed to access of victims to witness protection programmes or other similar measures?
18	To what extent has the Directive contributed to preventing secondary victimisation of victims of trafficking during criminal investigation and proceedings?
<b>Victim compensation and non-prosecution</b>	
13	To what extent has the Directive contributed to allowing a victim of trafficking to access and claim adequate compensation?
14	To what extent has the Directive contributed to ensuring that victims of trafficking are not prosecuted or penalised for their involvement in criminal activities that they have been compelled to commit as a consequence of being trafficked?
<b>Investigations, prosecutions, penalties and confiscation of assets</b>	

Number	EQ
16	To what extent has the Directive contributed to ensuring that investigation into or prosecution of trafficking offences 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?
22	To what extent has the Directives contributed to allowing a victim of trafficking to effectively report a case and bring a case to court? What have the obstacles been for victims to seek redress?
19	To what extent has the Directive contributed to efficient penalties on trafficking inhuman beings in the Member States? To what extent do the penalties in place have an effective, proportionate and dissuasive character?
21	To what extent has the Directive contributed to the seizure and confiscation of instrumentalities and proceeds from offences of THB? Has the Directive contributed to the use of seized and confiscated instrumentalities and criminal proceeds to support victims' assistance and protection, including compensation of victims?
<b>The liability of legal persons</b>	
20	To what extent has the Directive contributed to holding legal persons liable? To what extent are the penalties in this regard effective, proportionate, and dissuasive?
<b>Barriers to the effectiveness of the Directive</b>	
23	With reference to the above questions, to what extent has the Directive been interpreted and enforced in a consistent and harmonised way in the Member States? To what extent does this influence achieving their objectives as regards preventing and combatting THB? To what extent do insufficiencies in interpretation and enforcement cause distortions as regards the achievement of the above aim? Is there sufficient uniformity in the key concepts relevant to the effective implementation of the EU legal framework?
2	Which main factors (e.g., the quality of implementation by the Member States, action by stakeholders) have contributed to or stood in the way of achieving the objectives of the Directive?
24	Has the Directive led to any other significant changes, either as regards implementation and enforcement or otherwise, from the perspective of victims?
<b>Efficiency</b>	
25	If identifiable, what have the costs and benefits (monetary and non-monetary) associated with compliance with the Directive in the Member States been - as regards the aim of preventing and combatting THB?
26	Is availability of funding a constraint for the implementation of the Directive as regards the achievement of the above aim?
27	Have the Member States provided sufficient funding if relevant actions, such as support services, are externalised to other stakeholders, such as regional or local authorities or non-governmental organisations?

Number	EQ
28	What good practices of cost-effective implementation of the Directive can be identified in the Member States?
29	If identifiable, what are likely to be the costs (monetary and non-monetary) of non-implementation of the Directive as regards preventing and combatting THB?
30	To what extent is there potential for (legislative, non-legislative) simplification and reduction of regulatory costs and burdens as regards the achievement of the above aim? What would be the risks of such reductions?
<b>Relevance</b>	
<b>Overall assessment of fitness for purpose, extent to which Directive meets needs and concerns that remain to be addressed</b>	
31	To what extent are the relevant provisions of the Directive fit for purpose?
32	To what extent do the original objectives of the Directive correspond to the current needs of the society within the EU, reflect current policy trends, taking into account developments at EU and international levels, and fit the EUs institutional, legal, economic and political landscape as regards the achievement of the above aim?
33	If identifiable, what are the remaining concerns to be addressed with a view to effectively preventing and combatting THB in the Member State? To which degree are these addressed by the EU legislation described above?
34	Is THB, including in the online domain, addressed under the national laws and court or administrative practice of the Member State? If it is not addressed or it is addressed only partially, what forms are left unaddressed?
35	Has the Directive been adapted to legal, technological and other progress in the field of preventing and combatting trafficking in human beings?
36	Is the Directive relevant to all forms of exploitation? For example, does it address how trafficking of vulnerable groups, such as women and children or in high-risk sectors such as domestic work, agriculture, hospitality, fishing or the garment industry should be tackled in the national laws and court or administrative practice of the Member State? What forms of exploitation are left unaddressed?
<b>Child rights and gender perspective</b>	
37	Is THB addressed with a gender perspective and a child-rights approach in the Member States? Which provisions are applicable to it? If it is not addressed or it is addressed only partially, what forms are left unaddressed?
<b>Relevance to stakeholders</b>	
38	Has the Directive been relevant for the different stakeholders affected as regards the achievement of the above aim and how? In particular, how relevant is the directive to relevant stakeholders and what is their level of support for it in terms of the aim of preventing and combatting trafficking in human beings?

Number	EQ
39	What are the Member State authorities' expectations for the role of the EU as regards the achievement of the above aim?
40	What are other stakeholders', such as non-governmental organisations' expectations for the role of the EU as regards the achievement of the above aim?
<b>Coherence</b>	
41	Where relevant, to what extent is the Directive coherent with other Directives as regards preventing and combatting THB?
42	To what extent is the Directive satisfactorily integrated and coherent with other relevant EU laws and policies, such as in the context of the EU Asylum Acquis? Is there scope for further integration with other policy objectives? How do these policies affect (positively or negatively) the implementation of the EU legislation relevant to preventing and combatting trafficking in human beings?
43	To what extent is the Directive coherent with the objectives of the Treaties, including the Charter of Fundamental Rights of the EU, as regards the achievement of the above aim?
44	To what extent has the objective of preventing and combatting THB been successfully integrated into EU funds? (Asylum, Migration and Integration Fund (AMIF), International Security Fund (ISF), European Multidisciplinary Platform Against Criminal Threats (EMPACT))
45	To what extent is the Directive coherent with other relevant international obligations and standards (such as the United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the ILO Forced Labour Convention, 1930 (No.29), the Convention on the Elimination of Discrimination against Women (CEDAW) and UN Conventions on the Rights of the Child (UNCRC) and on the Rights of Persons with Disabilities (UNCRPD)?
<b>EU Added Value</b>	
46	What has been the EU added value of the Directive as regards the aim of preventing and combatting trafficking in human beings in particular? What would the situation have been in the Member States if there had been no EU legislation applicable (compared to what could have been achieved by the Member States alone at national and/or regional levels, as well as through international agreements and cooperation)?

## 2.2. Impact assessment

Assessing the potential impact of policy options included the following stages:

5. Problem definition and assessment;
6. Analysis of the EU's right to act;
7. Identification of policy objectives and detailed formulation of retained policy options;
8. Assessment of the impact of policy options;

9. Ranking and comparison of policy options.

### 2.3. Description of data collection methods methodology

#### 1.3.1. Evaluation

The evaluation of the Directive was informed by the collection and analysis of qualitative and quantitative data obtained through the following methods:

- **Mapping and analysis of transposition of the Directive into national law.** By using a network of national correspondents, the external contractor conducted desk research regarding the transposition of the Directive into Member States and compared it to data shared by the European Commission on the state of transposition in 2016. The full analysis is presented in Annex 6.
- **Analysis of quantitative data** shared by EUROSTAT on trends in THB from 2013-2020 across the EU27.
- **Documentary review** of more than 100 sources. Key desk resources include (i) reports, studies and other publications addressing trafficking in human beings; and (ii) information shared by DG HOME on EU funding streams (i.e., AMIF, ISF). The complete list of sources reviews for the Staff Working Document on the evaluation is presented at the end of this Annex.
- Public consultation of EU citizens that ran from 14 December 2021 until 22 March 2022. A total of 124 contributions were received.
- Online survey that ran from 29 November 2021 to 15 January 2022. A total of 90 responses were received. Participants included Member State national competent authorities (16); National rapporteurs and equivalent mechanisms (NREM) (14), national LEAs (9), national judicial authorities (JAs) (12), other national authorities (5), CSOs (24) and other (10). At least one response from each Member State was received.
- **Interviews** with 29 stakeholders were performed. Five interviews (4 EU agencies, 1 CSO) were performed during the inception phase to inform the scope, framework and data collection tools of the study. A further 24 interviews were performed during the evaluation phase. One additional stakeholder chose to submit responses in writing. Stakeholders included representatives from EU agencies (6), EMPACT (1), European CSOs (5), international bodies (5), academics/experts (6), and business/employer associations (1).
- **Two stakeholder workshops** with the EU Civil Society Platform against THB (Workshop 1) and NREM (Workshop 2).
- **Analysis of data on EU funding of THB projects** from 2014-2020 under the Asylum, Migration, and Integration Fund (AMIF) and the Internal Security Fund (ISF).
- **Feedback on the Roadmap/Inception Impact Assessment.** From 5 August 2021 to 16 September 2021, the EC sought feedback on the inception impact assessment underpinning this

evaluation.<sup>220</sup> The 36 responses received from CSOs (24), EU citizens (4), public authorities (3), non-EU citizens (2) and other (3) were also analysed<sup>221</sup>.

Further details on the data collection activities can be found in the synopsis report in Annex 4.

### *1.3.2. Impact assessment*

- **Interviews with (4) EU agencies and (3) EU level civil society organisations** were performed. One additional interview with a senior advisor at a National Rapporteur's office was conducted. Interviews were aimed at collecting views on the nature and extent of the likely impacts and feasibility of the identified policy options for the stakeholder groups who might be affected.
- **Case studies of five Member States (FR, IT, HU, NL, RO).** A description of the case study selection methodology can be found in the synopsis report (Annex 2). The case studies included group interviews with national authorities from the selected Member States on possible impacts of the identified policy measures.

## **2.4. Limitations**

The data collected for the evaluation and impact assessment has several limitations that should be borne in mind when interpreting the findings. These limitations are summarised below, along with the mitigation measures taken to address them where possible.

- **Measuring effectiveness with limited available data:** Given some of the data gaps (see evaluation and Annex 5), it was sometimes challenging to validate some of the expert judgements and stakeholder opinions, which made measuring the effectiveness challenging. For example, there was a lack of monitoring data on the effectiveness of prevention measures, such as awareness raising campaigns, research and information.
- **Subjectivity of stakeholders' views:** Data collected from stakeholders, including through interviews, surveys, and workshops represents subjective views, rather than objective conclusions. To help mitigate this, the report relies on the triangulation of various data sources (as outlined in this Annex). In addition, stakeholders consulted as part of the evaluation and impact assessment for interviews, workshops, and the online survey included people with relevant expertise in the field of trafficking in human beings, who are used to giving evidence as part of their professional roles.
- **Selection bias of stakeholders:** There may be a certain degree of selection bias, especially regarding interviewees. Participants' views might not be representative of all stakeholders affected by the Directive. To help mitigate this, stakeholders at all levels were selected for participation (in consultation with DG HOME), including at the EU, national, international and civil society level. Through the consultations, in particular the online survey, it was possible to gather perspectives from all Member States.
- **Attributing outcomes to the Directive:** attributing outcomes in the area of combatting trafficking in human beings to the existence of the Directive can be challenging. The evaluation and impact assessment assess the Directive's contribution to preventing and

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<sup>220</sup> European Commission, Fighting human trafficking – review of EU rules. Available [here](#).

<sup>221</sup> European Commission, Fighting human trafficking – review of EU rules. Available [here](#).

combatting trafficking in human beings based on how the available evidence compares to the intervention logic (see Annex 7 to the evaluation).

- **Assessing trends and statistics related to the phenomenon of THB:** As outlined in more detail in the evaluation and Annex 5, there are a number of gaps in the available data on THB. In an effort to fill gaps as much as possible, this report relies on a variety of available data sets, including data gathered by ESTAT from 2013-2020 and inputs provided by Member States in response to request for data from the European Commission. The consultation of several available data sources helped map important gaps.



## 2.5. Methodology of the data collection on trafficking in human beings for 2013-2020

The data provided in this Impact Assessment has been collected by Eurostat from the EU Member States via the national statistical offices. The European Commission ensured a coordinated approach to the data collection at national level, by involving the national rapporteurs and/or equivalent mechanisms on trafficking in human beings together with relevant authorities and civil society organisations. Eurostat provided support for this study through data management and quantitative analysis of statistics, whereas the Directorate-General for Migration and Home Affairs provided the analysis.

Data in this Impact Assessment is drawn from administrative sources.

For traffickers and suspected traffickers, the sources of data include police, prosecutors, and courts. For victims, the sources of data include police, non-governmental organisations (NGOs), border guards, immigration officers, and labour inspectors, among others.

Registered victims are composed of two categories: presumed and identified. In line with earlier data collections, victims are referred to as ‘presumed’ when they meet the criteria of Directive 2011/36/EU but have not been formally identified by the relevant authority as victims of trafficking in human beings or who have declined to be formally or legally identified as trafficked. Victims are considered ‘identified’ for persons who have been formally identified as victims of trafficking in human beings by the relevant formal authority in Member States’, this is to say after a process that establishes that they are victims; often, but not always, involving the police. ‘Identified’ and ‘presumed’ victims are referred together as ‘registered victims’. The actual number of victims is likely to be significantly higher than the number registered and reported in data collections.

Data was requested for 2013-2020 from the EU Member States on the number of registered (presumed and identified) victims of trafficking in human beings and on the number of traffickers who were suspected, prosecuted or convicted, taking into account their sex, age, nationality and forms of exploitation. In addition, with regard to suspects, data on prosecutions and convictions for the use of services which are the object of exploitation of victims of trafficking in human beings, additional sex and age breakdown was requested.

Member States were also asked to provide metadata giving further information on the data that was supplied.

Data is publically available in the following documents:

- Eurostat (2013) Trafficking in human beings - 2013 edition. [Link](#).
- Eurostat (2015) Trafficking in human beings – 2015 edition. [Link](#).
- 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 {SWD(2016) 159 final} (COM(2016) 267 final). Links: [here](#) and [here](#).
- European Commission, Study on Data collection on trafficking in human in the EU (2018), Publications Office of the EU. [Link](#)
- European Commission, Study on Data collection on trafficking in human in the EU (2020), Publications Office of the EU. [Link](#).

## 2.6 Methodology for the calculation of the costs and benefits

The costs and benefits of the policy options were mainly calculated based on the European Commission's *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020)<sup>222</sup>. **The estimation of the costs and benefits of the policy options was made by Directorate General Migration and Home Affairs solely for the purpose of the Impact Assessment and should not be considered as official data.**

The Commission's study on the economic, social and human costs of trafficking in human beings aims at measuring the cost of trafficking in human beings in the EU. This section summarises the methodology followed by the study<sup>223</sup>.

Three main types of costs of trafficking in human beings were identified: use of services (coordination and prevention, specialised services, law enforcement, health services and social protection); lost economic output; and lost quality of life. Three phases are distinguished: in trafficking; in specialist services; and, post-trafficking.

The Study adopts and builds on the existing scientific methodology for costing. The approach taken to estimates is conservative. Where there are doubts about the quality of data, costs are not included. The cost is thus an underestimate.

The Study identified the victims of trafficking. For some costs (coordination, law enforcement and specialised services), it was possible to investigate the costs generated by trafficking directly. For the other costs, the Study investigated costs by following the victim's journey from forms of exploitation, to types of violence experienced, to hurts to physical and mental health, and then to the costs generated, for example by increased use of services.

Several sources of data are used: administrative statistics on registered victims of trafficking in human beings in Member States; published scientific literature; original analysis of quantitative data sets; original collection of information across the EU; Eurostat held information; European Commission documents; and other scientific studies.

Data on the number, age, sex, and form of trafficking of registered victims of trafficking is extracted from the European Commission (2018) Data Collection on Trafficking in Human Beings in the EU. Data is fundamentally centred around registered victims in 2016.

The scientific literature on trafficking in human beings that contained quantitative information was systematically reviewed. This was used to provide a profile of the extent to which victims of trafficking suffered physical violence, sexual violence and threats, disaggregated by the form of trafficking.

Surveys of populations that share similarities with victims of trafficking were analysed to provide additional information on how harms from physical violence, sexual violence and threats had consequences for use of health and welfare services, for the extent of employment, and for quality of life including physical injuries, substance dependence and long-term mental health. This included surveys of crime, mental health and physical health, as well as of victims of trafficking. The datasets were analysed to quantify the extent to which people who had experienced each type of violence were more likely to experience each harm outcome. The analyses used regression

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<sup>222</sup>European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#).

<sup>223</sup> Ibid n°216, p.109.

models that adjusted for a range of other factors that could explain the association. Information from these surveys on the implications of specific types of harms was then applied proportionately to victims of trafficking.

Directorate General Migration and Home Affairs carried out several calculations in order to obtain broad estimates of the costs of the policy options, when this was possible. The methodology followed is described in the section on the economic impact of the policy options of the Impact Assessment (section 6.3) and Annex 3.

For instance, the estimated cost of police amounts to a total of EUR 623 789 396 or EUR 77 711 per victim in the EU in one year. Prosecution costs for trafficking offences are estimated at EUR 154 196 901 in total, EUR 19 210 per victim and EUR 56 379 per prosecution. Costs of conviction (i.e. the average cost per day and average number of days a court would spend on a trafficking case) are estimated at EUR 71 490 256 in total, EUR 8 906 per victim and EUR 52 838 per conviction<sup>224</sup>.

The data on the cost of a police investigation is an average cost per day and the average number of days a police officer worked on a case (utilising a 220-day working year). Nine Member States provided data. For each of the Member States that provided data, an average cost per case was calculated, then a cost for that Member State that took into account the number of registered victims in that country in 2016. The cost per case was the cost per day multiplied by the number of days. The cost for that Member State was the cost per case multiplied by the number of cases. For the police, the number of cases was taken to be the same as the number of registered victims.

The data on the cost of a prosecution were an average cost per day and the average number of days a prosecutor spends on a case (utilising a 220-day working year). Three Member States provided data. For each of the Member States that provided data, an average cost per case was calculated, then a cost for that Member State that took into account the number of registered victims in that country in 2016. The cost per case was the cost per day multiplied by the number of days. The cost for that Member State was the cost per case multiplied by the number of cases. For prosecutions, the number of cases was the number of prosecutions.

The data on the cost of a conviction were an average cost per day and the average number of days a court would spend on a trafficking case (utilising a 220-day working year). Three Member States provided data. For each of the Member States that provided data, an average cost per case was calculated, then a cost for that Member State that took into account the number of registered victims in that country in 2016. The cost per case was the cost per day multiplied by the number of days. The cost for that Member State was the cost per case multiplied by the number of cases. For courts, the number of cases was the number of convictions.

The estimated costs of the benefits brought by this initiative were calculated based on the cost of the lost economic input and the lost quality of life for victims of trafficking in human beings. This is based on the assumption that reducing the scale of trafficking in human beings, including the number of victims, would mean that more people can participate in the legal economy because they are not trafficked and do not suffer from the harms caused by the trafficking in the post-trafficking phase.

The Study on the economic, social and human costs of trafficking in human beings uses the concept of Gross Development Product per capita to estimate the costs of the lost economic input, which

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<sup>224</sup> Ibid n°216, p.52 onwards.

includes not only wages but also taxes and profits, and intrinsically contains adjustment for the balance of the population in employment or not. This methodology is based on definitions and data provided by ESTAT. The lost economic output is calculated when the victim is in trafficking and post-trafficking. The methodology is further described in the Study<sup>225</sup>.

Victims of trafficking are subject to physical violence, sexual violence and threats that reduce the length and quality of life. These losses in quality and length of life may be considered ‘intangible’ in that they do not have a direct monetary value, but they matter to people.

The approach in the Study on the economic, social and human costs of trafficking in human beings broadly follows the health-oriented framework of the Global Burden of Disease, in which disability weights are applied to particular injuries and health conditions in order to estimate their impact on Quality Adjusted Life Years (QALYs). This is combined with the benchmark valuations provided by the European Commission. The EU offer benchmarks to estimate the value of the statistical value of a human life and of the value of a year of life lived without disability (European Commission 2009). The value placed on a statistical life (VOSL) is 1-2 million euros. The Study takes the midpoint. The value placed on a year of life lived without disability (VOLY) in Europe is EUR 50 000-EUR 100 000. The Study takes the midpoint. The Study considers costs resulting from reduced quality of life at two stages in the journey of a victim of trafficking: while in trafficking and post-trafficking.

The methodology to estimate the costs for the physical injuries, homicides and fear, depression and anxiety during trafficking, as well as mental health harms post-trafficking is further described in the Study on the economic, social and human costs of trafficking in human beings<sup>226</sup>.

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## ANNEX 5: STATISTICS

### 1. State of play: trends and extent of THB

This section of the draft first final report sets out the state of play regarding the levels of and trends in THB. The analysis is based on data on THB provided by the EUROSTAT, covering the reporting period 2013-2020. The analysis was complemented by a review of a EC/Eurostat 2015 report on THB, which provided insights into the situation in 2010-2012.<sup>227</sup> The presentation of findings that follows excludes the United Kingdom (UK) but includes Denmark, thus covering the situation in the EU27.<sup>228</sup>

#### 1.1. Total number of victims: current situation and trends

**The annual number of registered victims of trafficking in human beings showed relatively little sign of variation across the 2013-2020 reporting period.** The total number of victims registered during the period 2013-2020 was 55,314 in the EU27, with an average of 16 registered victims per million inhabitants. The annual number of registered victims showed relatively little sign of variation across the 2013-2020 reporting period (see Figure 3), with the lowest number recorded in 2015 (6,071 registered victims)<sup>229</sup> and reaching the highest value in 2019 (7,777 registered victims). The annual numbers are comparable, if generally slightly lower, to the number recorded in the EU27 in 2011 (n=7,440) and notably lower than the 2012 number (n= 8,853).<sup>230</sup>

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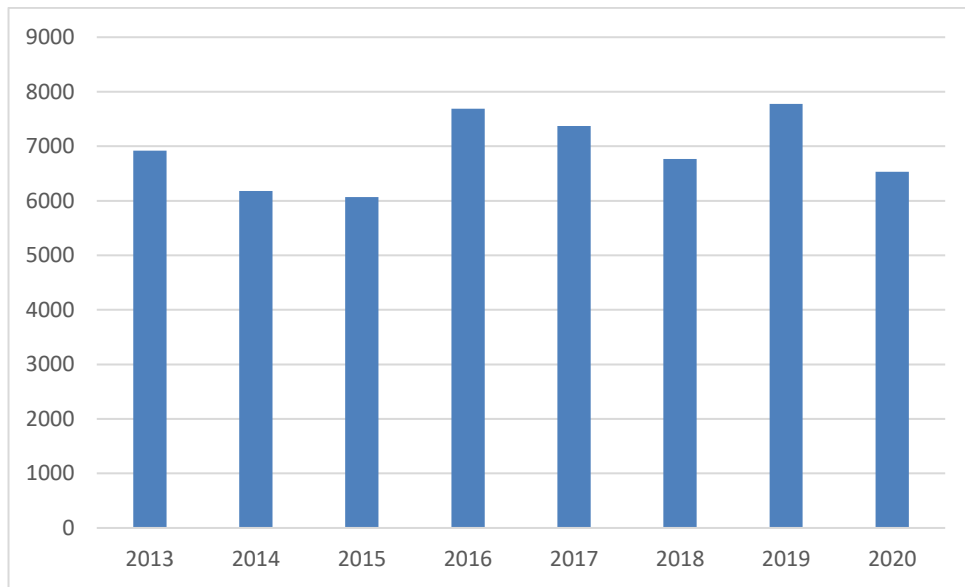
<sup>227</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015. Available [here](#).

<sup>228</sup> Note: At the time of writing, the ongoing Russia-Ukraine war was predicted to impact on the extent of trafficking in human beings in Europe. However, no statistics were available to include in this report. For more information, please see Siegfried, K; Ukraine crisis creates new trafficking risks, UNHCR, 13 April 2022. Available [here](#).

<sup>229</sup> Values for 2015 are significantly affected by the fact that data are not available for France, which recorded among the highest number of victims in the EU27.

<sup>230</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015.

**Figure 3: Trends in the number of registered victims in the EU (2013-2020)**<sup>231</sup>



**The actual number of victims is likely significantly higher than reported data suggests,** as these statistics only capture victims that become known to one of the registering entities and many victims remain undetected.<sup>232</sup>

**Numbers of registered victims differs by Member State** (see Figure 4). During the period 2013-2020, the five Member States with the largest number of registered victims, in absolute numbers, were the Netherlands (8,967), France (8,652),<sup>233</sup> Italy (6,927), Romania (5,742) and Germany (4,842). However, considering the proportion of victims as compared to the total population<sup>234</sup> of the registering country, rather than on the absolute number of victims, the top five EU-27 Member States in the period 2013-2018 were Cyprus (100), the Netherlands (66), Romania and Austria (both 36), and Malta (35).<sup>235</sup>

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<sup>231</sup> Values for 2015 are significantly affected by the fact that data are not available for France, which recorded among the highest number of victims in the EU27.

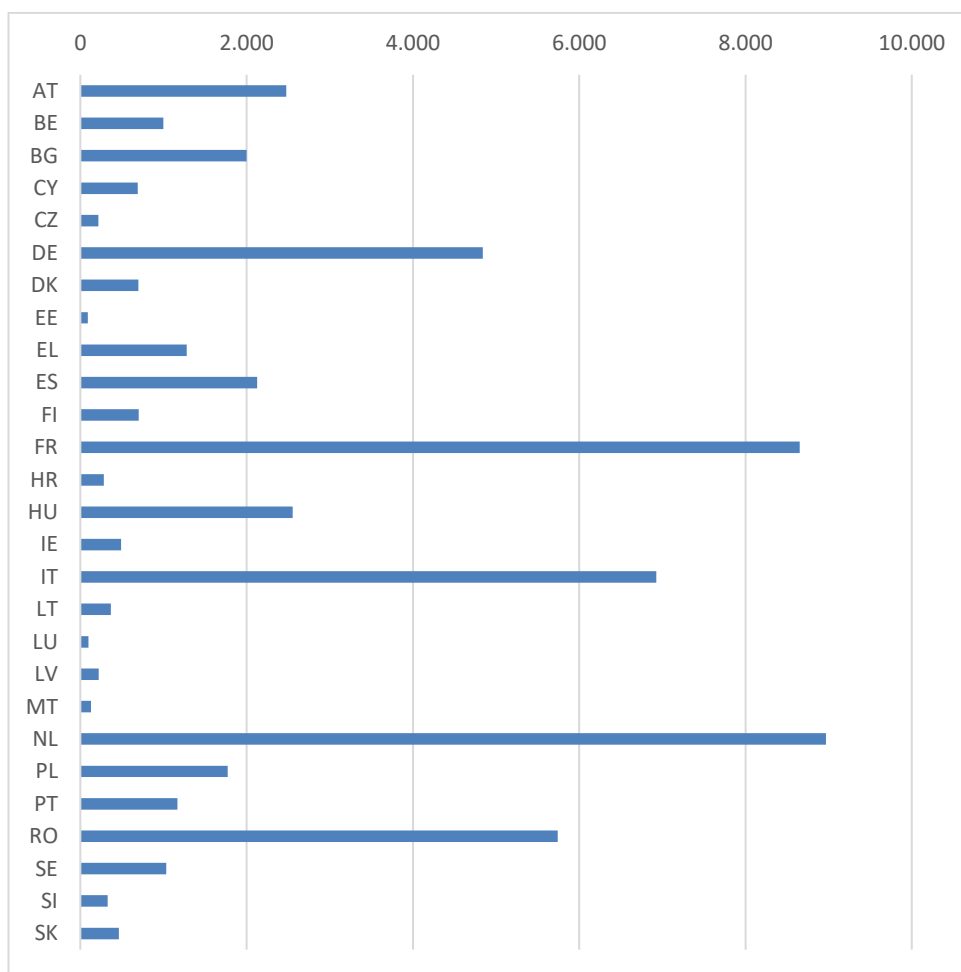
<sup>232</sup> European Commission (2020), Data collection of trafficking in human beings in the EU. Available at: [link](#).

