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REGULATORY SCRUTINY BOARD OPINIONS

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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Brussels,
Ares(2022)

Opinion

Title: Evaluation of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims

Overall opinion: POSITIVE

(A) Policy context

The 2011 EU Anti-Trafficking Directive established minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking of human beings and introduces provisions to strengthen the prevention of this crime and the protection of the victims, considering the gender perspective.

The evaluation of the Directive aims to assess to what extent it has been successful in preventing and fighting trafficking in human beings, supporting and protecting victims, whether it brought value at the EU level and whether it is still relevant. The results of the evaluation will feed into the parallel impact assessment on the revision of the Directive.

(B) Summary of findings

The Board notes the additional information provided in response to the quality checklist and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should improve with respect to the following aspects:

- (1) The report does not sufficiently follow the original objectives of the Directive.**
- (2) The positive assessment of effectiveness does not reflect the presented analysis.**
- (3) The reasons for the significant underestimation of the number of victims of trafficking in human beings is not sufficiently explained.**
- (4) The report does not provide a clear identification of lessons learned from evaluating the Directive that would form the basis for revising it.**

(C) What to improve

(1) The original objectives of the Directive under evaluation should be clearly identified in the report and consistently referred to throughout including in the intervention logic. The assessment of the evaluation criteria should then be conducted with reference to these objectives.

This opinion concerns a draft evaluation which may differ from the final version.

(2) The report gives a positive assessment of the effectiveness of the Directive that does not correspond to the presented analysis. The conclusions should be more nuanced, reflecting the different degree of effectiveness with respect to the objectives relating to setting up structures (process) and those to combatting trafficking (substance). The main objective of “combatting crime” by building a more coherent framework for the fight against trafficking, and the specific objective of “establishing an effective monitoring system” should be evaluated.

(3) While it is difficult to assess the number of unreported cases of trafficking in human beings, the reasons for this should be better explained in the report. The inclusion of any available data assessing the gap between the reported and the actual number of cases of trafficking in human beings would provide insights into the reliability of the existing data and the degree of uncertainty. The report should discuss how the size of the gap may impact the estimates of the costs related to trafficking in human beings.

(4) The report should clearly identify the lessons learned from the evaluation of the Directive and in particular the main issues identified. It should summarise why those issues remain in a way that would serve as a basis for its future revision. The lessons learned should distinguish the shortcomings inherent to the Directive itself from those resulting from insufficient / not complete transposition or problems linked to implementation.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

Full title	Evaluation of the Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims
Reference number	PLAN/2021/11112
Submitted to RSB on	14 September 2022
Date of RSB meeting	Written procedure



Brussels,
RSB/

Opinion

Title: Impact assessment / HOME - Preventing and combatting trafficking in human beings and protecting its victims - review of EU rules

Overall opinion: POSITIVE

(A) Policy context

The 2011 EU Anti-Trafficking Directive established minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking of human beings and introduced provisions to strengthen the prevention of this crime and the protection of the victims.

The back-to-back evaluation as well as the two-yearly progress reports of the Commission and various stakeholders' reports indicate that the decade old instrument may no longer be fit for purpose. The revision aims at updating, tightening and augmenting the EU rules on preventing and combatting trafficking in human beings, based on the findings of the evaluation.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspect:

- (1) The cost benefit analysis is incomplete and does not provide overall estimates of costs and benefits for each option.**

(C) What to improve

(1) The scale of the problem should be further elaborated given the underreporting and lack of reliable data. It should better explain how and why the problems vary between Member States. The report should better distinguish between the national level and the cross-border dimensions. It should explain better why some problems that are attributed to the differences between Member States lead to a general under-performance of tracing and

This opinion concerns a draft impact assessment which may differ from the final version.

registration. The report should provide a clear gap analysis, indicating which capabilities, competences and resources are currently missing in which Member States when compared to observed best practices or in view of measures considered necessary under this initiative to tackle the problems effectively.

(2) The structure and logic of the policy options should be presented in a coherent manner and acknowledge their incremental character. It should include key policy choices and trade-offs that policymakers must consider.

(3) The report should bring out more clearly why some measures included in the non-legislative option would not be part of a dynamic baseline. Non-legislative measures that are already in force should be incorporated in the baseline.

(4) The report should make an effort to provide aggregate cost estimates and quantified benefits for each option or explain why this is not possible. It should be more transparent about the credibility of the quantitative estimates. It should explain better the factors behind the assumed underreporting of cases. Where quantification is not possible, a qualitative narrative would strengthen the report.

(5) The report should improve the comparison of options. Once the cost benefit analysis is completed, it should provide the overall estimates of costs and benefits for each option and use them (and the qualitative analysis) when comparing the options. It should provide more detailed explanation of the methodology used to compare and score the options adjusting the scoring, as appropriate.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Preventing and combatting trafficking in human beings and protecting its victims - review of EU rules
Reference number	PLAN/2021/11112
Submitted to RSB on	14 September 2022
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

The costs and benefits of the preferred policy option are summarised in the following tables.

I. Overview of Benefits (total for all provisions) – Preferred Option		
<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.	<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	<p>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.</p>

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.
Indirect benefits		
Strengthen the fight against trafficking in human beings in the EU and improving the protection of its victims	Total costs of THB for one year in the EU amount to over EUR 2.7 billion for the coordination of anti-trafficking activities, prevention, specialised services, as well as law enforcement, health services and social protection and over EUR 300 000 per victim ¹ .	The preferred option will contribute to strengthen the fight against trafficking in human beings through both legislative and non-legislative measures, which will result in reducing the scale of the crime and its costs on society and the economy.
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 EUR 14 billion in one year ² . While there is no available estimate for other forms of exploitation, including labour , the proceeds from the crime are estimated to be high .	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.
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

¹ European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU* (2020). Available at: [link](#).

² 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.

		organisations, will benefit both the society 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.
Administrative cost savings related to the 'one in, one out' approach		
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

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 and creation of a standalone offence on the use of technology to commit trafficking	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 ³ .
	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 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 ⁴ .	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 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

³ 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](#).

⁴ 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

						Therefore, the regulatory and administrative costs of this measure would be limited.	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 ⁵ .
	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.	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. The lack of data on the

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](#).

⁵ 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](#).

							number of convictions of legal persons and the consequent lack of figures on the costs incurred for the enforcement of the 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 ⁶ . 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.	N/A
	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	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	N/A

⁶ 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 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.

human beings to the Commission every year						Member States. They will have to transmit data on a minimum set of indicators to the 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.	
	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
Costs related to the 'one in, one out' approach							
Total	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		