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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE 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

Delegations will find attached document SWD(2022) 426 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE 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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{SWD(2022) 427 final} - {SWD(2022) 428 final}

Executive Summary Sheet

Impact assessment on amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

A. Need for action

Why? What is the problem being addressed?

Trafficking in human beings (THB) constitutes a core activity of serious and organised crime in the EU and is set to remain a threat for the foreseeable future. While the Anti-trafficking Directive (Directive 2011/36/EU) contributed to the creation of an EU common ground for the prevention and fight against trafficking in human beings and the protection of the victims, a number of issues persist, notably:

- **Trafficking in human beings continues to thrive within the EU** despite the efforts in preventing and detecting the crime, as well as identifying its victims at an early stage. Moreover, data collection and trend monitoring does not reflect the full scale of trafficking in human beings in the EU.
- **Investigations, prosecutions and convictions numbers are low, leading to the impunity of traffickers.** The Directive does not address some major concerns, which have emerged and risen since its adoption, including new forms of exploitation and the use of technology to facilitate the crime. Interpretation of the trafficking offences and exploitation may differ across the Member States, which results in challenges in cross-border cooperation and proving the offence. Moreover, legal persons are not sufficiently held accountable for committing human trafficking, which contributes to the culture of impunity.
- **Victims do not always receive an adequate level of assistance, support and protection, adapted to their specific needs.** The principles of non-prosecution and non-punishment of the victims for their involvement in criminal activities, victims' rights to compensation and victims' protection measures are not consistently implemented in Member States. Existing national and transnational referral mechanisms are not fully effective, which may hinder victims' early identification and referral to assistance, support and protection.
- **The demand that fosters trafficking in human beings remains high in the EU**, which may be due to the fact that the criminalisation of the use of services exacted from victims is not consistent across Member States and that demand-reduction approaches are not widely implemented.

What is this initiative expected to achieve?

This initiative aims at **strengthening the EU legal framework against trafficking in human beings**. In order to achieve this general objective, the initiative sets out four specific objectives:

- **Ensuring adequate prevention, detection and improving the monitoring of trafficking in human beings at the EU level** by strengthening the capacity of all stakeholders likely to come into contact with (potential) victims to recognise the signs of the crime, as well as increasing the knowledge about the phenomenon and its trends.
- **Reinforcing the criminal justice response to the crime, including in the cross-border context**, in order to 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, and addressing emerging threats.
- **Ensuring that victims of THB receive adequate assistance, support and protection across the Member States**, notably through improving early identification and referral mechanisms, including in the cross-border context.
- **Reducing the demand for the exploited services of victims of THB that fosters trafficking for all forms of exploitation** from strengthening the criminal response to the use of exploited services to enhancing awareness-raising activities, education and training.

What is the value added of action at the EU level?

Trafficking in human beings is a cross-border crime, which affects all Member States. It has both an intra-EU cross-border dimension and an internal dimension involving the crossing of EU external borders. EU-wide cooperation is crucial to tackle the cross-border dimension when it comes to preventing and fighting against the crime, as well as making sure that victims are identified and receive adequate assistance, support and protection. The increased relevance of the online dimension of the crime further justifies new action at the EU level, as it gives traffickers further opportunities 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. National authorities and stakeholders widely recognise that the fight against trafficking requires action at the EU level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred

choice or not? Why?

Policy option 1 focuses on non-legislative measures.

Policy option 2 only contains legislative measures, which would entail amendments to the Directive. For some of the legislative measures under **policy option 2**, several sub-options were assessed.

Policy option 3 is a mix of the non-legislative measures presented in policy option 1 and some of the legislative measures proposed in policy option 2.

Policy option 3 is the preferred option. It responds to the horizontal and specific objectives identified:

- **Horizontal objective 1: Ensuring adequate prevention, detection and improving the monitoring of trafficking in human beings at the EU level:**
 - Establishing a Knowledge and Expertise Hub on Combatting Trafficking in Human Beings that, among others, supports the development of guidelines on data collection on trafficking in human beings in the EU and the promotion of awareness raising against trafficking (*non-legislative measures*).
 - Introducing an obligation in the Directive 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 (legislative measure).
- **Specific objective 2: Reinforcing the criminal justice response to the crime, including in the cross-border context:**
 - Ensuring that the online dimension is taken into account for every element of the offence in the Directive (*legislative measure*).
 - Enhancing cooperation between the Commission and internet companies within the EU Internet Forum (*non-legislative measure*).
 - Including forced marriage and illegal adoption in the list of the forms of exploitation (*legislative measure*).
 - Ensuring that legal persons can be subjected to some of the sanctions, which are currently optional for Member States to transpose, for the standard trafficking offences upon conviction by the court and to the other sanctions when the offence is committed with an aggravating circumstance (*legislative measure*).
 - Setting up the Focus Group of specialised prosecutors against trafficking in human beings (*non-legislative measure*).
- **Specific objective 3: Ensuring that victims of THB receive adequate assistance, support and protection across the Member States:**
 - Requiring Member States to set up formal National Referral Mechanisms and create national focal points for victims' referrals (*legislative measure*).
 - Developing of guidelines on minimum requirements and standards for National Referral Mechanisms and setting-up of a European Referral Mechanism within the framework of the Knowledge and Expertise Hub (*non-legislative measure*).
- **Specific objective 4: Reducing the demand for the exploited services of victims that fosters trafficking for all forms of exploitation:**
 - Requiring Member States to criminalise the knowing use of services exacted from victims of trafficking in human beings for all forms of exploitation (*legislative measure*).
 - Organisation of an EU-wide awareness raising campaign, aimed at discouraging the demand that fosters trafficking within the framework of the Knowledge and Expertise Hub (*non-legislative measure*).