<sup>233</sup> Data for 2015 not available and thus not included in the total.

<sup>234</sup> Number of victims per million inhabitants.

<sup>235</sup> Missing data: CZ (2017, 2018), FR (2015), SE (2017, 2018).

**Figure 4: Number of registered victims by Member State (2013-2020)**



**Three quarters of all victims in the EU were female** (women and girls) (75%), ranging from 42% in Portugal to 92% in Bulgaria.<sup>236</sup> There were two Member States (BE, PT) where the majority of victims recorded during this period were male (men and boys).

The majority of all victims (79%) in the EU were adults.<sup>237</sup> However, children were the majority of recorded victims in Hungary (54%) and in further five Member States (CZ, EE, EL, HR, RO) the proportion of children as a share of all victims where age group was reported exceeded one third.<sup>238</sup>

**A significant number of victims are EU citizens.** Of the total registered victims, 56% were EU citizens, although the share of non-EU citizens among recorded victims increased over time.<sup>239</sup> Amongst the EU victims, 63% were registered in their country of citizenship, although this varied substantially across Member States. To give an example of countries with higher numbers of their own citizens among registered victims: almost three fourths (70%) of victims with Hungarian

<sup>236</sup> Victims whose sex was reported as “Unknown” excluded from this analysis.

<sup>237</sup> Victims whose age group was reported as “Unknown” excluded from this analysis.

<sup>238</sup> Children defined as persons younger than 18 years.

<sup>239</sup> For the purposes of this analysis, citizenships recorded as “autre europe est,” “autre europe ouest” and “other” were assumed to be non-EU victims.

citizenship were registered in Hungary, much smaller shares of victims with Bulgarian (33%) and Romanian (44%) citizenship were registered in their respective countries.

## 1.2. Trends in types of trafficking

### 1.2.1. Overview of trends

**The common forms of exploitation of human beings trafficked in Europe are sexual exploitation and labour exploitation**, which is linked to a sustained demand for sexual services and cheap labour. **Figure 5** provides an overview of the main forms of exploitation in the EU27 over time.<sup>240</sup> The most prevalent form was consistently sexual exploitation, although its share decreased somewhat from 76% in 2014 to less than 60% in later years.<sup>241</sup>

**Trafficking for purposes other than sexual exploitation appear to be increasing.** The proportion of labour exploitation, accounting for 20% of all registrations during 2013-2020, as a share of all registrations initially decreased somewhat over time but later increased to represent approximately one third of all victims in 2020. The proportion of “other” forms increased over time to represent approximately one fifth of all cases in 2018 and decreased thereafter to slightly more than 10% of all registrations.<sup>242</sup>

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<sup>240</sup> See section 7.5 for a discussion of possible national differences in recording forms of exploitation, which may give rise to discrepancies and imprecisions in aggregate analyses.

<sup>241</sup> Cases where the form of exploitation is indicated as unknown (4% of all cases) excluded from analysis. Data missing for the following country-years: AT (2017, 2018), BG (2017, 2018), CZ (2017, 2018), EL (2013, 2014), FI (2017, 2018), FR (2015), IT (2013, 2014), PL (2015, 2016), RO (2015, 2016), SE (2017, 2018)

<sup>242</sup> The categorization of exploitation forms follows the 2013/2014 data collection questionnaire. For subsequent waves, this analysis includes the following forms of exploitation in the “other” category: benefit fraud, criminal activities, forced begging/use for begging, other forms of exploitation, removal of organs, unknown form of exploitation. See section 6.2.3 for a more detailed discussion of other types of exploitation. Note that both labour and other (i.e., non-sexual and non-labour) forms of exploitation saw a notable change between 2018 and 2019. It is possible that this development is at least partially attributable to changes in data collection. Starting in 2019, the heretofore separate categories “labour, including forced labour” and “domestic servitude” were seemingly merged in a new reporting category “forced labour, including domestic servitude.” At the same time, the share of registrations recorded as “other” fell precipitously from 14% in 2018 to 5% in 2019.

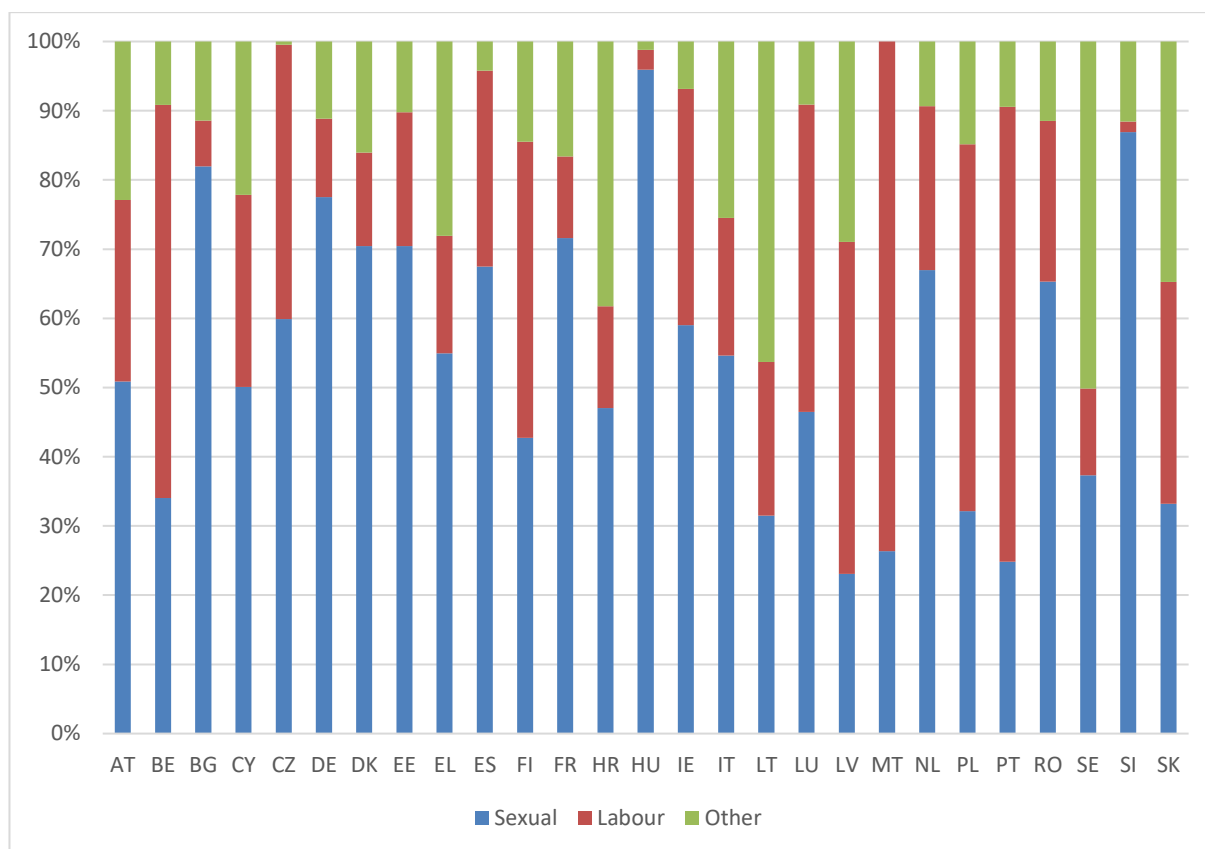


**Figure 5: Trends in main forms of exploitation in the EU (2013-2020), as a % of the total number of victims registered**



**The forms of exploitation differ by Member State.** Figure 6 shows the distribution of cases by type of exploitation across the entire reporting period (2013-2020) by individual Member States. In the majority of Member States (n=18), sexual exploitation was the most common form. In five Member States (BE, LV, MT, PL, PT) labour exploitation was most prevalent and in another three Member States (LT, SE, SK) the most frequently reported forms of exploitation fell under the “other” category. In Finland sexual and labour exploitation were equally common.

**Figure 6: Main forms of exploitation per Member State in 2013-2020, as a % of the total number of victims registered**



### 1.2.2. Sexual exploitation

Sexual exploitation is the most prevalent purpose behind THB in the EU (65% of all reported cases between 2013-2020),<sup>243</sup> although as Figure 7 shows, the absolute number of registered victims of sexual exploitation decreased between 2013 and 2020. The **victims** of sexual exploitation are overwhelmingly female (93%), both adults and minors, to the point that trafficking in human beings for sexual exploitation has been defined as a form of violence against women, rooted in gender inequalities.<sup>244</sup> This is the case across all Member States.

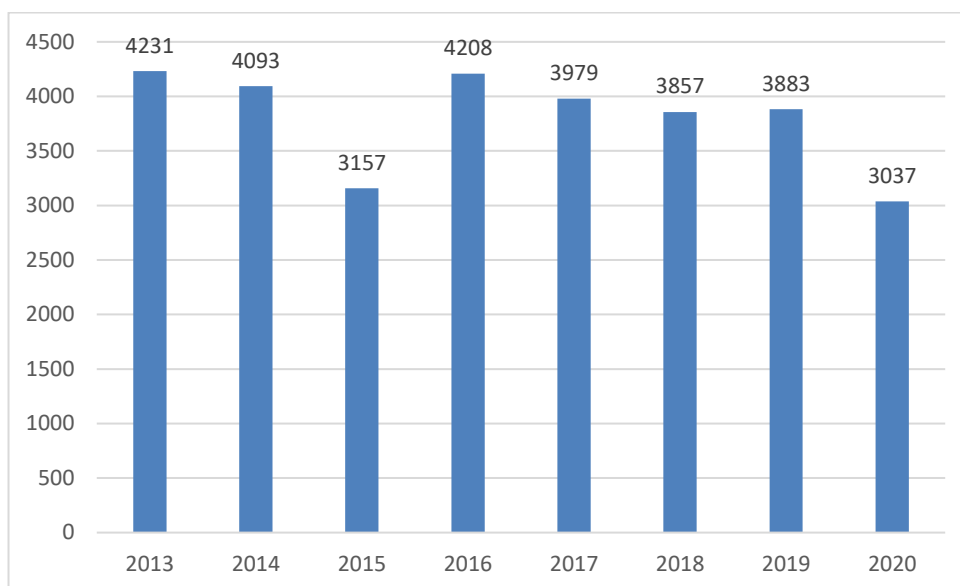
In all but three Member States (CZ, HU, NL) female victims accounted for at least 90% of all registered victims. The share of female victims stayed very high over time, exceeding 90% in almost every year during the 2013-2020 reporting period (the exception was 2019 with 85% share of females) as well as during 2010-2012.<sup>245</sup> The **Member States** registering the highest numbers of female victims of sexual exploitation in 2013-2020 were France (5,911), the Netherlands (5,535), Germany (3,753), Italy (2,795), and Romania (2,681).

<sup>243</sup> Cases with unknown form of exploitation were omitted from the analysis.

<sup>244</sup> European Commission (2020), Data collection of trafficking in human beings in the EU. Available at: [link](#).

<sup>245</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015.

**Figure 7: Trends in the number of sexual exploitation victims in the EU27 (2013-2020)**<sup>246</sup>



Over the reporting period, children accounted for approximately one quarter of sexual exploitation victims where the age group was reported. This is slightly higher than the share of child victims across all types of exploitation. There was little change in the value of this indicator over time, decreasing somewhat from 27% in 2015 to 24% in 2020.<sup>247</sup> It does, however, represent a notable increase from 2010-2012 when only 14% of registered victims of sexual exploitation were under 18 years old.<sup>248</sup>

### 1.2.3. Labour exploitation

Trafficking for labour exploitation is the second main cause of THB in the EU (21%). Several Member States and CSOs report an increase in trafficking for labour exploitation,<sup>249</sup> an assessment trend which is also borne out by ESTAT data indicating a notable increase in 2019 and 2020 (see Figure 8) (although it is possible that this development is at least partially attributable to changes in data collection). THB for labour exploitation entails any **work or service exacted from any**

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<sup>246</sup> Note: 2015 values very likely affected by missing data from France, which typically registers among the highest numbers of THB victims in the EU27.

<sup>247</sup> Data on age breakdowns by form of exploitation not available for 2013 and 2014. A disaggregated analysis of trends at the level of individual Member States is rendered difficult by gaps in existing data. For instance, most of victims reported by Austria are recorded with their age group unknown, with the majority of the much smaller remainder recorded as children.

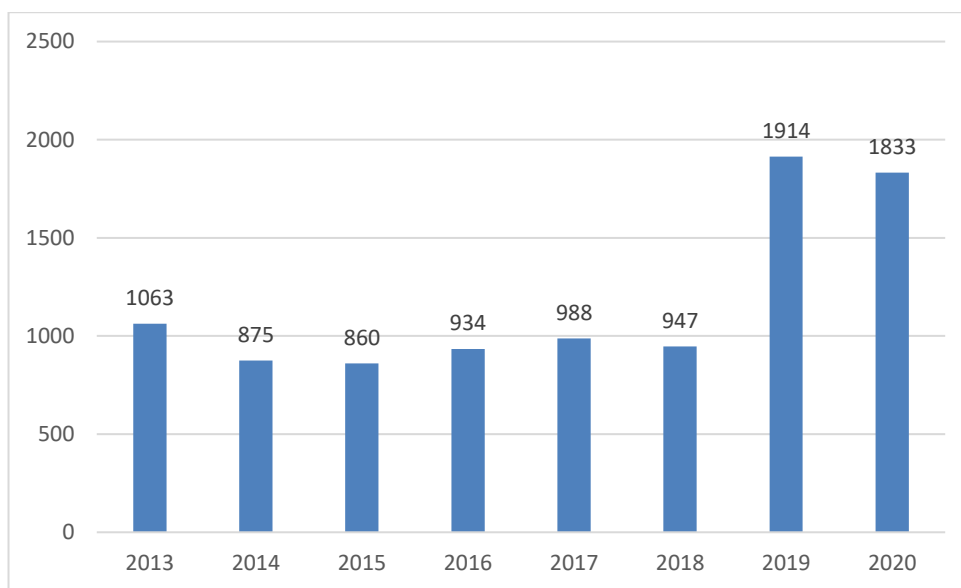
<sup>248</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015, <https://data.europa.eu/doi/10.2785/512112>

<sup>249</sup> European Commission (2020), Data collection of trafficking in human beings in the EU. Available at: [link](#).

**person under the threat of a penalty** and for which the person has not offered himself or herself voluntarily.<sup>250</sup>

Overall, labour exploitation affects mostly men (70%), although in particular sectors women are increasingly exploited (e.g., domestic work, care activities or cleaning services). After an initial slight increase, the share of men among victims of labour exploitation where the victim’s sex is reported decreased over the reporting period, from 73% in 2013 to 65% in 2020. The Member States registering the highest number of labour exploitation victims during the 2013-2020 reporting period were the Netherlands (1,957), Italy (998), France (974), Romania (953), and Spain (602).

**Figure 8: Trends in the number of labour exploitation victims in the EU27 (2013-2020)**



Labour exploitation predominantly affects adult victims, with children accounting for only 7% of victims of this type of exploitation where the victim’s age group was reported between 2013-2020. Over time, the share of children among victims of labour exploitation rose from 4% in 2015 to 12% in 2016, stayed broadly constant until 2018 and then decreased dramatically to only 4% in 2019 and 2% in 2020.<sup>251</sup>

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<sup>250</sup> ILO Forced Labour Convention, 1930 (No. 29).

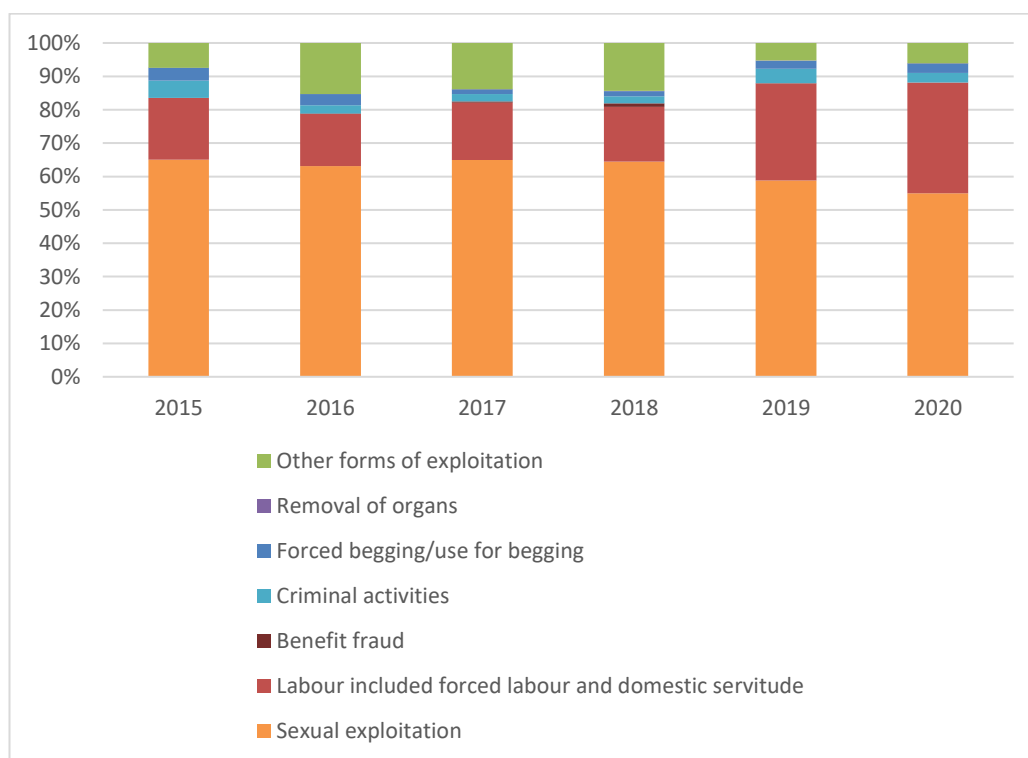
<sup>251</sup> Data on age breakdowns by form of exploitation are not available for 2013 and 2014. The same limitations pertaining to individual MS data regarding age group breakdowns as those reported in the section on sexual exploitation apply to labour exploitation as well. The decrease observed in 2019 and 2020 may also be at least partially attributable to data issues as both years saw a notable increase in the number of cases where age group was reported as unknown.

#### 1.2.4. Other forms of exploitation

As set out above, forms of exploitation other than sexual and labour-related accounted for 14% of THB cases where the form of exploitation was indicated. The share of these other forms of exploitations grew from 8% in 2013 to 20% in 2018 and then decreased to 12% in 2020.

Data for the reporting period 2015-2020 enable a further disaggregation of this “other” category into additional specific forms of exploitation, as shown in Figure 9. Forms of exploitation falling under the “other” umbrella term included criminal activities (3% of all cases during 2015-2020), forced begging (also 3%), and benefit fraud and removal of organs (both less than 1%). Cases with a form of exploitation marked as “other” (i.e., not indicating any of the specific designations offered) accounted for 11% of all cases during the reporting period.

**Figure 9: Trends in all forms of exploitation in the EU (2015-2020), as a % of the total number of victims registered**



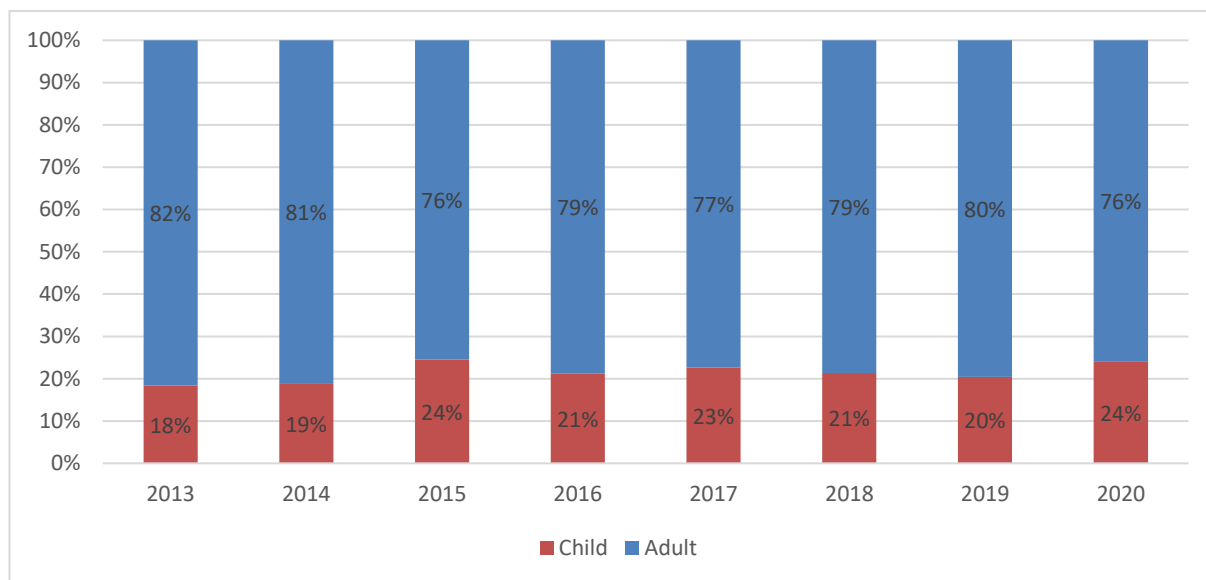
### 1.3. Trends in the types of people who are trafficked

#### 1.3.1. Victims by age

In 2013-2020, child victims constituted around one-fifth of all registered victims in the EU27 (21%) where the victim’s age group was known. The age group of the victim was indicated as “unknown” in 12% of all cases. The share of children among victims increased somewhat over

time, growing from 18% in 2013 to 24% in 2020 (see Figure 10). This represents a continuation of a trend from previous years, as the share of children among registered victims was 17% in 2011 and 2012.<sup>252</sup>

**Figure 10: Trends in victims by age group in the EU27, as a % of the total cases of THB with age group reported (2013-2020)**

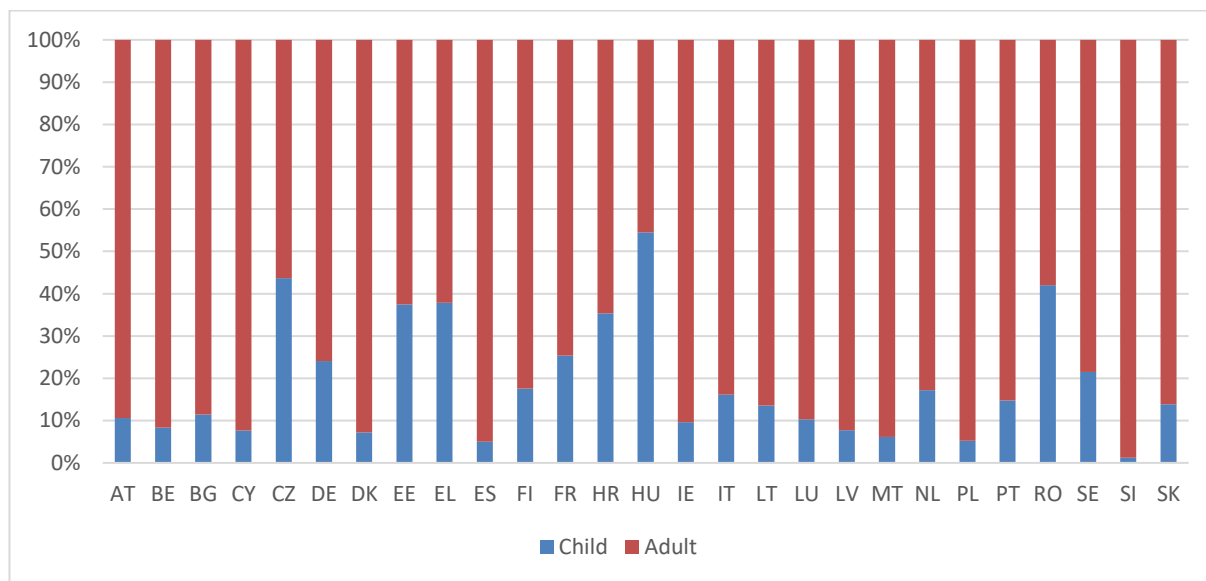


The Member States with the highest proportion of registered child victims where age group was known were Hungary (54%), the Czech Republic (44%), Romania (42%), and Estonia and Spain (38%). Figure 11 provides an overview of the age group distribution of victims across all Member States.

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<sup>252</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015. Available [here](#).

**Figure 11: Victims by age group per Member State, as a % of the total cases of THB with age group reported (2013-2018)**



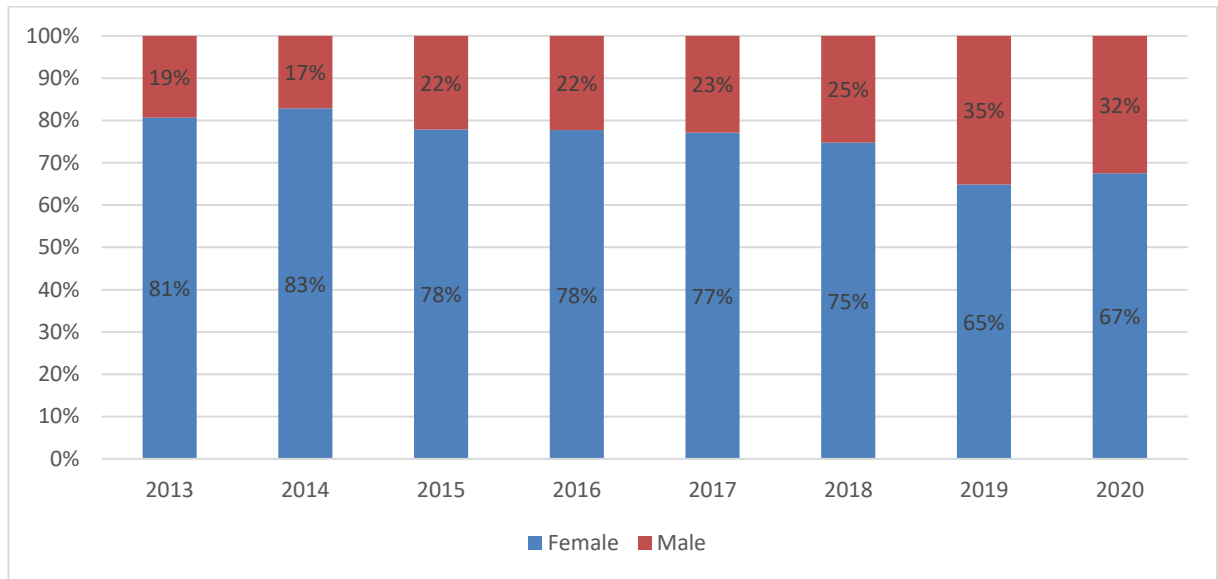
### 1.3.2. Victims by sex

In 2013-2020, women and girls represented a large majority of victims (75%) whose sex was reported (Figure 12). The sex of the victim was indicated as “unknown” in 9% of all cases, though the reporting of sex appears to have improved over time, with “unknown” indicated only in less than 5% of cases in 2020. The proportion of women as a share of all victims decreased over the 2013-2020 reporting period, declining from 81% in 2013 to 67% in 2020, although similar fluctuation could be seen in 2010-2012 as well.<sup>253</sup> Female victims are especially endangered by trafficking for the purpose of sexual exploitation, while men are usually victims of labour exploitation.

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<sup>253</sup> European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015. Available [here](#).

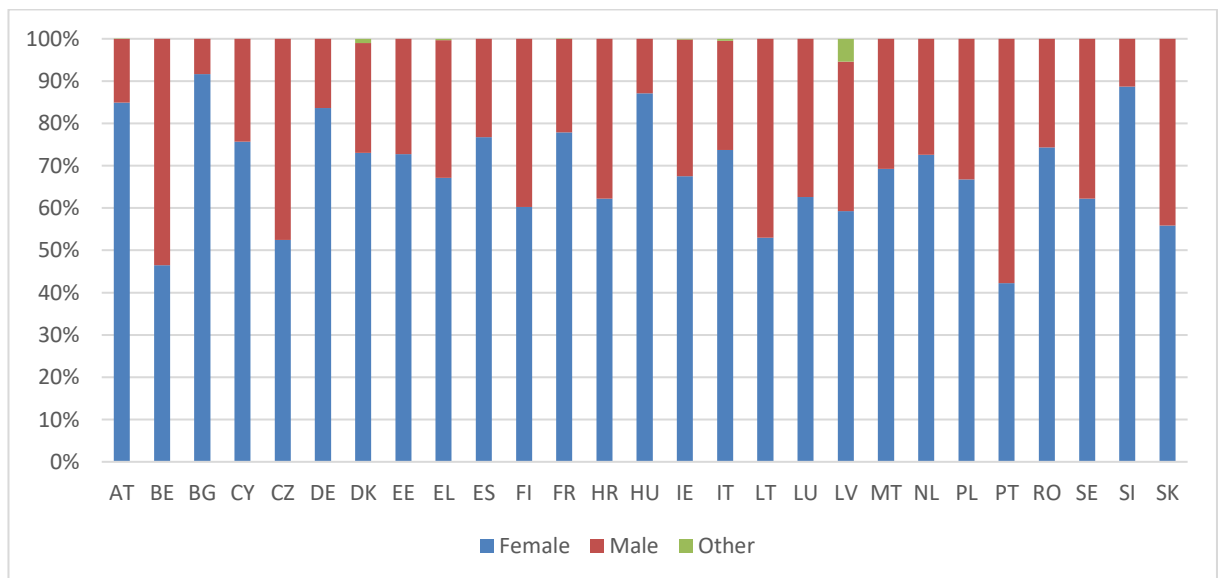
**Figure 12: Trends in victims by sex in the EU27, as a % of the total cases of THB with sex reported (2013-2020)**



*Source: Authors' elaboration based on ESTAT data*

During the reporting period, the Member States registering the highest proportion of female victims were Bulgaria (92%), Slovenia (89%), Hungary (87%), Austria (85%) and Germany (84%). By contrast, the Member States with the highest proportion of male victims were Portugal (58%), Belgium (54%), the Czech Republic (48%), Lithuania (47%), and Slovakia (44%). **Figure 13** displays the categorisation of reported victims by sex in each Member State.

**Figure 13: Victims by sex per Member State, as a % of the total cases of THB reported (2013-2020)**

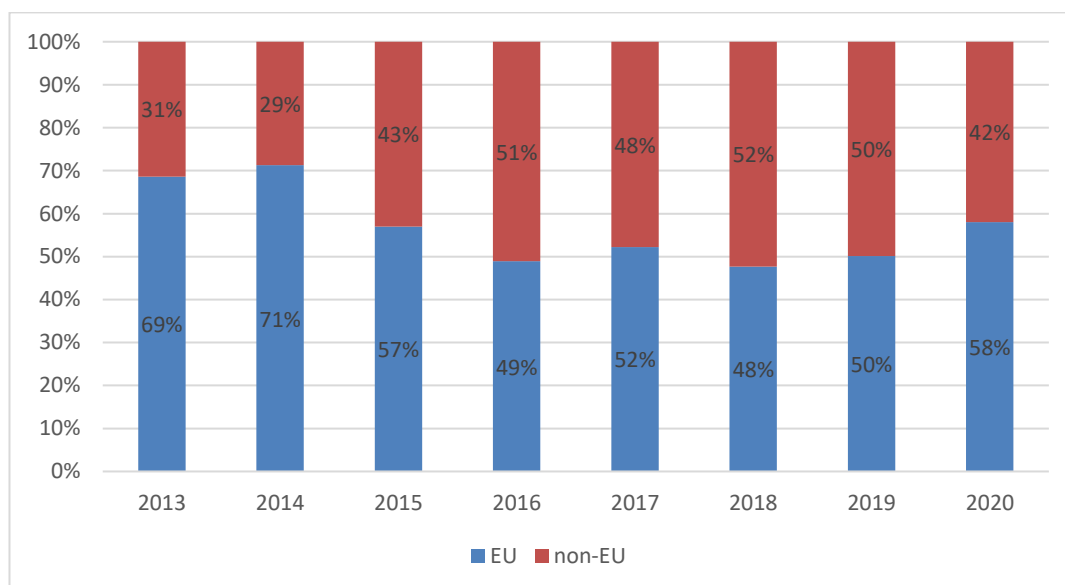




### 1.3.3. Victims by citizenship

In 2013-2020, 56% of the registered victims with known citizenship information were EU citizens and 44% were non-EU citizens. In 2% of cases, the victim’s citizenship was recorded as unknown. As Figure 14 shows, the share of EU victims gradually decreased between 2013 and 2018 and then increased somewhat in 2020.<sup>254</sup> In 2016 and 2018 the number of registered non-EU victims eclipsed that of those with EU citizenship.

**Figure 14: Trends in victims by citizenship group in the EU27, as a % of the total cases of THB with citizenship reported (2013-2020)**



As Table 1 shows, the main countries of citizenship of EU victims were Romania (9,392), Hungary (3,565), Bulgaria (3,424), France (3,136), and the Netherlands (2,558).

**Table 1: Citizenship of victims of THB (EU citizens, 2013-2020)**

Country	Number
Romania	9392
Hungary	3565
Bulgaria	3424
France	3136

<sup>254</sup> The ratio of EU and non-EU victims in 2010-2012 was similar to that of 2013. European Commission, Eurostat, Trafficking in human beings: 2015 edition, Publications Office, 2015, <https://data.europa.eu/doi/10.2785/512112>

Netherlands	2558
Poland	1551
Germany	1262
Italy	961
Slovakia	605
Lithuania	421
Portugal	387
Latvia	261
Croatia	218
Spain	203
Czech Republic	176
Greece	141
Estonia	76
Finland	62
Austria	56
Belgium	23
Ireland	21
Slovenia	20
Cyprus	18
Denmark	8
Malta	6
Sweden	3
Luxembourg	1

The main countries of citizenship of non-EU victims in the EU were Nigeria (6,513), China (1,417), Morocco (824), Ukraine (743), and Philippines (605) (see

Country	Number
Nigeria	6513
China	1417
Morocco	824
Ukraine	743
Philippines	605
Brazil	588
Moldova	473
Pakistan	418
India	406
Albania	378
Cameroon	375
Uganda	317
Afghanistan	303
Colombia	295
Guinea	291
Vietnam	283
Bangladesh	279
Thailand	257
Venezuela	228
Tunisia	221
Sierra Leone	217
Serbia	214
Algeria	205
Bosnia and Herzegovina	194

Gambia	193
Iraq	192
Ghana	190
Russia	187
Egypt	172
Syria	172
Côte d'Ivoire	161
Dominican Republic	156
Paraguay	150
Somalia	146
Senegal	140
Eritrea	138
Nepal	130
Peru	126
Democratic Republic of the Congo	124
North Korea	119
Indonesia	109
Turkey	107
Angola	93
North Macedonia	86
Iran	84
Belarus	81
Vietnam	77
Ethiopia	66
Taiwan	60

Mali	59
Sri Lanka	57
Honduras	52
Comoros	49
Nicaragua	49
Kenya	46
Zimbabwe	43
Mongolia	39
Equatorial Guinea	36
Niger	35
Tajikistan	35
Benin	33
Liberia	32
Argentina	27
Georgia	27
Ecuador	26
Kosovo	25
Republic of the Congo	24
Suriname	24
Armenia	23
Burkina Faso	23
Cuba	23
Guinea-Bissau	22
Bolivia	21
El Salvador	21

Mauritius	20
Sudan	20
Uzbekistan	20
Kyrgyzstan	17
United Kingdom	16
Madagascar	14
South Africa	14
Togo	14
Burundi	13
Tanzania	10
Zambia	10
Other	1,706

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**Table 2: Citizenship of victims of THB (non-EU citizens, 2013-2020)<sup>255</sup>**

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<sup>255</sup> Note: “Other” includes all nationalities with fewer than 10 individuals, those marked as “other,” “autre Afrique,” “autre Europe est,” “autre Europe ouest,” and those marked as “stateless.” Entries marked as “Congo” subsumed under “Democratic Republic of the Congo.”

Country	Number
Nigeria	6513
China	1417
Morocco	824
Ukraine	743
Philippines	605
Brazil	588
Moldova	473
Pakistan	418
India	406
Albania	378
Cameroon	375
Uganda	317
Afghanistan	303
Colombia	295
Guinea	291
Vietnam	283
Bangladesh	279
Thailand	257
Venezuela	228
Tunisia	221
Sierra Leone	217
Serbia	214
Algeria	205
Bosnia and Herzegovina	194

Gambia	193
Iraq	192
Ghana	190
Russia	187
Egypt	172
Syria	172
Côte d'Ivoire	161
Dominican Republic	156
Paraguay	150
Somalia	146
Senegal	140
Eritrea	138
Nepal	130
Peru	126
Democratic Republic of the Congo	124
North Korea	119
Indonesia	109
Turkey	107
Angola	93
North Macedonia	86
Iran	84
Belarus	81
Vietnam	77
Ethiopia	66
Taiwan	60



Mali	59
Sri Lanka	57
Honduras	52
Comoros	49
Nicaragua	49
Kenya	46
Zimbabwe	43
Mongolia	39
Equatorial Guinea	36
Niger	35
Tajikistan	35
Benin	33
Liberia	32
Argentina	27
Georgia	27
Ecuador	26
Kosovo	25
Republic of the Congo	24
Suriname	24
Armenia	23
Burkina Faso	23
Cuba	23
Guinea-Bissau	22
Bolivia	21
El Salvador	21

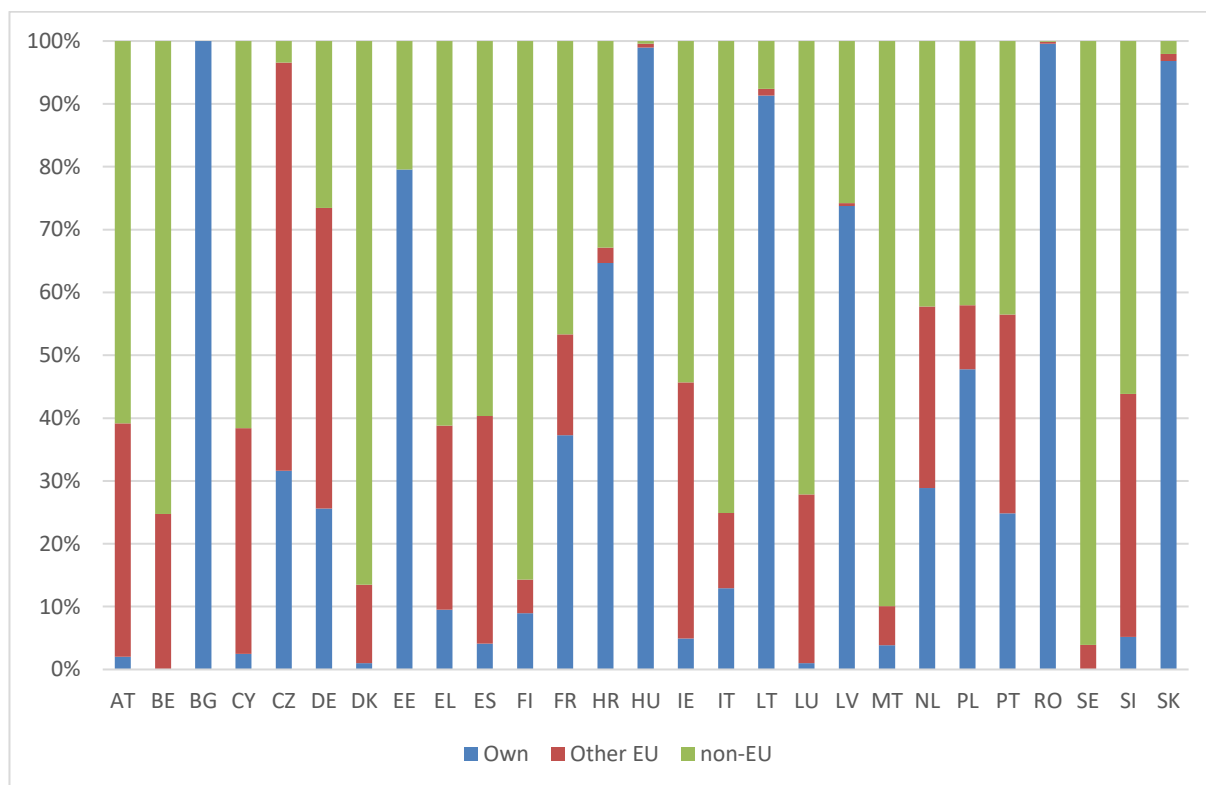
Mauritius	20
Sudan	20
Uzbekistan	20
Kyrgyzstan	17
United Kingdom	16
Madagascar	14
South Africa	14
Togo	14
Burundi	13
Tanzania	10
Zambia	10
Other	1,706

Across the EU27, approximately one-third (36%) of all registered victims were citizens of the country in which they are registered.<sup>256</sup> Citizens of other EU countries accounted for approximately one fifth (21%) of all registered victims and non-EU citizens for approximately two fifths (44%) of registered victims. However, this EU-level overview obscures important differences across individual Member States (see Figure 15). In some, the vast majority of registered victims were citizens of that country – this was particularly the case for Bulgaria (100%), Romania (100%), Hungary (99%), Slovakia (96%), and Lithuania (91%). The Member States with the highest share of citizens of other EU countries among registered victims were the Czech Republic (65%), Germany (48%), Ireland (41%), Slovenia (39%), and Austria (37%). Lastly, in a few countries, the vast majority of registered victims were non-EU citizens. This was notably the case for Sweden (96%), Malta (90%), Finland (86%), Denmark (87%), and Belgium and Italy (both 75%).

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<sup>256</sup> No information on citizenship was available for 8% of all victims. Further, the citizenship of about 2% of victims as indicated as “unknown.” These records were excluded from the analysis presented in this paragraph.

**Figure 15: Victims by citizenship type per Member State, as a % of the total cases of THB reported (2013-2020)**

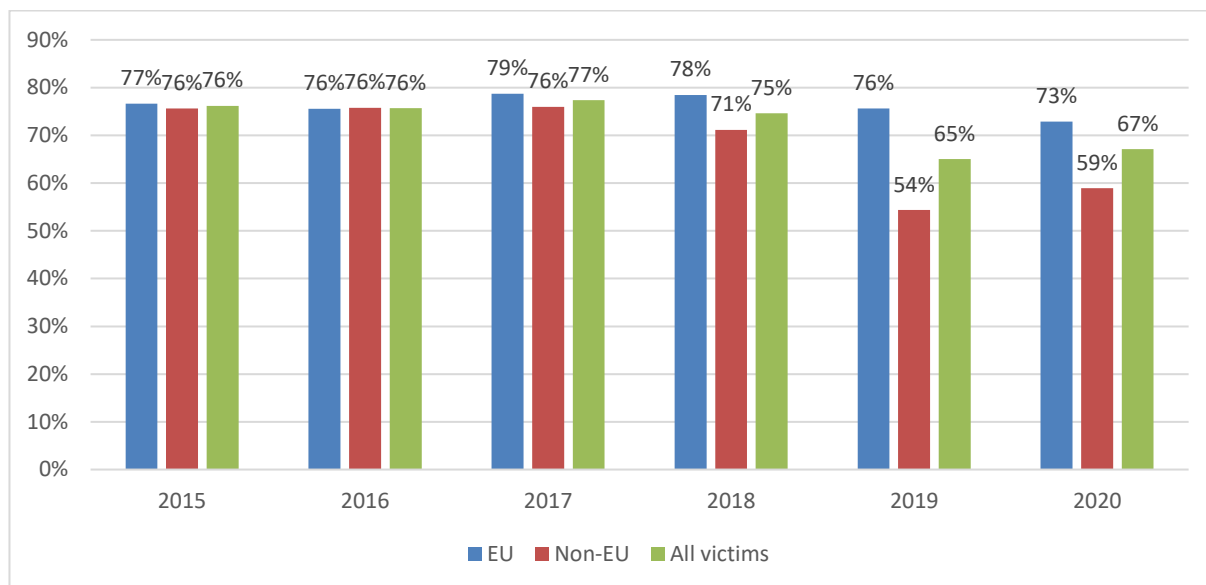


During 2015-2020,<sup>257</sup> there was very little difference in the sex breakdown between EU and non-EU victims until 2018. Afterwards, victims with EU citizenship were notably more likely to be female than victims with non-EU citizenship, although sex information was not available for 7% of citizenship records during the reporting period.<sup>258</sup> The majority of both groups were female, with the gap between the share of women in the EU and the non-EU group reaching 14 percentage points in 2020 (see Figure 16).

<sup>257</sup> Sex breakdown of victims by citizenship group is not available for 2013 and 2014.

<sup>258</sup> One implication of this data gap is that the share of females arrived at by looking at victims with citizenship information only is somewhat lower than the share of females when analyzing all victims with sex data (72% vs. 75%, respectively). In other words, female victims appear to be slightly less likely to have their citizenship information identified and recorded than male victims.

**Figure 16: Share of female victims by citizenship group among victims registered in the EU27 (2015-2020)**

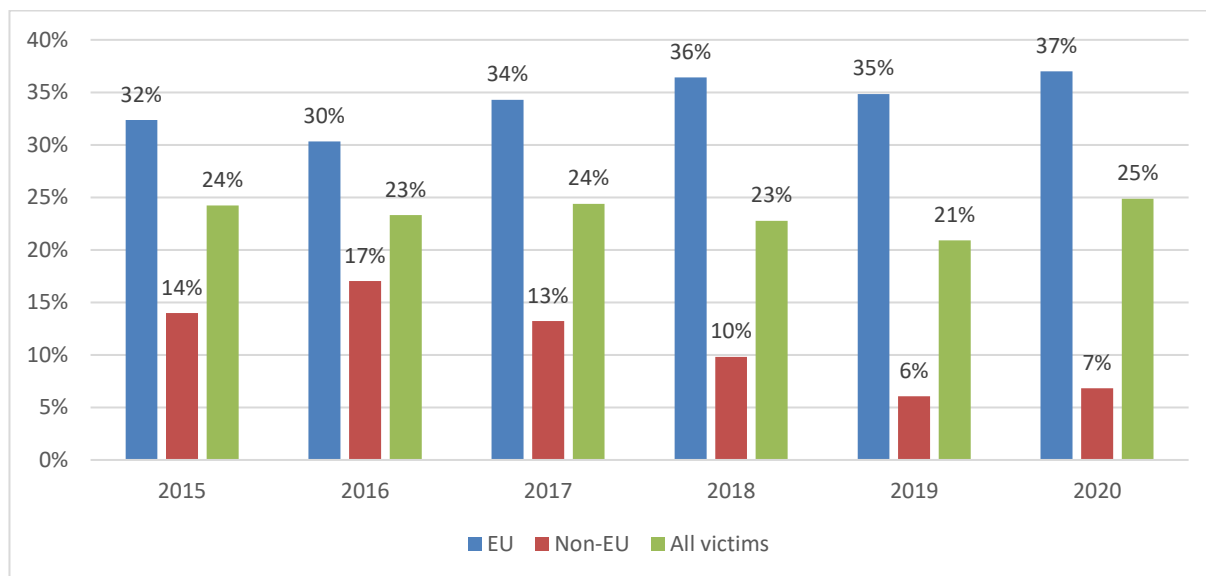


During the same reference period, there was a marked difference between the EU and non-EU groups and their age distribution where data on victims' age group were provided. There were notably more children among victims with EU citizenship than among victims with non-EU citizenship and the difference increased over time, largely due to the decrease in the share of children in the non-EU group (see Figure 17). Age group data were not available for 11% of records with citizenship information.<sup>259</sup>

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<sup>259</sup> Similarly to the discussion of sex breakdowns presented above, an analysis of records with both citizenship and age group data yields a share of 23% of children among all victims, whereas an analysis of records with only age group data yields a share of 21% of children among all victims. In other words, child victims appear to be slightly more likely to have their citizenship information identified and recorded than adult victims.

**Figure 17: Share of children by citizenship group among victims registered in the EU27 (2015-2020)**

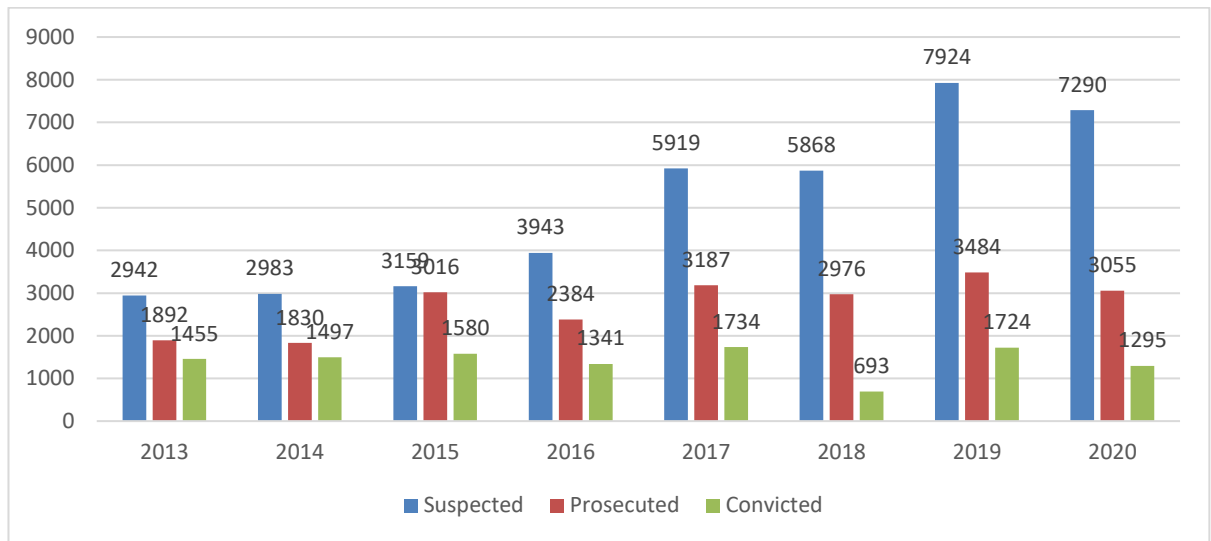


#### 1.4. Trends in criminal justice system indicators related to THB

ESTAT collects data on a variety of aspects pertaining to the criminal justice involvement of individuals in connection with THB cases. Figure 18 shows trends in three headline indicators related to the processing of individuals in the criminal justice system – suspects individuals, prosecuted individuals, and convicted individuals. Of the three, the number of recorded suspects individuals shows the most pronounced increase, nearly doubling from approximately 3,000 in 2013 to just under 8,000 in 2019. However, much of this increase is attributable to a gradual closing of data gaps. For instance, there are no data from Italy before 2017 and Italy alone recorded approximately 2,000 suspects in 2017 and 2018.<sup>260</sup> The number of recorded prosecuted individuals also rose over the reporting period, with a marked increase between 2014 and 2015 and a relatively stable trend thereafter. Again, the observed rise appears to be primarily a function of the fact that 2015 is the first year in which data from France are available. Lastly, the number of recorded convicted individuals increased somewhat over the reporting period, with a precipitous drop recorded in 2018. As with the previous two indicators, even this is largely explicable by data issues – no data are available for that year for Belgium, France, and the Netherlands, all Member States with comparatively high numbers of recorded convictions in prior years.

<sup>260</sup> The increase recorded in 2019 is also largely attributable to data from Italy, which reported an increase of more than 2,000 suspects from 2018 to 2019.

**Figure 18: Trends in headline criminal justice indicators related to THB cases (2015-2020)**



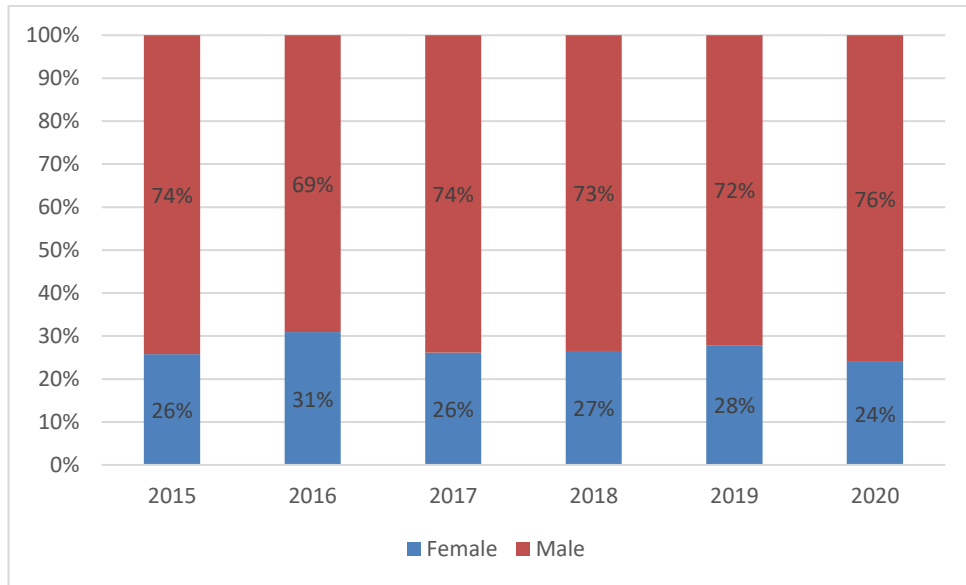
#### 1.4.1. Individuals suspected of THB crimes

Over the period 2015-2020,<sup>261</sup> the majority of individuals suspected of THB crimes where sex information was recorded were male (73%). As Figure 19, shows, the sex breakdown of THB suspects stayed relatively constant over time, with the share of males staying between 69% and 76% in individual years.