Who supports which option?

In its resolution of 10 February 2021, the European Parliament called on the Commission to **assess the implementation of the Anti-trafficking Directive and to come forward with proposals to revise it**. The Commission conducted extensive stakeholders' consultations, including through a public consultation and meetings of the EU Network of National rapporteurs and equivalent mechanisms and the EU Civil Society Platform against trafficking in human beings. The Commission also relied on the consultations carried out by an external contractor with a wide range of stakeholders, including national authorities in the Member States, EU Agencies, civil society organisations, as well as representatives of the private sector and International Organisations. The majority of consulted stakeholders supported the different measures proposed as part of the preferred option. In its resolution, the European Parliament called on the Commission to **amend the Directive with a view to ensuring that all Member States criminalise the knowing use of services exacted from victims of trafficking**. Stakeholders are more divided regarding this legislative change, although nearly two-third of respondents to the public consultation supported it. Moreover, most stakeholders consulted as part of case studies and targeted interviews on the policy options were in favour of it. This sub-option is considered the one with the highest possibility of reaching consensus among all the possible sub-options related to the criminalisation of the use of services.

C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The preferred option aims 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 . 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 non-legislative measures will provide support to the Member States in adapting their legislation and further implementing the Directive, in line with the EU Strategy on Combatting Trafficking in Human Beings (2021-2025) .
What are the costs of the preferred option (if any, otherwise main ones)?
The preferred option has a limited burden on Member States, which is offset by the positive impact of the measures on the prevention and fight against trafficking, and protection of the victims. The preferred option mostly consists in improving existing provisions rather than creating new obligations . The obligation to criminalise the knowing use of services which are exacted from victims of trafficking would mainly create a regulatory burden on the Member States who have not yet transposed this measure or others measures which go further. The majority of Member States already have corresponding legislation in place for at least sexual exploitation. The requirement to set-up National Referral Mechanisms would also incur some regulatory and administrative burden on Member States. However, it is not entirely a new obligation, since under the current Directive, Member States already had to establish mechanisms aimed at the early identification, assistance and support of the victims and all but one Member States already have a formal or informal referral mechanism in place. Therefore, the steps needed to formalise procedures for the identification and referral of the victims are expected to be minor.
How will businesses, SMEs and micro-enterprises be affected?
The preferred policy option does not impose any obligation on businesses and thus does not directly affect them, besides the fact that some non-legislative measures would require their voluntary engagement. Legal persons could be subject to penalties with an economic impact, such as the temporary closure of their establishment, only after a conviction for a trafficking offence committed for their benefit. This measure would contribute to ensuring a fairer economy where crime does not pay and companies acting by the rules would benefit from a reduction in the disloyal competence from businesses using forced labour. While the Commission would foster cooperation with the technology and internet industry, any related regulatory obligation linked to the responsibility of online platforms and service providers to detect, monitor and remove THB-related content would be covered by other existing or about to be adopted legal instruments.
Will there be significant impacts on national budgets and administrations?
As described above, the preferred option would have a limited impact on national administrations, which would mostly have to adjust their legislation to the new or revised provisions of the Directive, when they have not already done so. Some of the legislative measures, which are part of the preferred option, in particular the ones concerning criminalisation, are also expected to result in an increased number of investigations, prosecutions and convictions. However, a higher level of harmonisation of EU rules would contribute to improving the situation on trafficking in human beings in the EU and increasing law enforcement and judicial authorities' capacity to prevent and fight against trafficking in human beings, to protect its victims and to reduce the demand that fosters the crime.
Will there be other significant impacts?
The preferred option will strengthen the fight against trafficking in human beings through disrupting the criminal model of traffickers and will reduce the likeliness of people being exploited, thereby having a positive impact on the society, fundamental rights, the rule of law and security within the EU.
D. Follow up
When will the policy be reviewed?
The evaluation of the revised Directive 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. In particular, the revised Directive 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 European Parliament and the Council five-years after the transposition deadline. In the meantime, the Commission will continue to monitor and evaluate the implementation of the Directive 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.