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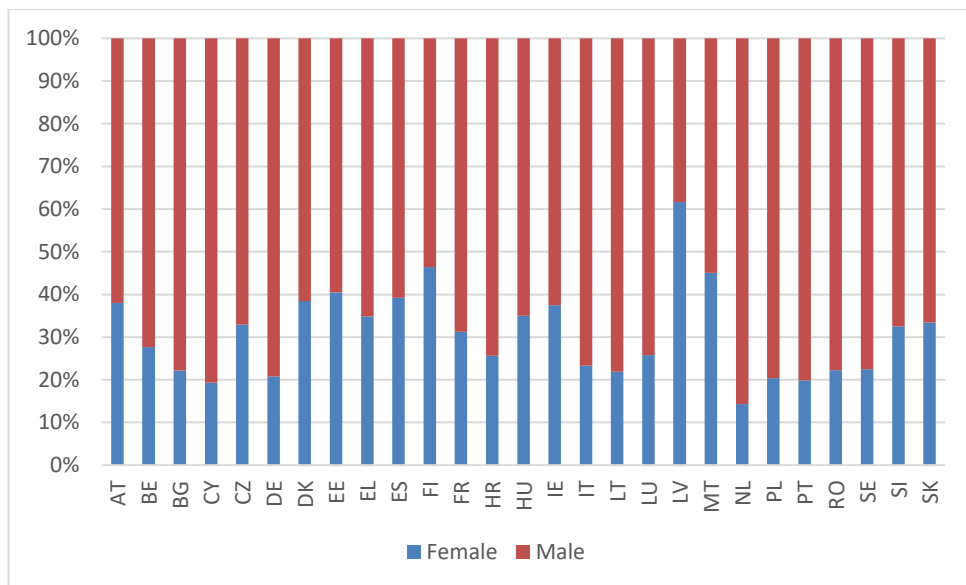
<sup>261</sup> Data on the sex of suspects only began being available in 2015. The sex of suspects was recorded as “unknown” in 5% of instances over the 2015-2020 period, although completeness of data improved substantially over time – in 2019 and 2020 fewer than 1% of records indicated the sex of the suspect as “unknown”.

**Figure 19: Sex of individuals suspected of THB crimes in EU27 (by year, 2015-2020)**



Correspondingly, men accounted for the majority of individuals suspected of THB crimes in all but one Member State (see Figure 20). The exception to the rule was Latvia where women accounted for 62% of recorded suspects, in further three Member States (EE, FI, MT), the proportion of women among suspects exceeded 40%.

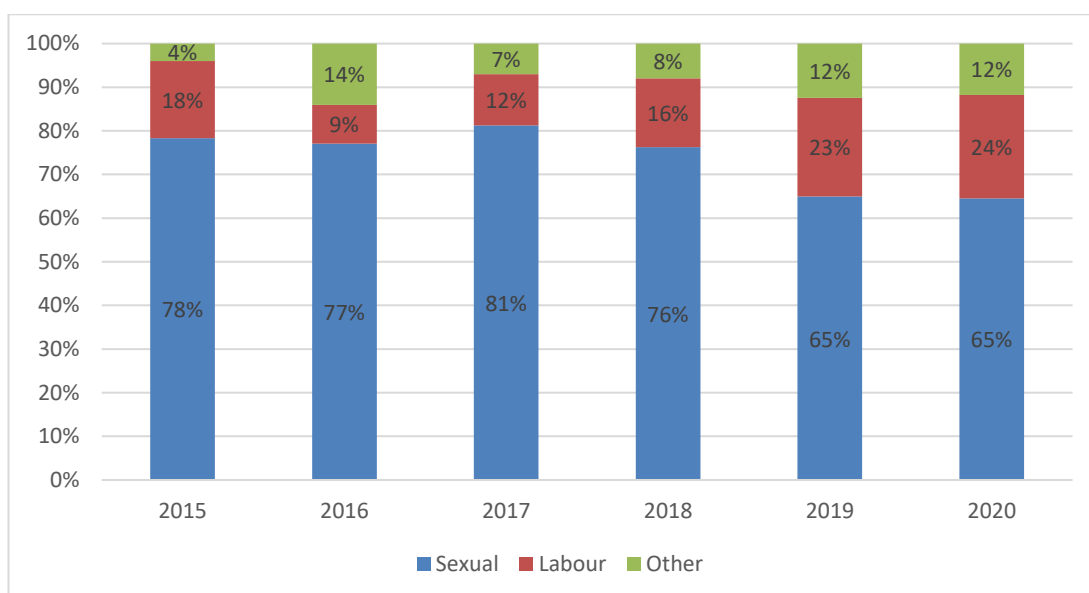
**Figure 20: Sex of individuals suspected of THB crimes in EU27 (by Member State, 2015-2020)**



Perhaps unsurprisingly, the vast majority (96%) of those suspected of THB crimes in 2015-2020 were adults.<sup>262</sup> As with gender, the age breakdown of suspects stayed constant over the reporting period, with the share of children among suspects staying between 2% and 5% in individual years. In four Member States, the share of children was notably higher than the EU average. In Estonia, children accounted for the majority of recorded suspects (53%); however, this needs to be viewed in light of a very small number of suspects recorded in Estonia in 2015-2020 (n=42). In further three Member States (CZ, HU, SE), the share of children exceeded 10%.<sup>263</sup>

With respect to various types of exploitation, individuals were most frequently suspected in relation to sexual exploitation (72%), followed by labour (18%) and other (10%) types of exploitation.<sup>264</sup> However, as Figure 21 shows, the share of sexual exploitation as an underlying reason decreased over time from a high of 81% in 2017 to 65% in 2020. This was contrasted with a rise in the frequency of labour exploitation, reaching 24% of cases of suspects in 2020, and with a somewhat less notable rise in suspicions related to other forms of exploitation.

**Figure 21: Individuals suspected of THB crimes and underlying form of exploitation in EU27 (by year, 2015-2020)**



Correspondingly, in most Member States sexual exploitation was the most commonly recorded form in connection with suspects (see Figure 22). The Member States with the highest shares of sexual exploitation cases were Finland (100%), Hungary (97%), Greece (92%), Ireland (88%), and the Czech Republic (87%). However, in three Member States, labour exploitation was the most frequently indicated form – these were Malta (82%), Luxembourg (52%) and Belgium (48%).

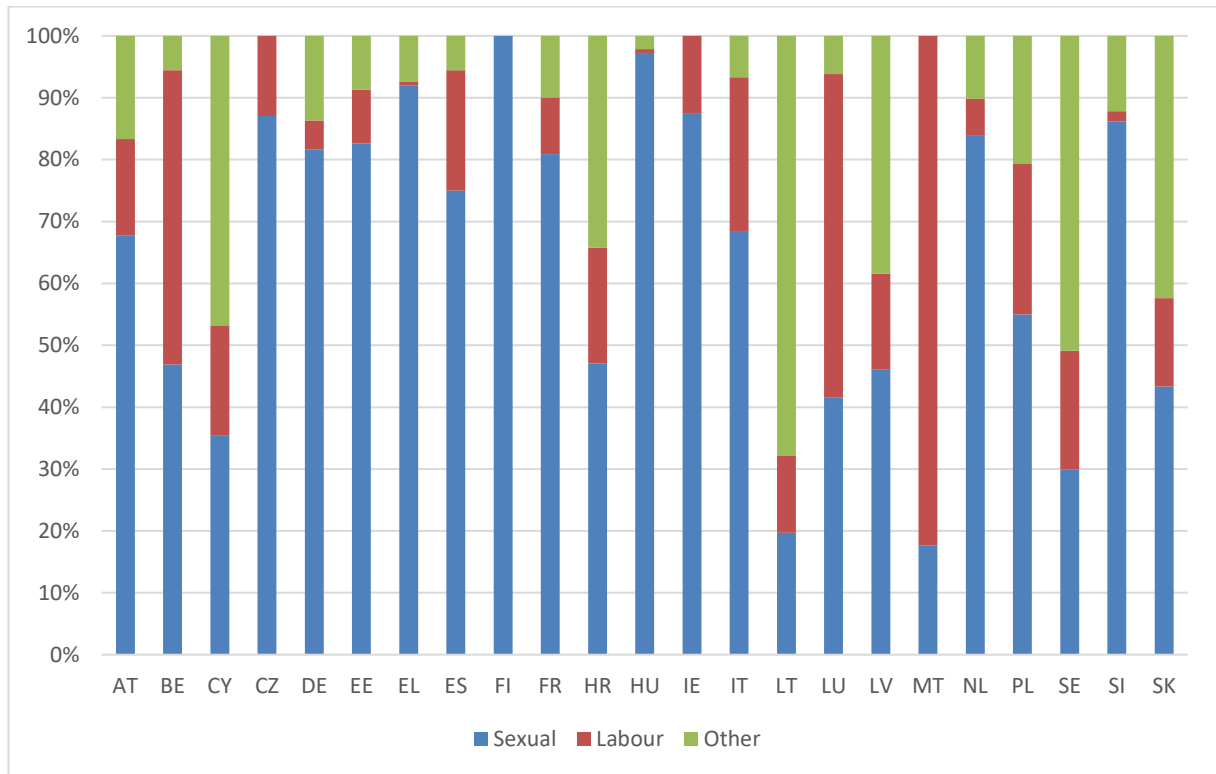
<sup>262</sup> Age group was recorded as “unknown” in 9% of cases. No data on age group of suspects provided by PT.

<sup>263</sup> In the case of Sweden, this is possibly attributable to data issues. Information on suspects’ age group is only available for 2015 and is recorded as “unknown” in the remaining years.

<sup>264</sup> Form of exploitation marked as “unknown” in 12% of cases. No data on forms of exploitation and suspects available from BG, DK, PT, RO.



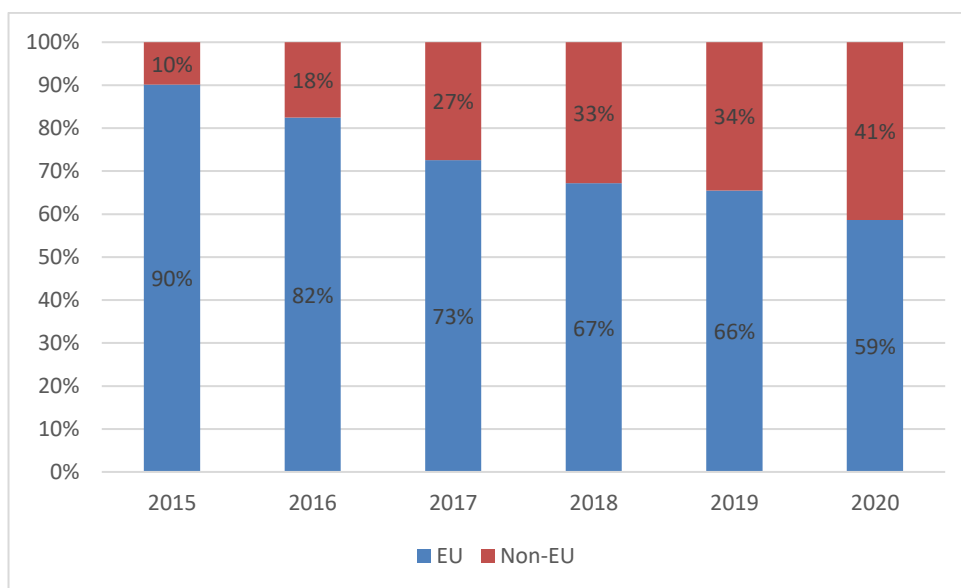
**Figure 22: Individuals suspected of THB crimes and underlying form of exploitation in EU27 (by Member State, 2015-2020)<sup>265</sup>**



Lastly, with respect to the citizenship of individuals suspected of THB crimes, EU citizens accounted for more than two thirds (70%) of all suspects with known country of citizenship during the 2015-2020 period. However, as Figure 23 shows, the proportion of non-EU citizens among suspects increased steadily during the reporting period, reaching 41% in 2020.

<sup>265</sup> Note: Data missing for BG, DK, PT, RO.

**Figure 23: Citizenship of individuals suspected of THB crimes (by year, 2015-2020)**



EU Member States with the highest number of nationals among those suspected of THB crimes were Romania (5,685), Italy (5,545), France (3,914), Hungary (1,882), and Germany (1,219) (see Table 3).

**Table 3: Citizenship of individuals suspected of THB crimes (EU citizens, 2015-2020)**

Country	Number of suspects
Romania	5685
Italy	5545
France	3914
Hungary	1882
Germany	1219
Bulgaria	1102
Belgium	436
Spain	381
Greece	248
Slovakia	247

Netherlands	224
Latvia	214
Poland	192
Croatia	185
Lithuania	147
Czech Republic	129
Slovenia	80
Austria	67
Finland	66
Portugal	65
Estonia	29
Cyprus	24
Malta	8
Luxembourg	7
Denmark	6
Sweden	6
Ireland	5

The most frequent non-EU nationalities among suspects were Nigeria (2,441), China (1,165), and Albania (695) (Table 4).

**Table 4: Citizenship of individuals suspected of THB crimes (non-EU citizens, 2015-2020)** <sup>266</sup>

Country	Number
Nigeria	2441

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<sup>266</sup> Note: “Other” includes all nationalities with fewer than 10 individuals, those marked as “other” and those marked as “stateless.”

China	1165
Albania	695
Pakistan	490
Morocco	456
Brazil	237
Tunisia	234
Turkey	222
India	194
Colombia	179
Algeria	145
Bangladesh	143
Serbia	140
Ukraine	138
Egypt	123
Syria	111
Bosnia and Herzegovina	97
Venezuela	89
Ghana	86
Iraq	86
Cameroon	82
Dominican Republic	72
Peru	65
Afghanistan	64
Russia	58
Côte d'Ivoire	57

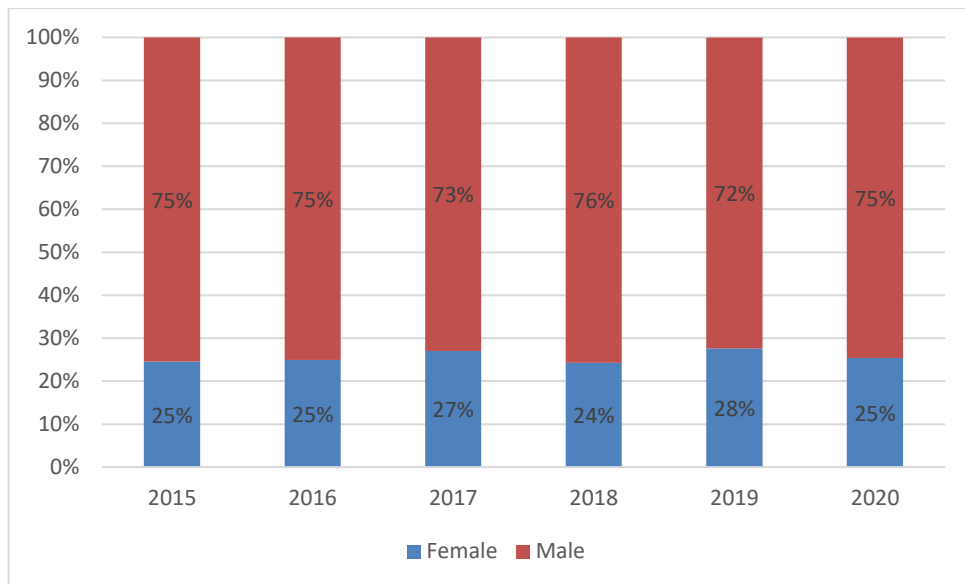
Senegal	54
Moldova	53
Philippines	51
Thailand	48
North Macedonia	44
Paraguay	40
Vietnam	46
Ecuador	39
Kosovo	30
Eritrea	27
Belarus	26
Sudan	26
Gambia	25
Mali	25
United Kingdom	21
DR Congo	20
Iran	20
Liberia	17
Armenia	16
Guinea	16
Sri Lanka	15
Sierra Leone	14
Nicaragua	13
Somalia	13
Ethiopia	12

Argentina	11
Burkina Faso	11
Cuba	11
Honduras	10
Other	839

#### 1.4.2. Individuals prosecuted for THB crimes

Most individuals prosecuted for THB crimes in 2015-2020 in the EU27 where information on sex was provided were male (74%).<sup>267</sup> There were no notable changes in this indicator over the reporting period, with the share of males staying between 72% and 76% in individual years (Figure 24).

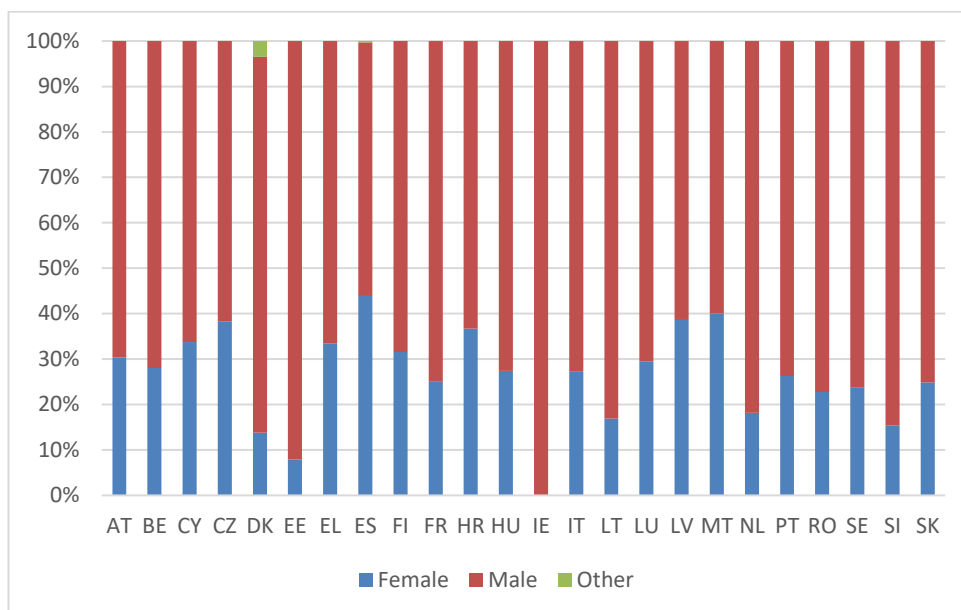
**Figure 24: Sex of individuals prosecuted for THB crimes in EU27 (by year, 2015-2020)**



Men accounted for the majority of prosecuted individuals in all Member States during the reporting period. The Member States with the highest shares of women among those prosecuted were Spain (44%), Malta (40%), Latvia (39%), the Czech Republic (38%), and Croatia (37%) (Figure 25).

<sup>267</sup> Information on sex of prosecuted individuals was recorded as “unknown” in 9% of cases in 2015-2020. No sex data were available for BG, DE, and PL.

**Figure 25: Sex of individuals prosecuted for THB crimes in EU27 (by Member State, 2015-2020)<sup>268</sup>**

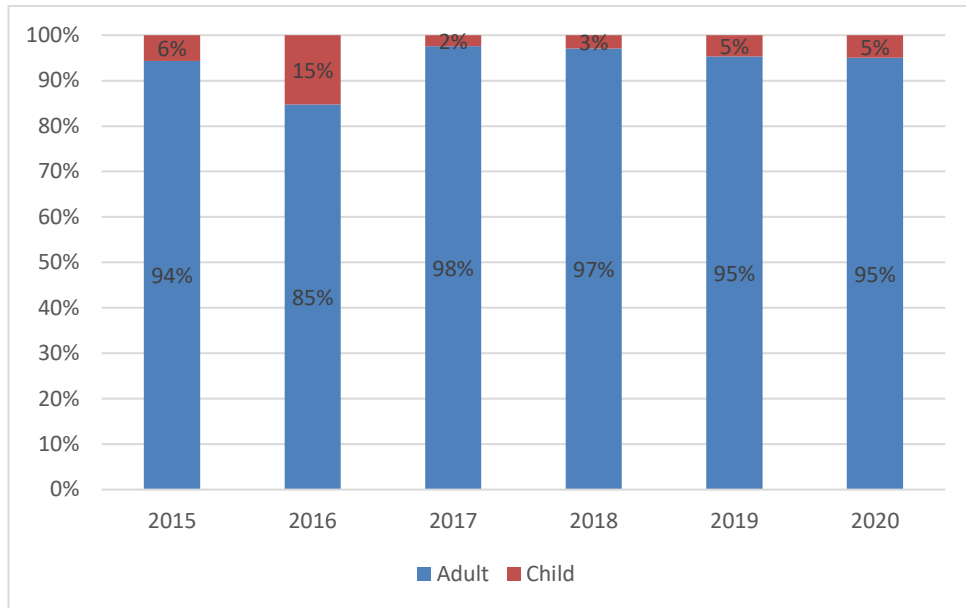


As Figure 26 shows, the vast majority of prosecuted individuals in 2015-2020 in EU27 were adults (95%). This indicator remained stable over the reporting period with the exception of 2016 when children accounted for 15% of recorded prosecuted individuals.<sup>269</sup> However, this deviation from the long-term average may be a function of available data – only 11 Member States provided information on sex in 2016 of which two (HU and RO) reported comparatively high numbers of defendants who were children.

<sup>268</sup> Note: Data missing for BG, DE, PL.

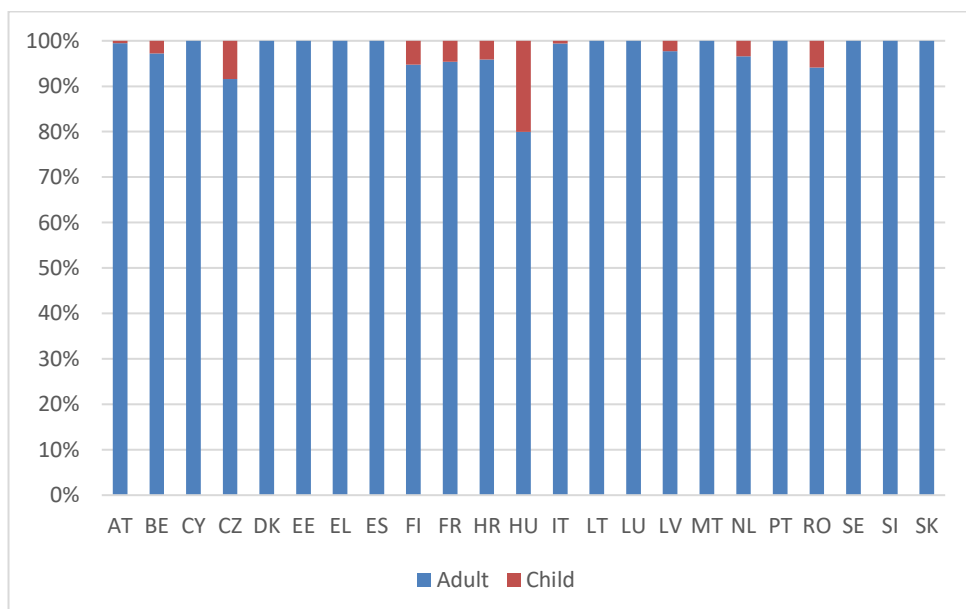
<sup>269</sup> Over the reporting period, in 25% of cases the age group of the prosecuted individual was recorded as “unknown”. No age group data were available for BG, DE, IE, and PL.

**Figure 26: Age of individuals prosecuted for THB crimes in EU27 (by year, 2015-2020)**



Correspondingly, adults were the vast majority of prosecuted individuals in all Member States. Hungary stands out as having a relatively higher share of children among those prosecuted for THB crimes (20%). The Czech Republic (8%) and Romania (6%) also reported above-average shares of children; by contrast, twelve Member States (CY, DK, EE, EL, ES, LT, LU, MT, PT, SE, SI, SK) did not report any prosecuted children, although in at least some cases this may have been a function of data reporting (see Figure 27).

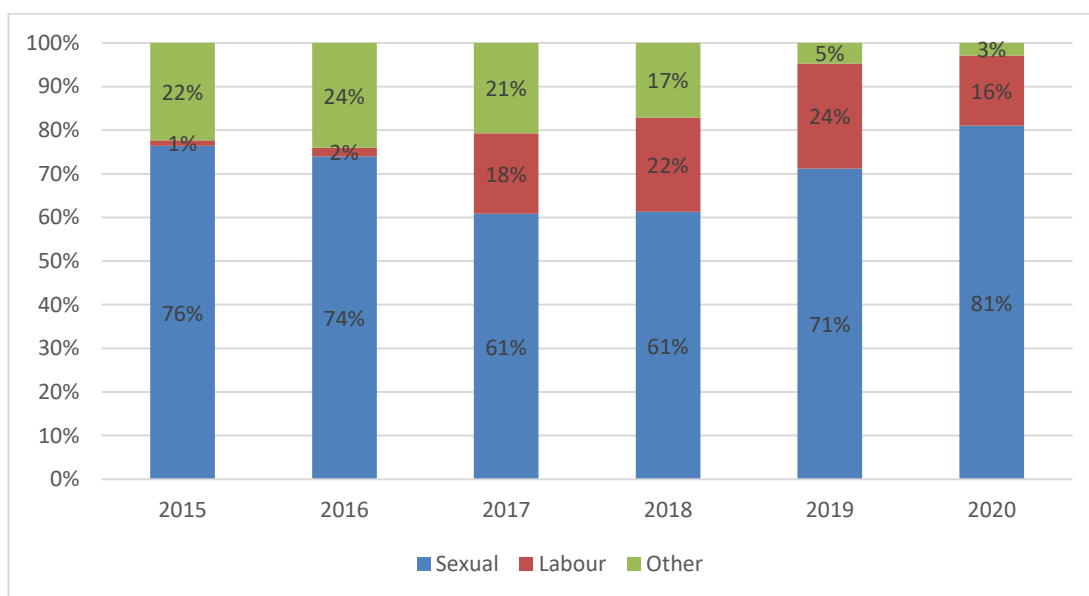
**Figure 27: Age of individuals prosecuted for THB crimes in EU27 (by Member State, 2015-2020)**





Sexual exploitation was the most common reason for prosecution, accounting for 71% of all recorded prosecuted persons.<sup>270</sup> Its share briefly decreased in 2017-2018 but recovered to reach 81% in 2020. Simultaneously, the share of labour exploitation cases increased from 1% in 2015 to 24% in 2019 and then falling to 16% in 2020%. The share of other forms of exploitation decreased steadily to represent only 3% of cases in 2020 (see Figure 28).

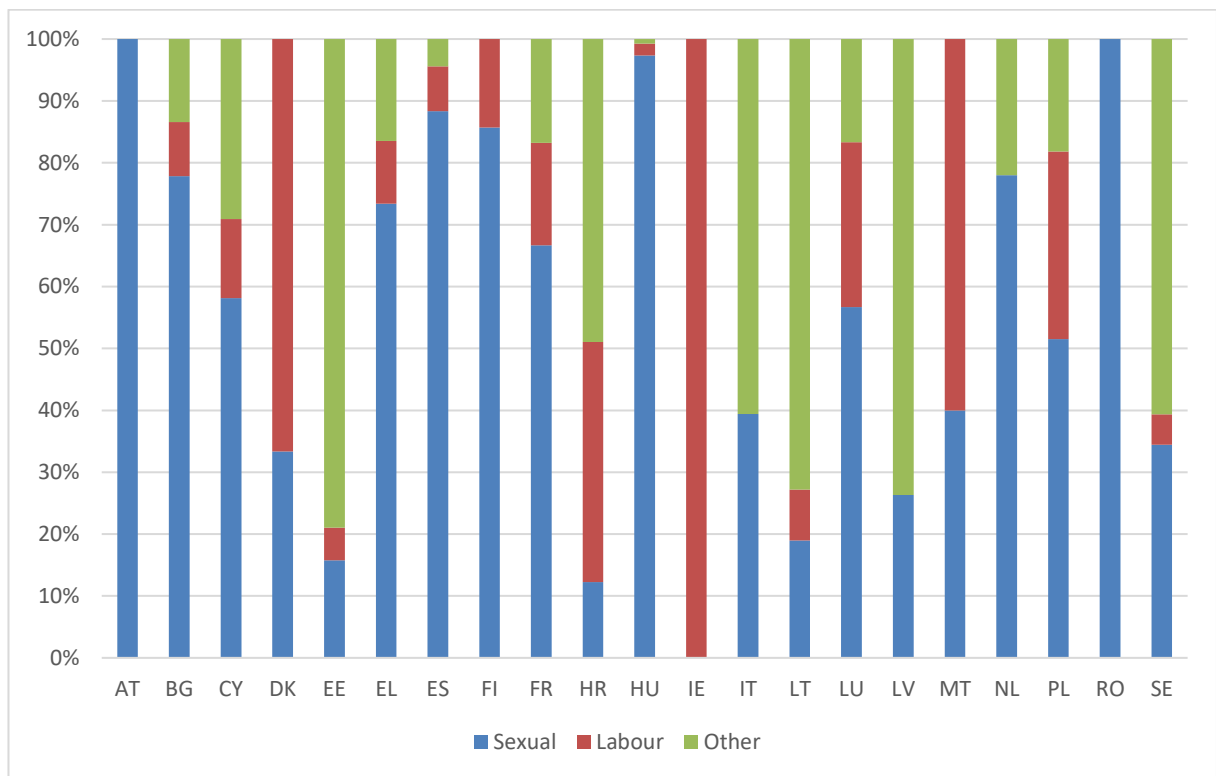
**Figure 28: Prosecuted individuals and underlying form of exploitation in EU27 (by year, 2015-2020)**



As with suspects, sexual exploitation was the most frequent form recorded for prosecuted individuals in most Member States, where the form was recorded as known, reaching 100% in Austria and Romania, and 97% in Hungary. Labour exploitation was the most common form of exploitation in Ireland (100% of cases), Denmark (67%), and Malta (60%) (see Figure 29).

<sup>270</sup> Form of exploitation was recorded as “unknown” in 10% of cases. No data on forms of exploitation and prosecuted persons available for BE, CZ, DE, PT, SI, SK.

**Figure 29: Prosecuted individuals and underlying form of exploitation in EU27 (by Member State, 2015-2020) <sup>271</sup>**

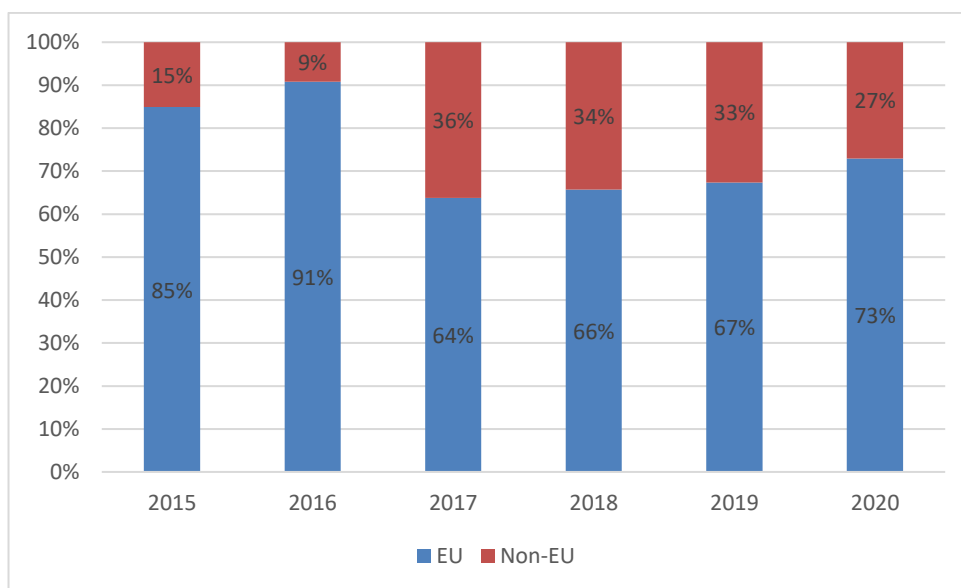


Similar to suspects, EU citizens accounted for a clear majority (72%) of individuals prosecuted for THB crimes with known country of citizenship. The share of non-EU citizens among prosecuted individuals rose sharply from 9% in 2016 to 36% in 2017 and has gradually decreased since then, reaching 27% in 2020 (Figure 30).<sup>272</sup>

<sup>271</sup> Note: Data missing for BE, CZ, DE, PT, SI, SK.

<sup>272</sup> The vast majority of prosecutions were recorded while the UK was a member of the EU. Only 16 prosecuted individuals were reported in the UK in 2020.

**Figure 30: Citizenship of prosecuted individuals (by year, 2015-2020)**



EU Member States with the highest number of citizens among prosecuted were France (2,934), Romania (2,560), Hungary (963), Belgium (759), and the Netherlands (238) (Table 5).

**Table 5: Citizenship of individuals prosecuted for THB crimes (EU citizens, 2015-2020)**

Country	Number
France	2934
Romania	2560
Hungary	963
Belgium	759
Netherlands	238
Bulgaria	215
Poland	202
Lithuania	198
Italy	148
Austria	128
Czech Republic	103

Greece	89
Portugal	69
Spain	60
Croatia	49
Latvia	43
Cyprus	38
Slovakia	24
Estonia	23
Germany	20
Malta	12
Finland	11
Slovenia	9
Denmark	8
Luxembourg	7
Sweden	2

The most common non-EU countries of citizenship among registered defendants for THB crimes were Nigeria (655), China (368), and the United Kingdom (153) (Table 6).

**Table 6: Citizenship of individuals prosecuted for THB crimes (non-EU citizens, 2015-2020)**

273

Country	Number
Nigeria	655
China	368
United Kingdom	153

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<sup>273</sup> Note: “Other” includes all nationalities with fewer than 10 individuals, those marked as “other” and those marked as “stateless.”

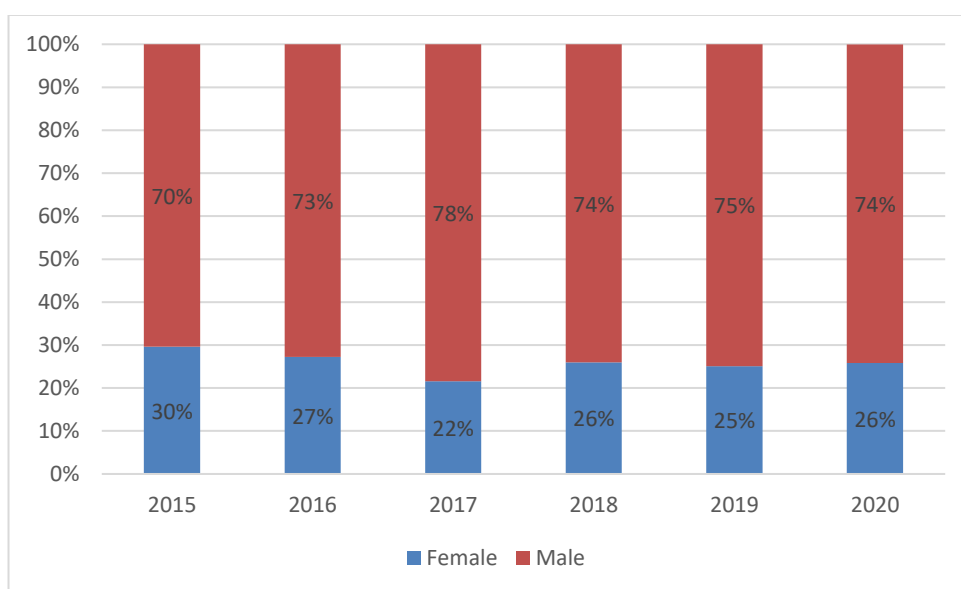
Albania	78
Morocco	58
Serbia	52
Eritrea	39
Ukraine	36
Pakistan	35
Brazil	34
Turkey	32
India	26
Suriname	25
Egypt	24
Bosnia & Herzegovina	22
Russia	22
Iraq	21
Moldova	19
Venezuela	19
Iran	18
Ethiopia	16
Syria	16
Afghanistan	14
Algeria	13
Cameroon	13
Bangladesh	12
Colombia	11
Paraguay	11

Dominican Republic	10
North Macedonia	10
Sudan	10
Vietnam	10
Other	1,610

### 1.4.3. Individuals convicted of THB crimes

In line with the preceding sections, men accounted for a clear majority (74%) of individuals convicted of THB crimes in the EU27 in 2015-2020.<sup>274</sup> As Figure 31 shows, there was very little variation in this indicator over time.

**Figure 31: Sex of individuals convicted of THB crimes in EU27 (by year, 2015-2020)**

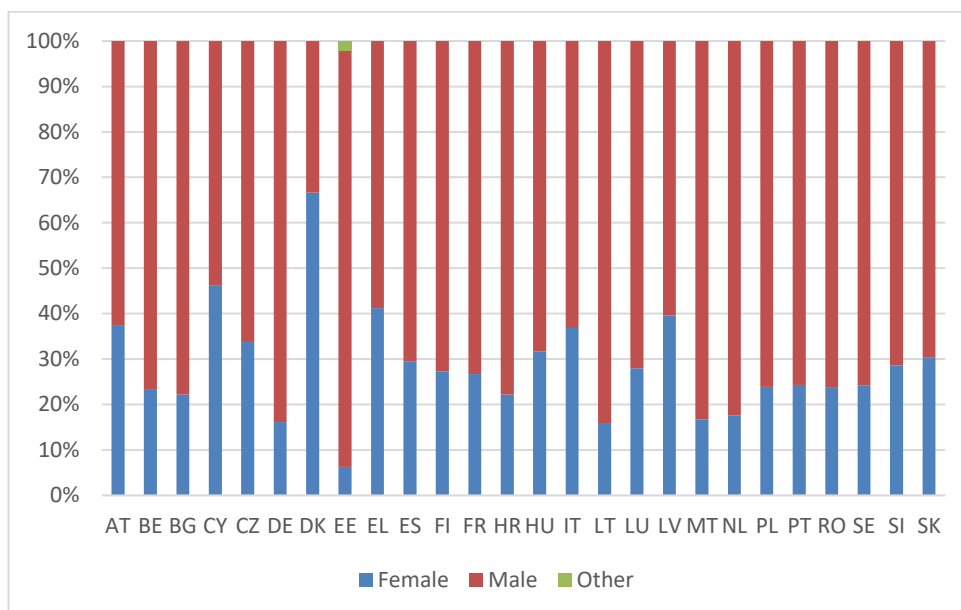


Correspondingly, men accounted for the majority of convicted individuals in all but one Member State.<sup>275</sup> Member States with comparatively higher shares of women among those convicted were (in descending order) Denmark, Cyprus, Greece, Latvia, and Austria (see Figure 32). However, it is plausible that the observed sex breakdowns are distorted by the relatively high prevalence of the “unknown” sex designation in available data.

<sup>274</sup> Sex was reported as “unknown” in 9% of cases. No sex information data available for IE.

<sup>275</sup> The only exception was Denmark, with women representing 67% of convicted individuals. However, this is likely a function of data availability as only 3 cases with known sex were reported in Denmark over the 2015-2020 period.

**Figure 32: Sex of individuals convicted for THB crimes in EU27 (by Member State, 2015-2020)<sup>276</sup>**



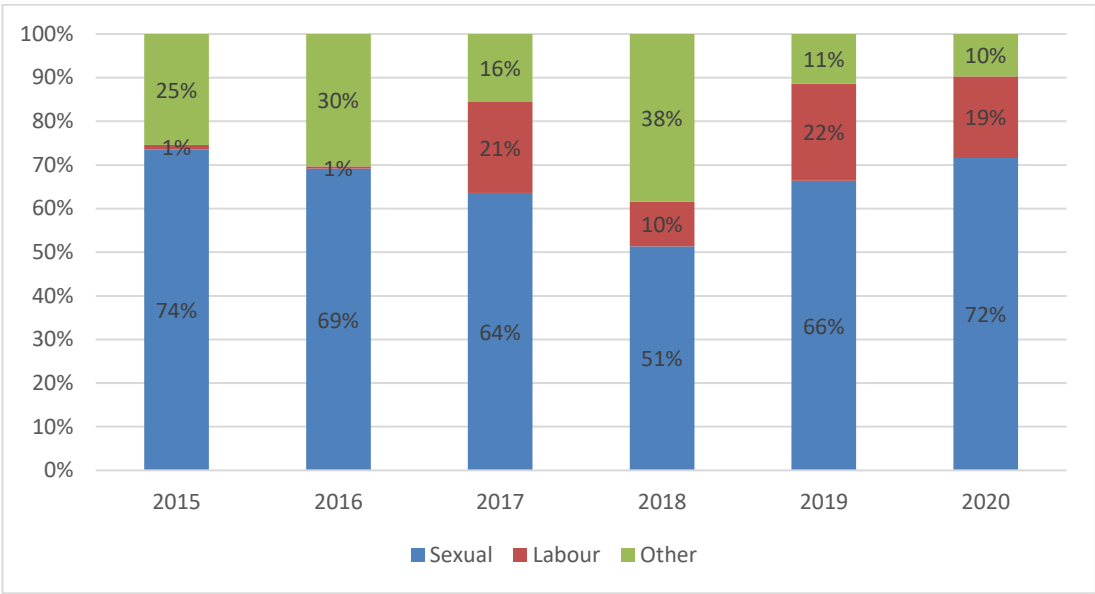
Adults accounted for nearly all (98%) individuals convicted for THB crimes in 2015-2020 and never in the reporting period did the share of children among those convicted exceed 3%. This is reflected in the situation in individual Member States, of which 13 reported no convicted children (AT, BE, CY, DK, EL, LT, LU, LV, MT, PT, SE, SI, SK). Croatia was the Member States with by far the highest share of children among convicted individuals (22%) – though with a very low denominator – followed by the Czech Republic (10%) and Finland (9%).

Sexual exploitation was consistently the most common form of exploitation in connection with convicted individuals, accounting for 68% of cases.<sup>277</sup> Its share decreased notably in 2018 but then reversed the trend to reach 72% in 2020. The share of labour exploitation grew over time to reach approximately 20% in recent years. By contrast, the share of other forms of exploitation decreased over the reporting period (Figure 33).

<sup>276</sup> Note: Data missing for IE.

<sup>277</sup> “Unknown” form of exploitation was recorded in 14% of cases. No data on forms of exploitation and convicted individuals available for BG, CZ, DK, HU, IE, IT, PT.

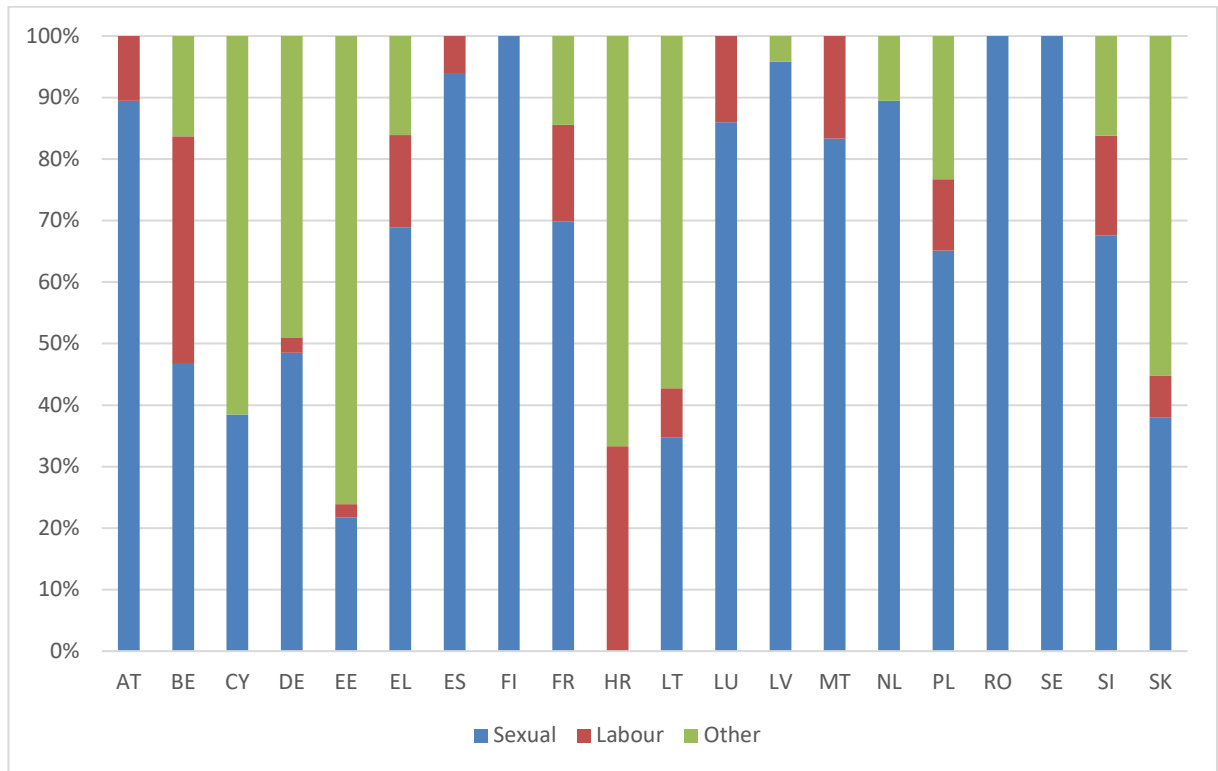
**Figure 33: Convicted individuals and underlying form of exploitation in EU27 (by year, 2015-2020)**



Correspondingly, among Member States reporting on forms of exploitation in relation to conviction, most indicate sexual exploitation as the most common one and in three Member States (FI, RO, SE) even the only one reported. No Member State reported labour exploitation as the most common form, while other forms of exploitations were most frequently reported in Cyprus, Estonia, Croatia, Lithuania, and Slovakia (Figure 34).



**Figure 34: Convicted individuals and underlying form of exploitation in EU27 (by Member State, 2015-2020) <sup>278</sup>**

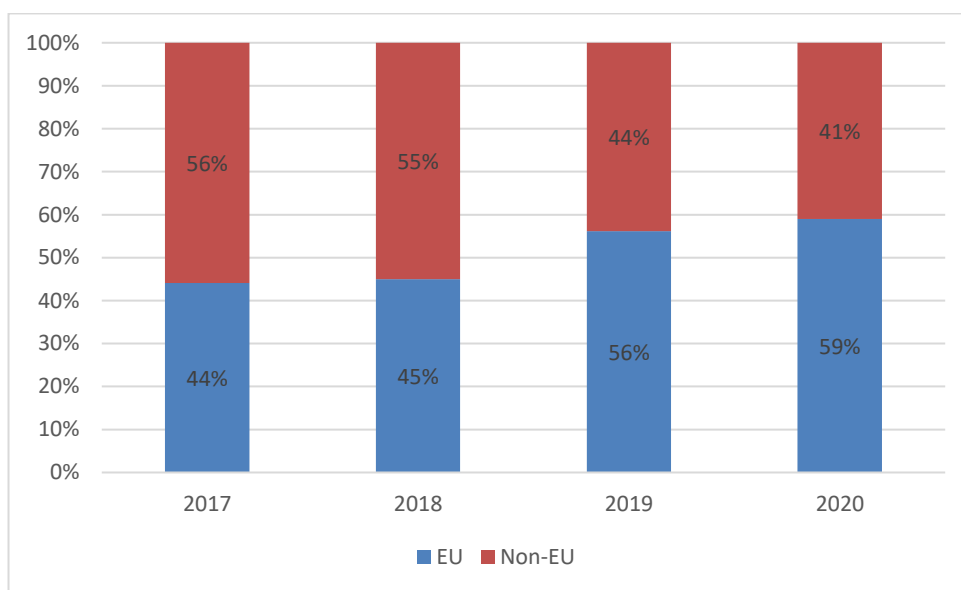


<sup>278</sup> Note: Data missing for BG, CZ, DK, HU, EL, IT, PT.

Since 2017, data are also available on the citizenship of convicted individuals. In contrast with suspected and prosecuted persons, convicted individuals were broadly evenly split between EU citizens (51%) and non-EU citizens (49%). As

**Figure 35** shows, the share of non-EU citizens decreased somewhat overtime from 56% in 2017 to 41% in 2020.

**Figure 35: Citizenship of convicted individuals (by year, 2017-2020)**



*Source: Authors' elaboration based on ESTAT data*

EU Member States with the highest numbers of citizens among convicted individuals were Romania (1,178), France (1,047), Germany (371), Bulgaria (240), and Lithuania (92) (Table 7).

**Table 7: Citizenship of individuals convicted of THB crimes (EU citizens, 2017-2020)**

Country	Number
Romania	1178
France	1047
Germany	371

Bulgaria	240
Lithuania	92
Poland	86
Belgium	69
Hungary	67
Netherlands	62
Spain	61
Slovakia	48
Portugal	45
Czech Republic	43
Italy	34
Latvia	25
Estonia	18
Austria	10
Croatia	8
Finland	6
Malta	6
Slovenia	4
Greece	3
Denmark	1
Cyprus	1

The most frequently recorded non-EU countries of citizenship among convicted individuals were Nigeria (273), China (178), and Morocco (107) (Table 8).

**Table 8: Citizenship of individuals convicted of THB crimes (non-EU citizens, 2017-2020)**

Row Labels	Number
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Nigeria	273
China	178
Morocco	107
United Kingdom	75
Turkey	39
Albania	25
Brazil	23
Bosnia and Herzegovina	18
Algeria	15
Afghanistan	14
Syria	12
Thailand	11
Other <sup>279</sup>	724

#### 1.4.4. Use of exploited services

Since 2015, Eurostat has also collected data related to the criminal offence of use of services, which are the objects of exploitation of victims. Altogether, during the reporting period of 2015-2020, 331 individuals were reported as suspects in cases related to the use of services, 343 persons were reported as prosecuted for these offenses and 202 were reported as convicted of such offenses. As Figure 36 shows, there is no clear trend in these indicators across the reporting period. Early on, the number of reported prosecuted individuals vastly outnumbered the other two categories, while in more recent years the number of reported suspects has been notably higher than that for the other two categories. However, it is necessary to acknowledge that data on the use of services suffers from serious data gaps, which affect the statistics presented above. Data on this indicator are available only for 18 Member States, of which only 11 reported on all three categories.<sup>280</sup> Notably, countries for which no data are available include some with comparatively high numbers of recorded victims such as France, Spain and the Netherlands.<sup>281</sup>

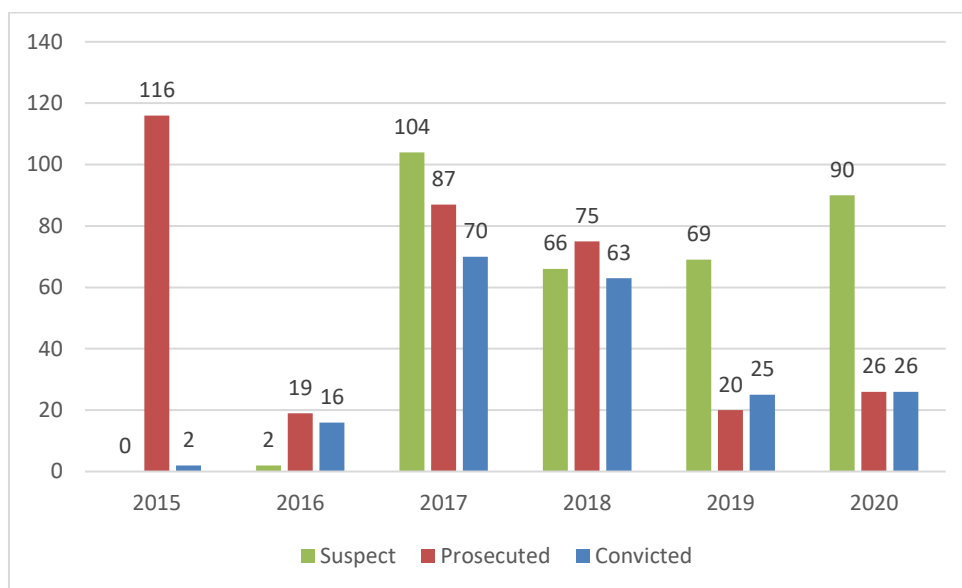
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<sup>279</sup> Note: “Other” includes all nationalities with fewer than 10 individuals, those marked as “other” and those marked as “stateless.”

<sup>280</sup> Of these 11 Member States, three (IE, SI, SK) positively reported zero individuals (as opposed to not providing any data at all).

<sup>281</sup> Some countries do not have any legislation criminalising knowing use of services extracted from victims. This might explain some of the data gaps; however, existing data gaps extend beyond this group of countries.

**Figure 36: Individuals involved with the criminal justice system in connection with the use of services, which are the objects of exploitation of victims (by criminal justice status, 2015-2020)**



## ANNEX 6: TRANSPOSITION OF THE ANTI-TRAFFICKING DIRECTIVE

This section provides an analysis of if and how the provisions of the Directive have been transposed by Member States. The methodology employed for this activity was as follows:

- 1) The external contractor used the analysis in the 2016 conformity assessment conducted for the European Commission<sup>282</sup> as a starting point. This assessment resulted in the European Commission’s 2016 Report assessing the extent to which Member States had taken the necessary measures in order to comply with Directive 2011/36/EU in accordance with Article 23(1). In relation to Article 18(4) the external contractor used the analysis in the 2016 report by the Commission 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<sup>283</sup> as the starting point.
- 2) A network of National Correspondents – one in each Member State except DK – were asked to indicate if there had been relevant changes to the national laws transposing the Directive since 2016.
- 3) In addition, the external contractor analysed responses sent by Member States to the Commission in 2019, as a result of a request for information from the EC.
- 4) The external contractor triangulated the information from the National Correspondents, the information 2016 Conformity Assessment and the information provided by MS to the EC in 2019 in order to update the 2016 Conformity assessments.
- 5) A draft version of the assessment was share with National Rapporteurs for clarification and validation.

This information is displayed visually below, as follows:

Transposed	Partially transposed	Not transposed	Not transposed optional provision	No changes observed	Minor changes	Major changes	Change since 2016 assessment
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- The **dark blue** cells indicate major changes to national legislation since 2016, while the **light blue** cells indicate minor changes.

<sup>282</sup> These assessments were conducted for the European Commission by TIPIK.

<sup>283</sup> European Commission (2016) REPORT FROM THE COMMISSION 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. Available at: [link](#)

- **Green** cells indicate full transposition.
- **Orange** cells indicate partial transposition.
- **Red** cells indicate that the national law has not transposed that article of the Directive.
- **Purple** cells indicate that Member States decided not to transpose optional articles of the Directive.
- **Dark green** cells indicate that the external contractor' analysis identified that, after the changes to national legislation or clarifications, Member States have transposed the Article of the Directive, when the conclusion of the 2016 assessment was that they had not.

### ***Article 1: Subject matter***

#### **Article 1: 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.

As Article 1 presents the subject matter of the Directive, a transposition assessment is not applicable.

### ***Article 2: Offences concerning trafficking in human beings***

Article 2 of the Directive provides a common definition of THB and related offences against which Member States have to ensure criminalisation measures. The text of this provision is set out below.

#### **Article 2: Offences concerning trafficking in human beings**

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

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

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

6. For the purpose of this Directive, ‘child’ shall mean any person below 18 years of age.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
2(1) 1st subpara.																										
2(1) 2nd subpara.																										
2(2)																										
2(3)																										
2(4)																										
2(5)																										
2(6)																										
Changes																										

The main identified changes since 2016 were:

- All these changes have improved the transposition of the Directive, and in some cases mean that MS have fully transposed a provision of the Directive for the first time.
- Regarding Article 2(2):
  - **ES:** the 2016 Assessment concluded partial transposition because the term ‘abduction’ is not mentioned as one of the means by which the offence is committed (in Article 177a(1) of the Spanish Criminal Code). However, ES clarified that the omission of the term ‘abduction’ was deliberate, since abduction is an offence in its own right in Spanish law, punishable by penalties up to 20 years’ imprisonment. When the means of committing another offence constitutes an offence in its own right - a ‘means to an end’ - it is governed in Spanish law by the concept of concurrent offences, as specified in the general part of the Code, under Article 77. For this reason it would not have been appropriate to insert the precise term into Article 177a without actually implying, on the contrary, less criminal protection or that such acts would not be prosecuted when committed in this way. **The**



**assessment made in the context of the evaluation finds that ES has transposed Article 2(1) of the Directive.**

- Regarding Article 2(3):
  - **EE:** *This change is being clarified with the national correspondent.*
  - **EL:** In 2019 Article 323 A of the Greek Penal Code came into force, this includes all forms of exploration as foreseen in the Directive. **Based on the assessment made in the context of the evaluation, this change means that EL has now transposed Article 2(3) of the Directive.**
  - **HU** amended its legislation to include “Forced Labour” as a possible purpose of trafficking in human beings. The previous system provided a standalone crime for forced labour, thus hampering conformity with the transposition of Article 2(3). Moreover, the definition of “Forced Labour” was further specified. **Based on the assessment made in the context of the evaluation, this change means that HU has now transposed Article 2(3) of the Directive.**
  - **LT:** *This change is being clarified with the national correspondent.*
  - **SE** amended its legislation in a way that it now specifies some forms of exploitation, which were previously covered by a catch-all provision transposing **Article 2(3)**. Specifically, Swedish law now explicitly refers to “*forced labour*”, “*labour under clearly unreasonable conditions*” and “*begging*”.
- Regarding Article 2(4):
  - **EL:** In 2019 an amended Article 323 A of the Greek Penal Code came into force, this includes reference to the fact that the consent of the victim is irrelevant, in case this has been extracted through means of deception or abuse of power or other. **The assessment made in the context of the evaluation finds that this change means that EL has now transposed Article 2(4) of the Directive.**
- Regarding Article 2(5):
  - **EL:** In 2019 Article 323 A of the Greek Penal Code came into force, this includes that where the victim is a minor, the consent is irrelevant regardless if means have been deployed to extract his or her consent or not. **The assessment made in the context of the evaluation means that EL has now transposed Article 2(5) of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 2(1): While the use of threat, force, other forms of coercion and the abuse of position of vulnerability are covered by all Member States, some Member States<sup>284</sup> still do not explicitly include other means covered by article 2(1).
- Article 2(2): Some Member States<sup>285</sup> define the position of vulnerability in different ways, and they do not always cover all the forms of vulnerability.

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<sup>284</sup> In EE, FR, LV, HU and FI, there is no explicit mention of “abduction” and “fraud”. IT does not explicitly include “abduction”, SI does not refer to “fraud”, AT does not refer to “abduction”, EE, HU and SI do not refer to “giving or receiving of payments or benefits”.

- Article 2(3): Several Member States<sup>286</sup> do not include explicit references to some of the forms of exploitation referred to in Article 2(3), such as slavery, servitude, begging or the exploitation of criminal activities.
- Article 2(4): Most Member States are compliant with Article 2(4) on the irrelevance of the victim’s consent. Although a few Member States<sup>287</sup> do not make an explicit reference to this element in their national legislation.
- Article 2(5) and Article 2(6): For DE, a “child” for the purposes of THB is a person under the age of 14, thus possibly hampering conformity with both Articles 2(5) and 2(6).

**Article 3: Incitement, aiding and abetting, and attempt**

Article 3 of the Directive requires Member States to “take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable”. The provision is set out below.

**Article 3: 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 referred to in Article 2 is punishable.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
3																										
Changes																										

The main identified changes since 2016 were:

- **HU**: Incitement, aiding and abetting, and attempt were already punishable acts under Hungarian law in 2016 and remain to be so. The change relates to the penalty thresholds set for these acts. An amendment of Article 192 of the Hungarian Criminal Code set the penalty threshold up to one year imprisonment for preparation of the acts set out in Article 192(1), up to three years of imprisonment for preparation of the acts in Article 192(2)-(3) and between one to five years of imprisonment for the acts in Article 192(4).

<sup>285</sup> For instance, some national laws only mention the “abuse of a position of dependency” (BG, CZ). Similar problems have been identified in DE, FR, HR and SI.

<sup>286</sup> Forms of exploitation that are not explicitly referred to in national legislations: Begging (HR, LV, SI), slavery and practices similar to slavery (BE, IT), exploitation of criminal activities (PL, RO, FI). Although Some Member States provide criminal sanctions for these crimes, conformity is affected because these forms of exploitation should be listed among the purposes for trafficking in human beings.

<sup>287</sup> For example, there is no reference to the irrelevance of victims’ consent in DE, LV, NL.

Overall status of transposition/ gaps in transposition:

- All Member States have transposed Article 3 in their national laws.

**Article 4: Penalties**

Article 4 lays down the minimum level of the maximum penalty that should be applicable for the offence of THB (Article 4(1)). It also lists aggravating circumstances (Article 4(2)), which should lead to the imposition of higher maximum penalties. The provisions are set out below.

**Article 4: Penalties**

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.
2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:
  - (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;
  - (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (15);
  - (c) deliberately or by gross negligence endangered the life of the victim; or
  - (d) was committed by use of serious violence or has caused particularly serious harm to the victim.
3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
4(1)																										
4(2) Intro																										
4(2)a																										
4(2)b																										

4(2)c	
4(2)d	
4(3)	
4(4)	
Changes	

The main identified changes since 2016 were:

- All the Member States who made changes were already at least partially compliant in 2016.
- Regarding Article 4(2):
  - **ES:** the 2016 assessment conclude partial transposition of Article 4(2)(d). However, ES has clarified that under Article 177a(4) of the criminal code, imprisonment of between eight years and one day and twelve years is imposed where “(a) the life or physical or mental integrity of the persons subjected to the offence has been endangered; b) the victim is particularly vulnerable because of illness, pregnancy, disability or personal circumstances, or is a minor.” “Serious violence” (as stated in the Directive) exists where the victim’s life or physical or mental integrity is endangered. **The assessment made in the context of the evaluation means that ES has now transposed Article 4(2) of the Directive.**
  - No changes were identified regarding the non-transposition of Article 4(3) by DE, LV and SI.
  - **CY** amended its legislation so that the maximum penalty for the offence of THB has been raised. Specifically, for trafficking in adult persons and sexual exploitation of adults (from 10 to 25 years), for labour exploitation (from 6 to 15 years), in case the victim is a child (from 10 years to lifelong), and for sexual exploitation of children (from 20 years to lifelong imprisonment).
  - **EL** amended its legislation to enhance the maximum penalty for the offence of THB to “at least 10 years of imprisonment”, while before it was punishable by a “maximum penalty of 10 years of imprisonment”.
  - **HU** raised the penalty thresholds for the offence of THB. Among others, THB for the purpose of forced labour is now punished between 2 and 8 years (compared to the previous 1 to 5 years), and sexual exploitation between 5 to 10 years of imprisonment (compared to the previous 2-8 years).
  - **IT** added two aggravating circumstances; where the defendant is the master of a ship used for the purposes of human trafficking; where the defendant is a member of the crew of a ship used for the purposes of human trafficking.
  - **MT** amended its criminal code so that the minimum penalty for the offence of THB was increased from 4 to 6 years imprisonment.

- **RO** also increased the minimum length of the penalty for the offence of THB from 3 to 5 years, and from 5 to 7 years for its aggravated form. The maximum penalty stayed the same, namely 10 years of imprisonment, and 12 years for its aggravated form. Moreover, three new aggravated forms of trafficking of minors were introduced, such as if the crime endangered the minor's life, and if the crime was committed by a family member.
- **SE:** *This change is being clarified with the national correspondent*
- **SK** amended its criminal code so that it introduced the use of a stricter criminal sanction (7 to 12 years of imprisonment) where the offence was committed by two or more persons acting in conjunction.

Overall status of transposition/ gaps in transposition:

- Article 4(1): The 2016 Conformity Assessment found that all MS had transposed this Article.
- Article 4(2): Some MS do not include some of the aggravating circumstances listed in this Article in national law (BG, DE, EE). Some Member States do not have provisions applying the requirement of at least 10 years of imprisonment for the aggravating circumstances (BG, DE, HU).
- Article 4(3): Several MS still do not explicitly provide for aggravated penalties for THB offences committed by public officials in the performance of their duties (DE, FI, LV, PL, SE, SI).

#### ***Article 5: Liability of legal persons***

Article 5 requires Member States to ensure that legal persons may be held liable for the offences referred to in Articles 2 and 3 and specifies the position or capacity of the perpetrator in relation to the legal person, which will lead to the legal person's liability. The provisions are shown below.

#### **Article 5: Liability of legal persons**

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person; or
  - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, ‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
5(1) Intro																										
5(1)a																										
5(1)b																										
5(1)c																										
5(2)																										
5(3)																										
5(4)																										
Changes																										

The main identified changes since 2016 were:

- **IT:** The liability of legal persons for labour exploitation was specified. The criminal code now stipulates that also intermediaries and third parties can be held responsible, and lists several “exploitation indices” (e.g. unsustainable working hours, violation of safety, healthy and surveillance regulations).
- **LU:** Following the 2019 Commission’s request for further information, LU replied that, by reading together Article 34 and Article 66 of the Criminal Code, the main participation by support or assistance to a crime or an offence committed on behalf or in the interest of a legal person includes the lack of supervision or control by one of the legal person’s legal bodies or by one or several of its *de jure* or *de facto* managers. **Based on the assessment made in the context of the evaluation, this clarification means that LU can be considered to have transposed Article 5(2) of the Directive.**
- **SE:** New legislation on criminal liability of legal persons entered into force on 1 January 2020, with the aim to ensure the efficiency and effectiveness of the Swedish criminal regulatory framework for legal persons. The maximum amount for corporate fines has increased from 10 million SEK to 500 million SEK. In addition, the scope of application of corporate fines does not only cover business activities, but also public sector activities that

can be equated to business activities and other activities conducted by a legal person, if the illegal act was intended to bring the legal person financial benefit.

Overall status of transposition/ gaps in transposition:

- All Member states have introduced criminal or administrative liability of legal persons that shall lead to responsibility for the offence.
- Some MS introduced *ad hoc* provisions concerning corporate liability for the crimes of THB,<sup>288</sup> while others transposed Article 5 (1)(a) to (c) literally.<sup>289</sup>

**Article 6: Sanctions on legal persons**

Article 6 specifies the sanctions for legal persons which should be available within MS. The provisions are set out below.

**Article 6: Sanctions on legal persons**

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 effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (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 results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
<b>6 Intro</b>																										
<b>6a</b>																										
<b>6b</b>																										
<b>6c</b>																										
<b>6d</b>																										

<sup>288</sup> LT, MT.

<sup>289</sup> EL, CY, LT, MT, PL, SK.

6e																						
Changes		■						■								■		■				

The main identified changes since 2016 were:

- **BE:** The criminal code has been amended and it now specifies that only a guilty verdict may be pronounced against certain bodies of the State (i.e. Federal State, Regions and communities, municipalities), to the exclusion of any other penalty. Concerning Article 6(a), Belgian law previously provided that for public contracts, any candidate or tenderer shall be denied access to any public contracts if he/she has been convicted by a judgment which related to the participation to a criminal organisation, corruption, fraud or money laundering. However, this did not correspond to the crime of trafficking in human beings. Therefore, the 2016 conformity assessment concluded that the law was not entirely in conformity with the Directive's optional requirement set out in Article 6(a). BE has now modified its national legislation, and the provisions concerning the exclusion from public tenders for persons and companies convicted for human trafficking have been included in the new text. Concerning Article 6(e), the criminal code already specified that, as a specific sanction for the crimes of trafficking in human beings, the court may order the temporary or permanent, partial or complete closure of the enterprise in which the crime is committed. The amendment specified that the partial or complete closure of the enterprise can be pronounced by a judge for a term of between one and twenty years. However, no changes have been identified concerning the transposition of the optional sanction provided in Article 6(c).
- **EL:** Article 6(e) of the Directive has been included in national law (law 4198/2013, article 3, para 1).
- **LT:** Article 43 of the criminal code – defining the types of penalties for legal entities - was amended by including an additional paragraph (n. 5), which now provides that, besides the penalty, legal persons may also receive one or more of the following punitive measures: contribution to the victims' fund, confiscation of property and extended confiscation of property. The sanction related to the contribution to the Victims' fund may only be imposed in addition to the penalty of restriction of operation of the legal entity (provided in Art. 43 para 2).
- **LV:** Article 708 of the KL (Krimināllikums, Criminal Law) was amended. It now provides that “in determining the type of a coercive measure, the nature of the criminal offence, the harm caused shall be taken into account and whether a coercive measure has been previously applied to a legal person”.<sup>290</sup> Article 704 of the KL, which provided that “a public prosecutor may, in an injunction regarding a coercive measure, apply not more than half of the maximum time for restriction of rights provided for in paragraph one<sup>291</sup> of this article” was abolished from the KL.

<sup>290</sup> The reference to “whether a coercive measure has been previously applied to a legal person” was added.

<sup>291</sup> Paragraph one provides that “Restriction of rights is the deprivation of specific rights or permits or the determination of such prohibition, which prevents a legal person from exercising certain rights, receive State support or assistance,



Overall status of transposition/ gaps in transposition:

- All Member States have at least a fine for legal persons involved in THB crimes, in accordance with the minimum requirements of the Directive.
- All Member States except BG, EE, FI, IE and SK have at least one of the optional additional sanction among those foreseen by the Directive:
- Article 6 (a): Exclusion from entitlement to public benefits or aid (BE, CZ, CY, EL, ES, HU, HR, IT, MT, PL, PT).<sup>292</sup>
- Article 6 (b): Temporary or permanent disqualification from the practice of commercial activities (AT, BE, CZ, CY, CY, EL, ES, FR, HU, HR, IT, LT, LV, MT, PL, PT, RO, SE, SI).
- Article 6 (c): Placing under judicial supervision (CY, ES, FR, IT, MT, PT, RO).
- Article 6 (d): Judicial winding-up (BE, CY, CZ, EL, ES, FR, HU, HR, LT, LU, MT, NL, PT, RO, SI)
- Article 6(e): Temporary or permanent closure of establishments which have been used for committing the offence (BE, EL, CY, ES, FR, LT, LU, MT, PT, RO).
- Some Member States' legislation also provide for the publication or display of the decision or judgement in which the legal person has been found guilty of the crime (BE, CZ, FR, PT, RO).

**Article 7: Seizure and confiscation**

Article 7 of the Directive requires Member States to ensure measures aiming at seizing and confiscating proceeds from the offences related to THB. The provisions are set out below:

**Article 7: 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 referred to in Articles 2 and 3.

The results of the analysis of transposition are set out in the figure below:

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
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participate in a State or local government procurement procedure, to perform a specific type of activity for a term of not less than one year and not exceeding ten years.”.

<sup>292</sup> In RO, any economic operator is excluded from any procedure for the award of a public procurement if guilty of committing acts related to trafficking in human beings.

The main identified changes since 2016 were:

- A few changes were observed vis-à-vis the transposition of Art. 7 of the Directive. However, none of these changes affect the transposition of this article.
- **BE:** Art. 43bis of the Belgian Criminal Code – which deals with the special confiscation applicable to the material benefits directly obtained from the crime, the goods and values brought in its place and the income from the invested benefits – states that if the goods cannot be found within the property of the convicted person, the judge shall estimate the monetary value thereof and the confiscation shall relate to a corresponding amount. This was amended to state that the measure of special confiscation shall be imposed except where this would result in the sentenced person being subject to an unreasonably harsh penalty. In addition, since 2018, Art. 43quater of the Belgian Criminal Code is explicitly linked to article 433quinquies of the Criminal Code, which means that special confiscation is possible for crimes relating to human trafficking.
- **BG:** Amendments to the text of Art. 53 of the Bulgarian Criminal Code brought clarifications as to the list of instrumentalities and proceeds subject to confiscation. It is now clear that both direct indirect benefits gained through the crime (if they are not subject to return or restoration) are subject to confiscation; where the benefit is missing or is expropriated, its equivalent shall be awarded. Furthermore, several relevant provisions implementing parts of Art. 7 of the Directive were moved to the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act that replaced the Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets.
- **LV:** In Latvia, Art. 7 of the Directive is transposed in Art. 361 of its Criminal Procedure Law ('KPL). This article was amended several times since 2016. These amendments redacted the wording and structure of the Article. For example, a new Article 361(9) was introduced in 2017 that stated that a copy of the decision shall be sent or issued to a person whose property is being seized.
- **RO:** Article 112<sup>1</sup> (Law 286/2009) regulating extended confiscation was amended. Extended confiscation can be applied in cases where the defendant was convicted for a crime for which the law stipulates imprisonment of 4 years or more. There is no longer a specific enumeration of crimes and only the 4 years of imprisonment limit subsists. The court's appreciation in deciding whether to apply the extensive confiscation may also be based on the disproportion between the lawful income and the person's wealth.

Overall status of transposition/ gaps in transposition:

- All Member States have measures in place that ensure that national competent authorities are entitled to seize and confiscate proceeds related to THB crimes.
- Most Member States rely on national criminal laws on seizure confiscation that apply to all crimes, including THB. Only few Member States (BE, CY, EL, ES, FR, UK) have specific provisions aimed at seizing and confiscating proceeds related to THB crimes.

***Article 8: Non prosecution of non-application of penalties to the victim***

The Directive, under Article 8, protects THB victims from being prosecuted for the criminal activities they committed as a direct consequence of their exploitation. Article 8 leaves discretion to Member States on how to regulate the non-prosecution or non-application of penalties to the victims involved in criminal activities which they have been compelled to commit as a direct consequence of being subject to such a crime. The provisions are set out below.

### Article 8: Non-prosecution or non-application of penalties to the victim

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

The results of the analysis of transposition are set out in the figure below:

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
8																										
Changes																										

The main identified changes since 2016 were:

- BE:** Article 443 of the criminal code has been amended, introducing a new paragraph (quinquies). It now specifies that a victim of trafficking in human beings who was involved in a criminal offence as a direct consequence of his or her exploitation shall not be punished for those offences. Article 71 of the criminal code provides that “there is no offense if the defendant or the accused, at the time of the facts, [...] was forced by a power which he was unable to resist”. As the national law does not define what should be considered as “forced by a power” which the person is unable to resist, the 2016 conformity assessment concluded that BE’s transposition of the Article was only in partial conformance with the Directive, since it does not clearly ensure that victims of trafficking involved in criminal activities which they have been compelled to commit shall not be prosecuted. Although Article 71 of the criminal code has not been amended, the amendment to Article 443quinquies, described above, specifies the non-punishment principle in more detail. **Based on the assessment made in the context of the evaluation, this change means that BE has now transposed Article 8 of the Directive.**
- EL:** As of 2019 paragraph 8 of article 323 A of Greek Penal Code provides for the application of the principle of non-punishment of the victim of trafficking for offenses committed in connection with the fact that he or she was exploited (even if the perpetrator has been exonerated, but the allegation seems valid).
- IE:** The Second National Action Plan to Prevent and Combat Human Trafficking in Ireland provides an ad hoc action (action n. 32), which aims to develop guidelines to assist all State authorities in addressing complex cases where persons who have been found engaged in criminal activities may be victims of trafficking. Action n. 42 aims to ensure the effective investigation of human trafficking where criminal activities may have been carried out by the potential victim and the appropriate consideration of non-punishment of victims of trafficking. Activities to implement this action include regular training for the police authorities, information initiatives with relevant bodies to address the issue of non-

punishment, and the decision to expunge the criminal records of potential victims of trafficking for sexual exploitation.

- **LT:** Paragraph 3 of Article 147-1 of CC(VIII-1968) was amended by including the same clause as in Articles 147 and 157, stating that also the victim of forced labour may be relieved from criminal liability for the offence which he/ she was directly forced to commit because of the offence done to him/her.
- **SK:** Article 215(2) d of Act no 301/2005 now specifies that the prosecutor may discontinue the criminal proceedings if the person was compelled to commit a crime as a direct consequence of being subjected to trafficking in human beings. The previous wording only provided that “the prosecutor may discontinue the criminal prosecution if a person was compelled to commit a *minor offence* as a direct consequence of being subjected to trafficking in human beings”.

Overall status of transposition/ gaps in transposition:

- Around half Member States (BG, EL, ES, CY, LV, LT, LU, MT, NL, RO and SK) explicitly refer to non-prosecution of THB victims, while others refer to the non-prosecution of a person who was compelled, threatened or coerced to commit a criminal act (HU, IT, PL, PT, SE and SI).
- Concerning **HR**, Article 22(1) and (2) of the criminal code (KZ) state that a criminal offence does not exist in case a perpetrator has committed such act in order to avert from himself or from another an imminent danger which could not have been averted in any other way, and a lesser harm was done than that which had been threatened. However, the 2016 conformity assessment concluded that this article sets out a general provision of criminal law on endangerment and lawful defence and does not as such correspond to the scenario foreseen in Article 8 of the Directive. There have been no changes to HR law on this matter since the 2016 assessment.

#### **Article 9: Investigation and prosecution**

Article 9 of the Directive provides that the investigation and prosecution of THB crimes (i) shall not be subject to victims’ reporting or accusation; (ii) prosecution shall be enabled for a sufficient period of time after the victim has reached the age of majority; (iii) investigators and prosecutors are properly trained and (iv) granted with effective investigative tools. The provisions are set out below:

#### **Article 9: Investigation and prosecution**

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.
4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to

persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
9(1)																										
9(2)																										
9(3)																										
9(4)																										
Changes																										

The main identified changes since 2016 were<sup>293</sup>:

- **BE:** An amendment was made to Article 21 Vt. W, transposing Article 9(2) of the Directive. The amendment extended the right to prosecute crimes committed against minors to 20 years (instead of 15 years), and to 15 years for crimes committed against adults (instead of 10 years). Moreover, Article 21bis (1) has been amended so that it now states that there is no time limitation on prosecution for crimes regarding genocide, crimes against humanity, and war crimes. Article 21bis (2) now states that there is no limitation of prosecution for crimes such as voyeurism, rape, and spreading sexual images, human trafficking, begging, forced labour, and removal of organs. The 2016 conformity assessment concluded that BE national law (Article 21bis (2)) was partially in conform to Article 9(2) of the Directive. **Based on the assessment made in the context of the evaluation, this change means that BE has now transposed Article 9(2) of the Directive.**
- **BG:** the 2016 assessment concluded partial conformity. BG clarified that Art. 80 of the Penal Code, the statute of limitations sufficiently covers the period for instituting criminal proceedings after reaching the age of 18 by victims of trafficking. **Based on the assessment made in the context of the evaluation, BG has transposed Article 9(2) of the Directive.**
- **EL:** There has been an extension of the time limit for commencing prosecution, after reaching majority.
- **ES:** Article 132 CC, which transposed Article 9(2) of the Directive, has been modified. It now establishes that for victims of trafficking in human beings who are minors, the term for

<sup>293</sup> The adoption of an updated National Plan for combatting trafficking in human beings [which frequently covers the need to provide trainings for relevant actors – Article 9(3)] was not included in the “minor/major changes” category.

the prosecution of the offence will not be computed from the time the victim reaches the age of majority, but from the time he/she has 35 years old, or, if he/she dies before, from the date of their death.

- **FR:** Article 7 of the Code of Criminal proceedings transposing Article 9(2) has been updated. The amendment extended the period of time for the right to prosecute the offence of trafficking in human beings against minors to 30 years (instead of 20 years), which only starts to run when the victim reaches the age of majority.
- **HU:** the amendment of Article 28(1a) of the Btk transposing Article 9(2) amended the limitation period regarding trafficking in human being cases against victims who were minors when the offence occurred. The limitation period now starts to run only when the victim comes to the age of 21 years old (instead of 18). Moreover, the national legislation transposing Article 9(4) has also been amended. The relevant provisions regulate the covert information gathering procedure: the amendments made the data information sharing among police authorities more transparent and with stronger rule of law safeguards. Some covert instruments are not subject to prior authorisation (e.g. the surveillance of a premise or a vehicle), while others require the prior authorisation of the court (e.g. interception).
- **LT:** The national law transposing Article 9(4) of the Directive was modified. Specifically, Article 93 paragraph 2 and Article 94 paragraph 1 of XI-1482 extend the trainings organised by the National Courts Administration to court civil servants and employees (and not only to judges).
- **PT:** The Framework Law on Criminal policy (n.55/2020) states that trafficking in human beings is a crime of priority (including in terms of prevention and criminal investigation). This piece of legislation is updated every two years.
- **SI:** the 2016 assessment conclude partial transposition of 9(2). SI clarified that Article 90(3) of the Criminal Code determines that notwithstanding paragraph one of that Article (limitation of criminal prosecution), the time limit for the statute of limitations in criminal offences against sexual inviolability and criminal offences against marriage, family or youth, committed against a minor, shall begin when the injured person reaches adulthood. **Based on the assessment made in the context of the evaluation, SI has transposed Article 9(2) of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 9(1): All Member States have transposed the provision and are compliant; all MS provide that the submission of a complaint is not required to open the investigation, and the withdrawal of a victim's statement does not have influence on the continuation of the investigation or prosecution.
- Article 9(2): The 2016 assessment concluded that HR and IE had not transposed Article 9(2). No relevant changes were identified to legislation in HU and IE since 2016. The 2016 identified some MS as having partially transposed on the grounds that: that national legislation referred solely to the sexual exploitation and do not cover all the types of exploitation foreseen in the Directive (SI, LV, EE); the national legislation did not ensure that young victims would be given a sufficient period of time to initiate criminal proceedings after reaching the age of 18 (PT, SE). With regard to child victims of trafficking, DE legislation does not stay the limitation period up until the age of majority of the child victim.
- Article 9(3): All Member States provide measures for the training of actors responsible for the investigation and prosecution of trafficking in human beings, either in soft-law instruments (e.g. national action plans) or in legal provisions.

- Article 9(4): All Member States have foreseen measures to ensure the availability of effective investigative tools to persons, units or services responsible for investigating or prosecuting trafficking in human beings.

**Article 10: Jurisdiction**

Article 10 requires MS laws to provide for jurisdiction over THB offences committed not just within their territory, but also where the offender is a national of that country (regardless of whether the act was an offence in the jurisdiction where it was committed and regardless of whether it is reported by a victim). Article 10 also requires MS to inform the EC about any wider jurisdiction. The provisions are set out below:

**Article 10: Jurisdiction**

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

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
10(1) Intro																										
10(1)a																										





of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but was not extradited to the foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country, in which the offence was committed (Article 13(2) of the Criminal Code). Under Article 13(3) the Criminal Code of the Republic of Slovenia is applicable also to anyone who commits any criminal offence abroad which, under relevant international agreements or general legal rules recognised by the international community, is subject to prosecution, regardless of the location where it was committed. **Based on the assessment made in the context of the evaluation, SI has transposed Article 10(2)c of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 10(1): All Member States took necessary measures to ensure jurisdiction when the offence is committed within their national territory or the offender is one of their nationals. In IT, conformity is affected because, for crimes committed outside the Italian territory against the EU, a foreign State or a foreign citizen, the Italian jurisdiction is established only upon request of the Ministry of Justice, and unless extradition has been conceded.
- Article 10(2): All Member States - except BG, DE and FR - had at least one of the optional jurisdictional grounds provided in Article 10(2) (a) (b) and (c).
- Article 10(3): most Member States transposed Article 10(3)(a) in their national legislation and have not introduced such a requirement when determining jurisdiction under Article 10(1). Nevertheless, in EE, NL, PT and RO, jurisdiction for cases in which the offender is one of their nationals is only established when the offence is criminalised in the place where it is committed. Concerning ES, the 2016 conformity assessment concluded that the national law was not in conformity with the Directive, as it provided that the jurisdiction shall not be granted to Spanish Courts in the event such jurisdiction is being granted to an international court or another State whereby proceedings are already initiated. The reply to the 2019 Commission's request for further information explained that, in accordance with the principle of universal jurisdiction, acts committed by Spanish nationals or non-nationals outside the national territory that can be classified according to Spanish law as human trafficking offences are subject to Spanish jurisdiction where any of the conditions set out in Article 23(4)(m) of the OLJP exist. As none of these conditions refer to the double criminality requirement, the Spanish authorities consider that the national law transposing the Directive is in conformity. **Based on the assessment made in the context of the evaluation, this clarification means that ES can be considered to have transposed Article 10(3) of the Directive.**

#### ***Article 11: Assistance and support for victims***

Pursuant to Article 11 of the Directive, Member States shall provide adequate assistance and support to victims of THB as soon as competent authorities have an indication or reasonable grounds to believe that the person might have been subject to THB offences. The provisions are set out below.

#### **Article 11: Assistance and support for victims of trafficking in human beings**

1. 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 Framework Decision 2001/220/JHA, and in this Directive.
2. Member States shall take the necessary measures to ensure that a person is provided with

assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.
4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.
5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.
6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (16) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (17) or pursuant to other international instruments or other similar national rules.
7. 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.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
11(1)																										
11(2)																										
11(3)																										
11(4)																										
11(5)																										



providing information about the risk of secondary and repeated victimisation, of intimidation or revenge, as well as providing advice on preventing the latter. Victim support organisations now also have the obligation to provide shelter or any other suitable temporary accommodation to the victims of crimes for which there is an imminent risk of secondary victimisation, intimidation, and revenge.

- **EL:** The 2016 assessment conclude that EL had partially transposed 11(2). EL clarified that presidential decree 233/2003 provides for the assistance measures outlined in Article 11(2). **Based on the assessment made in the context of the evaluation, this clarification means that EL can be considered to have transposed Article 11(2) of the Directive.**
- **HR:** A 2019 Protocol on the integration and reintegration of victims of trafficking in human beings was adopted, which specified several victims' rights to be ensured before, during and after the criminal proceedings.
- **HU:** According to the amended Article 17(6) of Government Decree 354/2012, voluntarily cooperating organisations may conclude identification conversations with presumed victims of trafficking in human beings. In case the victim status is confirmed, the organisation informs the regional victim aid service without delay (relevant to Article 11(2)).
- **LT:** Paragraph 5 of Article 8 of CCP (IX-785) was amended by including the victim's right to request a translation of the criminal proceeding's documents in cases where a translation of these documents or parts thereof is necessary for them to take an active part in the criminal proceedings.
- **LV:** Regulation No. 344 (2019) regarding the procedures by which victims of trafficking receive social rehabilitation service, and the criteria for the recognition of a person as a victim of trafficking in human beings clarifies the regulatory framework on assistance and support to victims of trafficking. Regulation No 388 (2017) on the requirements for social service providers was also adopted.
- **MT:** Two new services have been added to the list of minimum services for victims of crimes (Article 12 VCA), namely medical treatment and protection measures against the risks of intimidation and retaliation. The amendments also clarified that these services are to be provided to victims even when the offence was committed in another EU Member State.
- **PT:** Order No-138-E/2021 approved a new model regarding the status of vulnerable victims, including victims of trafficking in human beings. The aim is to ensure that relevant documents for victims are clear and easy to understand, especially the information about their rights. To this end, documents were revised by specialised services to convert legal and procedural technical language into a more accessible language. The rights provided to victims of trafficking include, *inter alia*, the right to file a criminal complaint, the right to be accompanied, the right to legal assistance, right to receive compensation, the right to the reflection period, the right to non-punishment of victims of trafficking their involvement in criminal activities if they were compelled to do so.
- **RO:** New services to support and protect victims of trafficking have been added, such as the provision of day care centres that mainly provide information, emotional and social support for the purposes of reintegration, and social, psychological, legal and financial counselling. The national legislation further specifies that the legal provisions on assistance and support apply in cases of crimes committed on the Romanian territory and for crimes committed outside the territory of Romania but against a Romanian citizen or legal resident. Moreover, Article 43 of the CPE was amended. This article regulates the tasks and purposes of the Fund for Victims' Aid and Post-Penitentiary Aid. The amendments introduced by the Act of 12 July 2017 clarify what the Fund's resources may be used for. Among other things,

paragraph 8, item 4, subsection (e) was added to this provision, which states that the Fund's resources shall be used to promote the system of assistance to persons wronged by crime

- **SE:** Section 1 of Chapter 4 of the Social Services Acts has been amended. It now specifies that anyone who is unable to meet their own needs or can have them met in another way is entitled to assistance from the social welfare board for their support and for their living in general. Those who are unable to support themselves but who can work are entitled to maintenance support according to the first paragraph if he or she is available on the labour market, which includes, if necessary, participating in municipal adult education in Swedish for immigrants or equivalent education at folk high schools. The individual might also be entitled to maintenance support even if he or she is not available on the labour market. The individual must be ensured a reasonable standard of living through the assistance. The assistance must be designed so that it strengthens his or her opportunities to live an independent life. It must be noted that the 2016 conformity assessment specified that, previously to this amendment, it was unclear whether victims of trafficking who do not have a right to reside in Sweden would get support that include at least standards of living capable of ensuring victims subsistence. **The assessment of the Evaluation Team is that this change means that SE has now transposed Article 11(5) of the Directive.**
- **SI:** Article 50 of the Aliens Act has been amended. It now provides for a new reason on the basis of which the police may allow a victim of trafficking in human beings to stay for 90 days in the territory of Slovenia on the basis of the existence of personal circumstances. The 2016 assessment concluded partial and non transposition of parts of Article 11. SI clarified that: in the process of implementation of so-called Victims' Rights Directive, the Criminal Procedure Act and Social Assistance Act have been amended. Following these changes, each victim is entitled to help and support, regardless of his or her status in the eventual (pre)criminal procedure and also, if (s)he didn't report the criminal offence. The centers for social work provide general support and help to victims of all criminal offences (free of charge), while NGOs provide special services (also for victims of human trafficking). **Based on the assessment made in the context of the evaluation, SI has transposed Article 11 of the Directive.**
- **SK:** According to article 49 of the Criminal Procedure Act (301/2005), victims are informed about (both orally and in a written form), *inter alia*, the specialized programmes offered, for free, to victims of trafficking. Since 2020, the contracted NGO for assistance to victims of trafficking (namely Caritas Slovakia) has been enabled to speak to victims of trafficking and inform them about the specialised programmes and the available services.

Overall status of transposition/ gaps in transposition:

- Article 11(1): Almost all Member State legislation specifies that victims of trafficking are provided with the assistance and protection measures before, during and after the criminal proceedings. The 2016 conformity assessment identified partial transposition in some national legislation, namely LV, FI, PL and HU<sup>296</sup>, as their national legislation does not explicitly state that the protection measures shall be provided to victims before, during and after the criminal proceedings.

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<sup>296</sup> For example, in HU, the national law does not ensure 'aid and support' to third-country national victims before the commencement of the criminal proceedings. Third-country national victims are only entitled to receive care after the issuance of the third country national victims' residence permit which is issued depending on their willingness to cooperate in the criminal investigation.

- Article 11(2): Several Member States do not explicitly require that assistance and support should be provided as soon as the competent authorities have an indication or reasonable grounds to believe that the person is a victim of trafficking (PL, HR, LV, IT, PT, SE). Other national legislation seem to make a distinction between victims who are third-country nationals and EU citizens (BE, DE, HU).
- Article 11(3): Almost all Member States have transposed the requirement to ensure that assistance and support for victims are not made conditional on the victim's willingness to cooperate in the criminal investigation. However, in IE, the provision of temporary residence for victims of trafficking is governed by the Administrative Immigration Arrangements (AIA). The provision of temporary residence remains contingent upon cooperation with law enforcement authorities. In BE, the national legislation transposing Article 11(3) only applies to aliens, and not to nationals. In SK, the duration of the so called "emergency treatment" is conditional to the victim's cooperation with the law enforcement authorities.<sup>297</sup>
- Article 11(4): All Member States established different types of mechanisms aimed at the early identification of, assistance to and support for victims of trafficking, in cooperation with relevant support organisations. However, in BE although the Belgian provisions seem to create appropriate mechanisms, those only apply to non-Belgian victims.
- Article 11(5): All Member States transposed the minimum requirements of article 11(5) in different ways that range from the transposition in national law (CY, MT), the inclusion of the provisions in different acts (BE, BG, EL, ES, FR, HU, IT, LV, LT, NL, AT, PL, PT, RO, SI and SK) or via catch-all provisions aimed at ensuring other form of assistance (BG, ES, HR, RO). In BE provisions create appropriate mechanisms, but these only apply to non-Belgian victims. In IT no provision provides that victims must be informed on their rights and on the availability of assistance programmes.
- Article 11(6): In most Member States compliance with article 11(6) can be derived from a set of national provisions on the necessary procedure to gain residence permits for third-country nationals. However, some Member State legislation does not explicitly provide that the person concerned shall be informed about the reflection period (BE, LV, IT), or the possibility of granting international protection (BE, HU, IE, LV, SE, NL).<sup>298</sup>
- Article 11(7): Some Member States include the reference to victims with special needs in soft law instruments (BG, HR), while in other cases the national laws do not clearly set out a special assistance tailored for victims of trafficking with special needs (BE, DE, EL, FR, SI, LV, NL).

***Article 12: Protection of victims in criminal investigation and proceedings***

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<sup>297</sup> In addition, Article 9(2) of Decree No 180/2013 provides that if the victim's presence is not necessary for the purposes of criminal proceedings in the Slovak Republic, the victim can be discarded from the program.

<sup>298</sup> In LV, the national law transposing Article 11(6) does not specifically ensure the provision of information on the possibility to be granted a reflection period or international protection to a victim of trafficking. Specifically, the victim can only submit to the investigative institution an application for the granting of the reflection period within 3 days after he or she has been granted the status of victim of trafficking, and the national law does not impose an obligation on the authorities to grant a reflection period. The 2016 Commission's report also noted that information in LV might need closer examination. In NL, the national legislation ensures that an informational meeting in the form of an interview shall take place prior to a victim filing any report. This meeting aims to provide the victim an explanation concerning the criminal procedure, but the law does not explicitly state that the victim is given the information on the possibility of being granted international protection and it does not mention the principle of non-refoulement.

Article 12 of the Directive obliges Member States to provide THB victims with protection measures in criminal investigations and prosecutions. The provisions are as follows:

**Article 12: Protection of victims of trafficking in human beings in criminal investigation and proceedings**

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

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
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12(2)																										
12(3)																										
12(4)																										





person's status in criminal court proceedings. The 2019 Protocol specified several victims' rights both before, during and after the criminal proceedings. From the moment of establishing contact with the competent authorities, victims are entitled to access to information on relevant court and administrative proceedings in a language they understand. Victims should be familiar with their rights and should be provided with free legal aid at the earliest possible stage.

- **HU:** Article 3 of the Government Decree 420/2017 regulates the procedural rules to certify the victim status. In accordance with this decree, in case legal aid is needed, and the client is considered as a victim eligible for victim aid compensation, the regional victim aid service sends the certification of victim status and related documents to the legal aid services chosen by the victim without delay. The detailed rules on granting legal aid are now contained in the New Be., the Act on Legal Aid, as well in Government Decree 421/2017. For the purposes of the transposition of the Directive, there were no material changes in this matter compared to the 2016 assessment. The 2016 conformity assessment observed that it was unclear when, exactly, the victim will have access to legal counselling after the decision of the legal assistance service. However, Act LXXX of 2003 on Legal Aid aims to establish institutions for socially disadvantaged people in order to enhance their access to justice by providing professional legal advice and representation in courts in case of asserting rights and resolving legal disputes. According to the Act, the National Legal Aid Service may grant legal aid in extrajudicial cases, both in civil and criminal procedures. According to the Act, among others, victims of trafficking in human beings may also be provided legal aid in both extrajudicial cases (legal advice, drafting a document) and criminal procedures. Victims of trafficking in human beings can get immediate legal advice from the employees of either the victim support services or the legal aid services for free, in simple legal cases, without a separate application. Otherwise, after the application has been processed, victims can benefit from legal aid in both extrajudicial and litigation cases. Eligibility is facilitated if the applicant has a certificate of victim status. The victim status is declared by the Victim Support Service. Legal aid in extrajudicial cases provided for the applicants can be granted in two basic forms: as free assistance, or by advancing the fees of the assistance. The granting legal aid is based on the financial situation of the applicant. Therefore, the assessment concluded that HU transposed Article 12(2) of the Directive. In addition, Points 1 and 8 of Article 1 of the Act on the Protection Programme were amended. Pursuant to the current rules, the Protection Programme is now extended to every - past or present - participant to the criminal procedure. Furthermore, the New Be. restructured the rules concerning the protection - including data protection - of participants to the criminal procedure. While the Be. regulated the confidential handling of personal data only with regards to witnesses, the New Be. extends these provisions to all participants of the criminal procedure. The personal data of persons participating in Protection Programme and the related documents shall be handled with confidentiality. The provisions regarding witnesses of special protection were amended with more detailed procedural rules. Chapter XIV. of the New Be. included numerous provisions on the protection of persons with special needs during the criminal procedure. Specifically, it is important to point out that Article 85(1)(c) of the New Be clearly states that the court shall exercise due care in the conduct of the criminal proceeding in order to respect the privacy of the person concerned. The 2016 conformity assessment concluded that Hungarian law transposing Article 12(4) was partially in conformity because the unnecessary questioning concerning the victim's private life was only prohibited in the national strategy 2013-2016, which is a soft law instrument.

Therefore, **based on the assessment made in the context of the evaluation, this change means that HU has now transposed Article 12(4)(d) of the Directive.**

- **LT:** Paragraph 1 of Article 185 of CCP (IX-785) was amended by stating that, where necessary to meet the special protection needs of the victim, one or more of the provisions of Article 186 of the Code may apply. Article 186 regulates the questioning of minors. Paragraph 2 of Article 185 was added including a right of a victim of trafficking of human beings to request that the questioning is conducted by a person of the same sex. Paragraph 3 of Article 186 of CCP (IX-785) was amended to include additional provisions regarding the questioning of a minor, namely the mandatory participation of a psychologist.
- **LV:** the national law transposing Article 12(2) has been replaced with Regulation 338 (2017) providing for the requirements for social service providers. However, no specific substantial changes have been identified.
- **RO:** Act of 11 March 2016 introduced article 148a of the CPP, which ensured better protection of victims' personal data.
- **SI:** the 2016 assessment concluded SI partially transposed Article 11. Since then, the process of implementing the so-called Victims Directive, in SI the needs of each victim with regard to the protective measures in the criminal procedure are individually assessed. Various protective measures can be used given the aforementioned assessment. **Based on the assessment made in the context of the evaluation, SI has transposed Article 11 of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 12(1): All Member States provide that the protection measures enshrined in their national legislation apply in addition to the rights set out in the Framework Decision 2001/220/JHA, currently Directive 2012/29/EU.
- Article 12(2): Most Member States (BG, CY, CZ, EE, EL, ES, FI, FR, HR, LV, LT, MT, PT, SI, SK, FI, SE) have legislation in place that provides THB victims with access without delay to legal counsel and representation, including for the purpose of claiming compensation, and free of charge where the victim does not have sufficient financial resources. More precisely, most Member States included the possibility of legal aid, free of charge, where a person does not have sufficient financial resources. In some Member States (EL, HR, LV and SE) such aid is granted for free, regardless of victims' resources. However, some national legislation does not specify that access to legal counselling and legal representation should occur without delay (BE, DE, HU, IE, IT, PL, RO), and some Member States have different procedures for third country nationals (LU, IT) or do not cover all kinds of exploitation, thus different "types" of victims (NL).
- Article 12(3): All Member States are compliant with paragraph 3 which obliges them to provide assistance protection to victims on the basis of an individual risk assessment. The assistance protection measures envisaged by the Directive and transposed by all Member States include the access to a witness protection process or to other similar measures.
- Article 12(4): Most Member States have transposed this provision. However, some Member States do not explicitly provide that the practices listed in Article 12(4) (a-d) shall be avoided.

### ***Article 13: General provisions on assistance, support and protection***

Article 13 requires that Member States ensure assistance measures to child victims following the child's best interests. The provisions are below:

**Article 13: General provisions on assistance, support and protection measures for child victims of trafficking in human beings**

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

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	E	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
13(1)																										
13(2)																										
Changes																										

The main identified changes since 2016 were:<sup>299</sup>

- **BE:** The circular of 26 December 2016 provides that in case of child victims of human trafficking, the police will take into account the specificity of the minor's vulnerability. The understanding is that this circular does not change legislation, so does not change the Transposition Assessment.
- **ES:** Amendments ensure that if the age of a victim cannot be established, they will be considered a minor and be guaranteed all other rights provided for by transposition of Article 15.
- **HU:** Article 43(2) of the Act on the Support of Crime Victims was amended in a way that it no longer requires the severe threat to be directed against the life or the physical integrity of the child represent a prerequisite for the starting of a procedure. Other articles of the Gylv. Have been amended. The aim was to specify some children’s rights, such as the access to special care, rehabilitation, as well as a procedure through which the police can immediately place a presumed child victim of trafficking (who either lives in his/her family or in temporary care) under the care of a special children's home. In addition, Article 84(1) of Gylv. was amended in such way that a child protection guardian shall be appointed in cases where the child’s parents are unknown. Concerning Article 13(2) of the Directive, article

<sup>299</sup> Soft law instruments (such as circulars or an updated National Action Plan) which frequently cover general provisions on assistance and protection to victims of trafficking was not included in the “minor/major changes” category.

72(1) of the Harmvhr was amended. It now provides that a medical examination shall be carried out to clarify the person's age in case the age is uncertain.

- **IE:** The Second National Action Plan to Prevent and Combat Human Trafficking in Ireland specifies that where the age of a person is uncertain and they claim to be a child, Tusla (the Child and Family Agency) considers them as such initially and provides them with assistance, support and protection as if they are a child.
- **IT:** The so-called Zampa Law (47/2017) introduced a series of changes to the national legislation on unaccompanied minors. Among the most relevant changes, it established a prohibition on rejecting unaccompanied minors at the border and it ensured that reception facilities meet minimum standards in terms of assistance and support services. When choosing where to place a minor, the needs and characteristics of the minor (resulting from an interview) shall be taken into account, in relation to the type of services offered by the facility. Concerning the age assessment of the child, the amendment specified that in the event that there are well-founded doubts as to the age declared by the minor, the public security authority shall proceed to the identification with the help of cultural mediators and in the presence of the guardian or temporary guardian, if already appointed, and only after ensuring immediate humanitarian assistance. This law already provided that the minor age is presumed in the case where the disciplinary procedure performed does not allow to establish with certainty the age of the person.
- **LT:** In all cases where the victim of trafficking is a minor, the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour shall now be informed. The national law also specified that assistance to victims of trafficking (including minors) can also be offered by non-governmental institutions.
- **LU:** According to Article 3-7 para 3 of the Criminal Procedure Code (amended by Law 8 Mars 2017), when the age of the victim is uncertain, and there are reasons to believe that the victim is a minor, the victims is presumed to be a minor. **Based on the assessment made in the context of the evaluation, this change means that LU has now transposed Article 13(2) of the Directive.**
- **NL:** While not a change to national legislation, it was noted that the 2021 tender procedure for appointing and organisation to provide the Categorical Reception of Victims of Human Trafficking (COSM) service has started, adopted on behalf of the Ministry of Justice and Security and the Ministry of Health. Compared to the previous COSM, there is a reduction in the number of available places in reception centres for children. This reduction was probably caused by the effects of the Covid-19 pandemic.
- **RO:** the Annex to the Order of the Minister of Labour and Social Protection no. 1335/2020 approving the minimum quality for social services specifies the minimum quality standards for social services with accommodation and assistance services for child victims of human trafficking.
- **SI:** The 2016 assessment conclude SI had not transposed 13(2). SI clarified that Article 64(2) of the CPA transposes this Article. Legislation says that each victim is individually assessed, and the law stipulates that a minor always has special needs for protection (therefore, no need to argue for special needs in the process of individual assessment); Article 143.č of CPA. **The assessment made in the context of the evaluation is that SI has transposed Article 13 of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 13(1): This provision has been transposed by all Member States. Concerning BE, the 2016 conformity assessment found that the specific measures of assistance and support for all child victims of trafficking in human beings is only contained in a soft law instrument.<sup>300</sup>
- Article 13(2): Several Member States have not transposed Article 13(2), as their national legislation does not explicitly provide for a specific measure ensuring that, where the age of a person is uncertain, the person is presumed to be a child. Specifically, some Member States do not refer to the principle (BE, DE, FI, FR, HU<sup>301</sup>, LV, PL, SI),<sup>302</sup> IE does not include it in non-binding instruments,<sup>303</sup> while others limit the scope of the principles to unaccompanied minors or to third-country nationals (IT, LT, NL).

**Article 14: Assistance and support to child victims**

Article 14 requires tailored assistance measures for child victims of THB. The provisions are set out below:

**Article 14: Assistance and support to child victims**

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.
2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.
3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the

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<sup>300</sup> 2016 *Circular on the introduction of multidisciplinary cooperation regarding the victims of trafficking in human beings and/or certain more serious forms of smuggling of human beings* need to be clarified.

<sup>301</sup> Although the amended provision states that a medical examination shall be carried out to clarify his/her age, the articles does not ensure that if the age of the minor is uncertain and there are no reasons to believe that the person is a child, that person is presumed to be a child.

<sup>302</sup> Similarly, in SE, if an asylum applicant claims that he or she is an unaccompanied minor, the Migration Agency shall, providing there are reasons to question that the applicant is under the age of 18, promptly assess the age and issue a temporary decision. According to chapter 13, section 17 of the Swedish Aliens Act, a final judgement about the age of the applicant shall be made in the final decision on the application. The Migration Agency's temporary decision about the age may be appealed to a migration court. However, the national law does not specifically provide the presumption of minority.

<sup>303</sup> It should be noted that the 2016 conformity assessment stated that Ireland did not transpose Article 13(2) because the SCEP (Statement of Good Practice – which was identified as the national law transposing Article 13(2)) only applied to third country nationals and not to all victims of trafficking. Moreover, as the SCEP was adopted by a non-governmental entity, it does not have binding force. As the National Plan has no binding nature either, the assessment concludes that Ireland did not transpose Article 13(2).

territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

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

The results of the analysis of transposition are set out in the figure below.

Art.	A T	B E	B G	C Y	C Z	D E	E E	E L	E S	F I	F R	H R	H U	I E	I T	L T	L U	L V	M T	N L	P L	P T	R O	S E	S I	S K
14(1)																										
14(2)																										
14(3)																										
14(4)																										
Changes																										

The main identified changes since 2016 were:<sup>304</sup>

- **AT:** Legislation regarding child and youth welfare tasks which transposed Article 14(1) expired in 2019. However, other existing requirements for child protection and access to education make the necessary provisions for this Article and the Austrian authorities have provided more description to demonstrate this. The legislation requiring the appointment of a guardian (Article 14(2)) has been replaced and the new legislation now specifies the guardian (or ‘curator’) might be distinct from the legal representative and should be different for each affected minor, if their best interests are in conflict.
- **BG:** The relevant regulation now stipulates that an action plan be agreed upon with the child (depending on age and stage of development). Additionally, periodic meetings to monitor the child now must include ‘all interested parties’.
- **EL:** The 2016 assessment concluded that EL had partially transposed Article 14(1). EL clarified that Presidential Degree 233/2003 and other legal instruments concerning child protection ensure that access to education is guaranteed for all minors irrespective of nationality, legal status, or vulnerability. Needs assessment and best interests assessment take place in all cases where a child is under the care of an agency, actor, NGO, etc. (Civil code, law 4554/2018, 4538/2018, law 4636/2019, as amended). **Based on the assessment made in the context of the evaluation, this clarification means that EL can be considered to have transposed Article 14(1) of the Directive.**

<sup>304</sup> The adoption of an updated National Plan for combatting trafficking in human beings (IE, PL) [which frequently covers Article 13] was not included in the “minor/major changes” category.

- **EE:** The Child Protection Act (2016) provides a comprehensive definition of “child in need of assistance”, urging all persons who have knowledge of a child in need of assistance to notify their situation to the local authority (or to a helpline service), which is required to immediately assess the child’s need for assistance and provide the relevant assistance measures. The same act provides for other rights related to child’s assistance and victim support services.
- **HR:** A section of a new Protocol on unaccompanied minors specifies actions to be taken in the case of suspected THB. The Protocol requires immediate notification of a specialised police officer and subsequent information-sharing with the Coordinator for the Suppression of THB and the National and Regional Coordinators for Combatting THB. The Regional Officer or a centre for social care is authorised to make decisions on safe accommodation for the child without delay and the child should be accompanied there by the regional coordinator and a special guardian.
- **HU:** Changes reported in regard to the transposition of Article 13 are reported to also apply for Article 14. Beyond this, amendments have stated that it is no longer necessary that a child be in danger of direct risk to life or physical integrity for intervention by the relevant authorities to begin. Legislation providing for access to education has been replaced, but this has not resulted in any material changes to the provisions transposing Article 14(1). Legislation has also been amended to state that an unaccompanied minor will be provided with a guardian if their parents are unknown and/or if available, where information shows them to be unaccompanied (Article 14(2)).
- **IT:** A 2017 law changed existing legislation on unaccompanied foreign minors so that the national system of protection and reception is strengthened. It also states that educational institutions of all levels must promote the completion of compulsory schooling for these minors, including those who are child victims of THB.
- **LV:** Amendments have been made to increase the tasks assigned to the Orphan’s Court. These now include the responsibility to evaluate abuse of parental rights, carrying out necessary activities to ensure appropriate care of a child and that their best interests are represented, informing the State Inspectorate for the Protection of the Rights of the Child of cases of repeated termination of parental custody. These are all reported to apply to child victims of THB and to transpose Articles 14(1) and 14(2).
- **MT:** In 2019, legislation transposing Article 14 was replaced with a new act on child protection. This includes a review of the childcare system, protection of children during judicial procedures and the availability of child advocates. These are all applicable to child victims of THB and are reported to transpose Articles 14(1) and 14(2).
- **PL:** Legislation providing access to education for child victims of THB was revoked in 2017 (Article 14(1)). In the same year, a new regulation was issued on the education of children without Polish citizenship or children with Polish citizenship who have previously been education abroad. This provides for access to education for any child arriving from abroad but does not specify provisions for child victims of THB.
- **RO:** In 2019, amendments were made to Law 211/2004 on measures to ensure information, support and protection of victims of crime. Article 1 currently provides that everyone who is a victim has the right to be recognised as such from the moment of identification, to be treated with respect, professionalism, to benefit from individualised protection and support, financial compensation and restoration for rights, and the victim’s family members enjoy the same rights. **Based on the assessment made in the context of the evaluation, this change means that RO has now transposed Article 14(3) of the Directive.**

- **SK:** Legislation has been amended to state that if the legal representative of the child victim cannot exercise the rights of the child or if there is danger of omission, the prosecutor can request a judge to appoint a guardian (Article 14(2)).

Overall status of transposition/ gaps in transposition:

- Article 14(1):
  - Most Member States (BG, EL, CZ, EE, ES, FR, CY, HU, LT, PT, RO, SK) refer to general assistance and support measures tailored to children such as counselling, social support, healthcare services and an appropriate form of accommodation. In some Member States (IE, FI, SE) support and assistance measures are only available to a limited group of minors.
  - Only few Member States developed psychological and medical assistance measures for child victims providing them with enrolment in the social welfare system (HR), a temporary residence permit (SI) and the establishment of child protection groups in hospitals (AT).
  - The assistance and support measures offered by some Member States (BE, LV and PL) are applicable to all victims. Article 14(1) also provides that these measures should assist and support the child "in the short and long term": only France makes explicit reference to the time period of the duration of the assistance measures, while the other Member States seem to provide such measures for a "reasonable time" without specifying the precise time frame.
- Article 14(2): All Member States have made provisions to conform to Article 14(2): a few Member States (CY, NL) adopted specific provisions to that purpose, while the others ensure the appointment through their general rules.
- Article 14(3). The 2016 assessment found that only half of Member States (BG, ES, CY, LT, LU,<sup>305</sup> MT, PL, PT, SI, SK, FI, SE) had adopted specific measures for the family of the child victim. Other Member States (CZ, DE, LV) partially transposed Article 14(3), as their national legislations are very general in terms of assistance and support measures offered to the family of the child victim.

***Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings***

Article 15 sets out a number of measures to protect child victims during the process of a criminal investigation proceedings. The provisions are set out below:

**Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings**

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as

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<sup>305</sup> In LU, a bill of law on the rights of child victims will soon be submitted for approval to the Council of Government and to the Parliament. This bill will gather the (already existing) procedural rights of child victims in one piece of legislation.



a result of a conflict of interest between them and the child victim.

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

The results of the analysis of transposition are set out in the figure below

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
15(1)																										



prosecutors and investigators and state that minors can give testimony if contact with the accused can be avoided (Article 15(5b)).

- **EL:** the 2016 assessment concluded EL had not transposed Article 15(3)(d). EL clarified that this is implemented in practice following standard operating procedures. **Based on the assessment made in the context of the evaluation, this clarification means that EL can be considered to have transposed Article 15(3)(d) of the Directive.**
- **HU:** Changes to legislation are reported but these do not appear to change the conclusions of the 2016 assessment that there is only partial transposition of Article 15(2), 15(3a), 15(3b), 15(4) and 15(5b) for the following reasons: the legislation does not specify that protection should be provided without delay (Article 15(2)), the crime of human trafficking is not sufficiently covered by the provisions quoted as transposing Article 15(3a), provisions transposing Article 15(3b), 15(4) and 15(5b) only refer to minors under 14 or refer to minors under 18 without foreseeing an obligation.
- **IE:** The 2017 Victims' Crime Act currently includes victims' rights enshrined in Article 15(3)(a-f). **Based on the assessment made in the context of the evaluation, this change means that IE has now transposed Article 15(3).**
- **LT:** Legislation on the timing and number of interviews of child victims has been amended to state that such proceedings with minors may not be performed between 10pm and 6am unless urgent. Other provisions have been moved between legal articles but are unchanged.
- **LV:** Legislative amendments require that a minor is questioned by an interviewer with knowledge of communication with a minor during criminal proceedings and that a child victim's representative is permitted to participate in the interview.
- **MT:** New legislation allows for the appointment of a trained expert support person for child victims throughout court proceedings and for the appointment of a family law child's advocate to represent the child victim's interests in civil proceedings.
- **SI:** The 2016 assessment concluded some articles had not been transposed. Since then SI has significantly changed its CPA in order to implement so-called Victims Directive. **Based on the assessment made in the context of the evaluation, ES has transposed Article 15 of the Directive.**

Overall status of transposition/ gaps in transposition:

- Article 15(1): All Member States provide the appointment of a guardian or a legal representative in case parents cannot represent a child's interest due to a conflict of responsibility, or for unaccompanied children (please refer to Article 16 below).
- Article 15(2) and (3): the 2016 Assessment noted that these were implemented through general provisions of criminal law, thus specific measures are sometimes lacking and there is some variability in terms of the age of child for whom such measures are available (the Directive specifies under 18, but some Member States apply to under 15 or under 15).
- Article 15(4): Four states have partially transposed this article (FI, HU, LV, PL), with the remainder fully transposing. Finland's amendments do not cover minors of all ages, Hungary's and Latvia's only cover minors under 14 and Poland's only cover minors under 15.
- Article 15(5a): Two Member States have only partially transposed this article. In Belgium, provisions transposing this article have not been consistently applied across the legislation reported on, while the Polish provision to exclude the public from court proceedings is aimed solely at the protection of minors under 15.
- Article 15(5b): Some Member State laws only apply to children under 15 (FI) and 14 (HU, LV). The Directive categorises child victims as under 18. In addition, Polish legislation

refers to the rights of the accused to be present (with exceptions) rather than the rights of the child victim. Therefore, these five Member States are considered to have only partially transposed this article.

- Article 15(6): All Member States have transposed this article without prejudice to Article 12 (Protection of victims in criminal investigation and proceedings).

**Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings**

Article 16 sets out the measures that MS must provide to protect children who are unaccompanied. The provisions are set out below:

**Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings**

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.
3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.
4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.
5. This Article shall apply without prejudice to Articles 14 and 15.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
16(1)																										
16(2)																										
16(3)																										
16(4)																										
16(5)																										
Changes																										

The main identified changes since 2016 were:

- **AT:** Legislation has been updated to re-name the national youth agency, which is entrusted with the custody and care of unaccompanied minors, to ‘child and youth’ agency.
- **BG:** Amendments to national law oblige the relevant authorities to take measures for the protection of child victims, ensure access to public education and the appointment of legal representation with necessary knowledge, make provisions for an assessment of the child’s best interests and a subsequent action plan as well as residential care for child victims of trafficking. The mandatory notification of victims about their rights now specifies the need to take the age of victims into account.
- **EL:** The 2016 assessment concluded that EL had partially transposed Articles 16(1) and 16(2). However, law 4554/2018 and 4636/2019 now provide that unaccompanied minors are accorded special protection measures, including appropriate for their age and needs accommodation, interpretation, representation, access to healthcare and to education. A risk/vulnerability assessment and a best interest assessment take place in view of identifying durable solutions. These measures apply to all unaccompanied minors in the country. Under Presidential Decrees 18/2020, 106/2020, law 4636/2019 and Presidential Decree 70/2021, the Special Secretariat for the Protection of Unaccompanied Minors has been established within the Ministry of Migration and Asylum as the competent authority for all matters concerning the protection of unaccompanied minors and in particular their accommodation, the quality of service provision, their integration, support, representation/guardianship and institutional protection. **Based on the assessment made in the context of the evaluation, EL has transposed Article 16(1) and (2) of the Directive.**
- **HR:** A new Protocol was adopted in 2019 which outlines actions to be taken in case of suspected TBH: upon identification of a potential child victim, the relevant authority is to notify officers specialising in trafficking or juvenile delinquency and the coordinator for the suppression of THB (Article 16(1) and 16(2)). A special guardian will be proposed (Article 16(3)), and appropriate accommodation should be decided on for the child victim without delay.
- **IT:** New (2017) legislation establishes a national system of protection and reception for unaccompanied foreign minors, ensuring homogeneity of provisions across the national territory. It also aims to strengthen existing protection tools and requires that educational institutions of all levels activate measures to promote the completion of compulsory schooling for unaccompanied minors (Article 16(1) and 16(2)).
- **LT:** Legislative amendments now require the participation of a psychologist in any questioning of a minor and mandate that the Migration Department must issue a foreigner’s registration certificate within 2 days of receiving information on an identified unaccompanied minor, rather than within 2 working days.
- **LV:** Relevant laws have been amended to empower an Orphans and Custody Court to evaluate cases of abuse or failures in custody and act to secure appropriate alternative care in the best interests of the child. These provisions would also be applicable to (unaccompanied) child victims of trafficking (Articles 16(1) and 16(2)). Other amendments replaced ‘interim guardian’ with ‘a guardian for a time period’ to reflect the nature of appointing a guardian for unaccompanied children without specifying if temporary or otherwise (Article 16(3)).
- **RO:** Amendments specify that the procedures of identification and assignment of support are considered complete only if the minor is safely reunited with family or handed over to authorities in the country of origin, if there is non-identification of family or if the State of

origin will not accept the minor. In the latter two cases, long-term stay permits can be granted and now, international protection in Romania is granted rather than ‘a form of protection’. Conditions for these provisions were also added to state that no serious doubts over the minority of the victim may exist.

- **SI:** Legislation previously transposing Article 16(3) is no longer in use, having been replaced by the Family Code. However, the provisions required by Article 16(3) can be inferred from other national provisions on victims of all nationalities.

Overall status of transposition/ gaps in transposition:

- All MS have at least partially implemented all parts of Article 16. In some MS, measures specify provisions for unaccompanied child victims (HU, IE, CY, AT, SK, FI, FR, LU, NL) while, in others, general rules and regulations on assistance and care for children also are also suitable to cover unaccompanied child victims (BG, EE, HR, LV, PT, SI).
- Latvia’s legislation only partially conforms to Article 16(2) as provisions to ensure a rehabilitation plan and the receipt of social services apply to both adult and child victims, therefore not accounting for the specialised assistance required for minors.
- Regarding Sweden, the unclear scope of support and assistance provided to child victims who do not have a right to reside in Sweden (or are ‘paperless’) means that legislation specifying assistance, support and durable solutions for child victims only partially transposes both Article 16(1) and Article 16(2).

**Article 17: Compensation**

Article 17 requires Member States to provide compensation measures to THB victims. The provision is set out below:

**Article 17: Compensation to victims**

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

The results of the analysis of transposition are set out in the figure below:

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S	
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K	
17	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Yellow	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Red
Changes	Grey	Blue	Light Blue	Grey	Grey	Grey	Light Blue	Grey	Grey	Grey	Grey	Grey	Light Blue	Grey	Grey	Grey	Grey	Grey	Light Blue	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Dark Blue

The main identified changes since 2016 were:

- **BE:** Legislation has been amended to specify that exceptional damage caused by the identity and motives of the perpetrator remaining unknown is now basis for compensation. Another amendment states that aid will be granted per intentional act of violence, per applicant, for damages above 500€ to a limit of 125,000€.
- **BG:** Amendments to existing laws transposing Article 17 now specify that victims of crimes can receive assistance for both pecuniary and non-pecuniary damages whereas financial

compensation can be granted to victims who have suffered pecuniary damages as a result of THB. The loss of support to dependents has been added to the list of damages which can result in a claim for compensation while expenses covered by the National Health Insurance fund have been excluded from the medical costs which can be compensated.

- **EE:** The wording of relevant legislation has changed, now stating that ‘compensation is payable for economically assessable damage’, including for costs arising from incapacity for work, damage to health, death and/or funeral of the victim, damage to spectacles, dentures and other similar appliances for bodily function.
- **HU:** Legislation regarding the support of crime victims was amended in 2020 to make compensation available to all victims regardless of their deprivation status, with the amount of compensation victims can receive clarified: the rate is at most fifteen times the basic sum.
- **NL:** One section of the Code of Criminal Procedure transposing Article 17 has been abolished. However, it is claimed that another section sufficiently establishes victims’ rights to compensation.
- **SK:** A piece of legislation which transposed Article 17 was repealed. It has been replaced with a new legislative act which defines the category of ‘victim’ and ‘vulnerable victim’ and stipulates rights to compensation for victims of violent criminal offences of any nationality, provided the injury or damages occurred in the Slovak Republic. It also describes the circumstances in which compensation cannot be granted, including scenarios in which the alleged perpetrator is acquitted.

Overall status of transposition/ gaps in transposition:

- All Member States provide compensation measures to THB victims. Such measures include compensation for non-material damages, such as physical and psychological suffering (AT, FI, SK, UK), dual system of compensation (BG, CZ, ES, LT, MT, NL, PT, SE), fund for victims of violent crimes (BE, FR and HR) or other special compensation measures (EE, EL, HU, LV, PL, RO, SK and UK).
- In the case of SI, the 2016 assessment found that compensation appeared to be provided only to victims who are Slovenian or EU citizens. No relevant changes have been identified in national legislation since that assessment was made. In IE, the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses, and not pain and suffering. Although the possibility to start a legal action is open, in practice, victims of trafficking’ eligibility to free legal aid is not guaranteed.

### **Article 18: Prevention**

Article 18 requires that Member States take steps to prevent THB. This includes actions for awareness-raising campaigns but also education and training measures for their officials involved in the fight against THB. Article 18.4 states that Member States shall *consider* measures to establish as a criminal offence the use of services related to the object of exploitation. The provisions are set out below:

#### **Article 18: Prevention**

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take appropriate action, including through the Internet, such as information

and awareness-raising campaigns, research and education programmes, where appropriate in cooperation 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.

3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.
4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

The results of the analysis are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
18(1)																										
18(2)																										
18(3)																										
18(4)																										
Changes																										

The main identified changes since 2016 were:<sup>307</sup>

- **EL:** The legislation transposing Article 18(1) was annulled but a Ministerial Decision provides for the establishment and operation of the National System for the Identification and Referral of Victims of Human Trafficking and the rest of the measures brought in to conform to this Article of the Directive remain in place.
- **HU:** A new provision transposes Article 18(4) and criminalises the knowing use of the work or services of a trafficked person with a penalty of up to three years’ imprisonment. In the case of knowing use of sexual services of a trafficked person, the penalty is up to five years’ imprisonment with a minimum sentence of one year’s imprisonment. **Based on the assessment made in the context of the evaluation, this change means that HU has now transposed the optional Article 18(4) of the Directive.**

<sup>307</sup> The adoption of an updated National Plan for combatting trafficking in human beings (BE) [which covers the type of actions required by Article 18] was not included in the “minor/major changes” category.



- **LU:** The 2016 conformity assessment was unable to locate measures on education, training, and raising awareness. Therefore, this meant that the actions taken have only partially transposed Article 18(1) and 18(2). Several initiatives were set up after 2017, including Stoptrate.lu, trainings, and other initiatives implemented through the Benelux framework. **Based on the assessment made in the context of the evaluation, this change means that LU has now transposed Article 18(1) and Article 18(2) of the Directive.**
- **LV:** A new Trafficking Prevention Plan for 2021-2023 was developed, including a list of actions to be taken in this time period. These actions are: raising public awareness, improving the identification of victims, stepping up efforts to prosecute perpetrators with the aim of providing a deterrent and, finally, strengthening coordination and information-exchange within Latvia and with partners abroad and in international institutions.
- **RO:** Relevant legislation was amended to clarify the responsibilities of the National Agency Against Trafficking in Human Beings (previously in Persons). These responsibilities are developing campaigns to prevent THB, programs to facilitate assistance to victims and collaboration with public, private and non-governmental organisations for joint campaigns.
- **NL:** The Dutch Parliament passed a law criminalising the use of services exploited from victims of trafficking (linked to sexual exploitation).<sup>308</sup> **Based on the assessment made in the context of the evaluation, this change means that HU has now partially transposed the optional Article 18(4) of the Directive.**

Overall status of transposition/ gaps in transposition

- Article 18(1) and 18(2): Most Member States (BE, EE, EL, ES, FR, HR, HU, IE, CY, LT, MT, NL, AT, PL, PT, RO, SI, SK, SE) have developed general training and educational measures. All Member States have put in place campaigns to raise awareness and enable the reduction of the demand of THB, such as awareness-raising campaigns and lectures among students (FR, LT, SK), round tables and debates (HR, LU), TV and radio campaigns (CY, LU, MT), festivals and annual events (AT, HU, PL, SK)<sup>309</sup>. Some Member States also introduced activities for foreign victims to prevent THB in their country of origin (AT, BE, BG).
- The 2016 conformity assessment concluded that Italy's provisions only partially conform to Article 18(1) and 18(2) due to a missing article in the relevant Decree and the large discretion given to the Department for Equal Opportunities in carrying out prevention measures.
- Article 18(3): All Member States included training activities for competent authorities in their strategy against THB<sup>310</sup>. All Member States reported measures aimed at ensuring that their officials who are likely to engage with victims or potential victims of THB are adequately trained. Some Member States focused more on training of their immigration officers (BE, FR and LU) and border control staff (HU, LT and PT). Others focused on the training of health-care professionals (BE, FR and LU), staff of social assistance services (BG, HU, IT, LT, LU, MT, PT, SI and SK) or labour inspectors (CZ, FR and SI). The

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<sup>308</sup> Kamerbrief over initiatiefwetsvoorstel strafbaarstelling misbruik van prostitutie(s) die slachtoffer van mensenhandel zijn 34091" Available [here](#).

<sup>309</sup> Website of the European Commission, *Together Against Trafficking in Human Beings – Member States*. Available at: [link](#).

<sup>310</sup> Website of the European Commission, *Together Against Trafficking in Human Beings – Member States*. Available at: [link](#).

majority of Member States made reference to training measures for public officials involved in investigations and prosecutions such as judges (AT, BE, BG, CZ, HU, LT, MT, PL, PT, SE and SI), prosecutors (BG, CZ, EE, ES, HU, IT, LT, MT, NL, AT, PL, SI and SE), law enforcement bodies (EE, NL and PL) and judicial police (ES).

- Article 18(4): Article 18(4) sets out an option for the Member States to criminalise the use of services which are the object of exploitation.
- Ten Member States<sup>311</sup> have legislation that criminalise the knowing use of services extracted from victims of any form of exploitation. One Member State (CY) has such a standard – the law states that, in the case of the use of sexual exploitation services, a person can be prosecuted for the demand, reception or use of sexual exploitation service, regardless of whether they had a reasonable suspicion that the person was a VoT. CY therefore uses a ‘strict liability’ standard.<sup>312</sup>
- Ten Member States<sup>313</sup> have legislation that criminalise the knowing use of services by victims of sexual exploitation. **To this extent, the assessment concludes that these Member States have partially transposed the optional Article 18(4).** Additionally, PL reported that there is discussion underway about whether to criminalise knowing use and SK reported that the process is ongoing to criminalise knowing use of the services by VoT.
- Four Member States<sup>314</sup> in effect criminalise the knowing use of services exacted from VoT for sexual exploitation because they follow the ‘Nordic Model’, which criminalises consumers of prostitution (including those who use the sexual services of victims of trafficking in human beings).<sup>315</sup> This approach is adopted by Sweden, Finland, Ireland and France. Spain is reported to be considering adopting the Nordic Model.<sup>316</sup> **To this extent the assessment concludes that these Member States have partially transposed the optional Article 18(4).**
- Seven Member States<sup>317</sup> do not have any legislation criminalising knowing use of services exacted from victims.
- Some Member States have legislation that may create criminal liabilities for users of exploited services, but which does not transpose the Directive. For example:
  - AT has legislation that criminalises labour exploitation by third country nationals
  - CZ makes it an offence not to report trafficking, where a person becomes aware.

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<sup>311</sup> BG; CY; EL; HR; HU; LT; MT; PT; RO; SI.

<sup>312</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Discouraging the demand that fosters trafficking for the purpose of sexual exploitation* (2021). Available at: [link](#).

<sup>313</sup> EE; DE; EL; FI; FR; IE; LU; LV; NL; SE.

<sup>314</sup> FI; FR; IE; SE.

<sup>315</sup> Some countries have outlawed sex buying on the grounds that any purchase of sex is a form of exploitation and related to gender-based violence, regardless of the status of any person in prostitution. This is the so-called Nordic model, which bases the criminalisation of the purchase of sex on the grounds that most sex purchasers are taking advantage of the difficult situation of prostitutes. Because of this analysis, the Nordic model does not criminalise the selling of sex. OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Discouraging the demand that fosters trafficking for the purpose of sexual exploitation* (2021). Available at: [link](#).

<sup>316</sup> Comment from ES National Rapporteur, Workshop 2.

<sup>317</sup> AT; BE; CZ; ES; IT; PL; SK.

- IT has legislation making unlawful brokering and exploitation of labour an offence (in the Criminal Code).
- PL (According to Article 10(1) of the AREIF) it is a criminal offence for an employer to employ an illegally residing foreigner, accompanied by particularly exploitative working conditions. However, the 2016 assessment found that this law does not refer to the condition requiring that the employer has the knowledge that the employee is a victim of trafficking in human beings. In addition, the national provisions are only addressed to third-country nationals. Overall, based on the assessment made in the context of the evaluation, PL has not transposed the optional 18(4).

### Article 19: National Rapporteurs or equivalent mechanisms (NREMs)

According to Article 19, Member States shall appoint a national rapporteur or equivalent mechanism with the aim to report periodic national assessment of trends, measures and issues related to the fight against THB. The provision is set out below:

#### Article 19: 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.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
19																										
Changes																										

The main identified changes since 2016 were:

- **BG:** 2019 legislation establishes the National Commission for Combatting Trafficking in Human Beings (NCCTHB) as national rapporteur with authority to request and receive information from all relevant actors and to report to the Council of Ministers.
- **CZ:** The National Strategy for 2020-2023 improves the rapporteur mechanisms. These improvements include revisions to the NRM to improve functionality and increased data collection on THB, especially information on victims' demographics and country of origin.
- **HU:** The relevant legislation (Order of the Minister of the Interior) was replaced with new legislation on the same subject.
- **IE:** In October 2020, IE adopted a law appointing an independent national rapporteur on Trafficking in Human Beings, namely the Irish Human Rights and Equality Commission (IHREC)

- **LT:** The relevant legislation was abolished and replaced with a new order of the minister of the interior in 2017 which appoints a national rapporteur. The order also regulates procedures for the rapporteur’s collection of statistical data and other information on THB.
- **PL:** The Committee for Combating and Preventing Trafficking in Human Beings was replaced by the Team for Counteracting Human Trafficking in 2019. The team is tasked with drafting National Action Plans, initiating actions against THB and evaluating the implementation of programmes. The Inter-Ministerial Team for Combatting and Preventing Human Trafficking was abolished in 2018. However, the Head of the Office for Foreigners is a member of the Team for Counteracting Human Trafficking.
- **RO:** Legislative amendments removed the coordination of the implementation of human trafficking policies from the responsibilities of the National Agency against Trafficking Human Beings.

Overall status of transposition/ gaps in transposition

- All Member States have identified a specific person, a body or equivalent mechanism to carry out the tasks envisaged by article 19 of the Directive.

**Article 20: Coordination**

Article 20 requires Member States to report the information required in Article 19 to the Anti-Trafficking coordinator at the EU level.

**Article 20: 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 referred to in Article 19, 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.

The results of the analysis of transposition are set out in the figure below.

Art.	A	B	B	C	C	D	E	E	E	F	F	H	H	I	I	L	L	L	M	N	P	P	R	S	S	S
	T	E	G	Y	Z	E	E	L	S	I	R	R	U	E	T	T	U	V	T	L	L	T	O	E	I	K
20																										
Changes																										

**The main identified changes since 2016 were<sup>318</sup>:**

<sup>318</sup> The adoption of an updated National Plan for combatting trafficking in human beings (FR) [which covers the type of actions required by Article 20] was not included in the “minor/major changes” category.

- All Member States had transposed Art. 20 of the Directive as at 2016. A few organisational changes were implemented since, but these had no impact on the transposition of the Directive:
  - **IE:** The Irish Human Rights and Equality Commission (INHREC) recently made its first submission, to contribute to the fourth progress report on the progress made in the fight against trafficking in human beings.
  - **LT:** Order of 6 September 2013 of the Minister of Interior of the Republic of Lithuania No 1V – 750 on the implementation of Articles 19 and 20 of Directive 2011/36/EU was abolished and replaced by the order of the minister of the interior of the Republic of Lithuania of 31 March 2017 on the appointment of the national reporter of the republic of Lithuania on the situation of the fight against trafficking in human beings and statistical data and other information about the situation of trafficking in the protection of human resources No 1V-245. The order regulates the procedure for collecting and providing statistical data and other information on the situation regarding trafficking in human beings to the National Rapporteur on Combating Trafficking in Human Beings and publishing this information.
  - **PL:** The 2016 Assessment concluded that the Polish legislation does not include a provision corresponding explicitly to Art. 20 of the Directive, but that its requirements can be inferred from several national instruments, including the Committee for Combating and Preventing Trafficking in Human Beings. This committee was replaced in 2019 by the Team for Counteracting Human Trafficking (established by Ordinance No. 6 of the Minister of Internal Affairs and Administration of 15 February 2019), which now fulfils that role in implementing Art. 20.
  - **SI:** Previously, Slovenian national law did not include a provision corresponding explicitly to Article 20 of the Directive. However, the 2016 assessment concluded that Slovenia seemed to contribute to the work of the ATC through information provided from the national contact point. In 2020, the Government of the Republic of Slovenia adopted Resolution no. 01203-9/2020/4 amending the decision on the establishment of the Inter-Ministerial Working Group on Combating Trafficking in Human Beings, which appointed a new national coordinator for combatting trafficking in human beings and an updated membership of the working group. Similar to the situation in 2016, this working group fulfils the role of ATC.

**Overall status of transposition/ gaps in transposition:**

- All Member States have implemented to Article 20.