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## Feedback

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## Contribution

Introduction

Trafficking in human beings is prohibited by the Charter of Fundamental Rights of the European Union as a grave violation of fundamental rights. It is also addressed in Article 83(1) of the Treaty on the Functioning of the European Union as a particularly serious cross-border crime that can only be effectively tackled by common minimum rules across the European Union.

Nearly half of the victims of trafficking within the EU are EU citizens, and a significant number of them are trafficked within their own Member State. EU and non-EU victims are also trafficked from their country of origin via transit countries to their destination, both within and to the European Union. The EU Anti-Trafficking Directive ('Directive', 2011/36/EU) has been the backbone of the EU's efforts in combatting human trafficking since 2011. The Directive:

- establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings; and
- introduces provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims as well as to reinforce investigation and prosecution.

The Commission First, Second and Third progress reports and the results of the EU-wide data collections demonstrate that trafficking in human beings has further evolved and the available means are not sufficient to fight it effectively. According to the latest available data, between 2017 and 2018, there were more than 14 000 registered victims within the European Union. The actual number is likely to be significantly higher as many victims remain undetected.

The Commission acknowledged in the EU Strategy on combatting trafficking in human beings 2021- 2025 adopted on 14 April 2021 ('Strategy') that various reports indicate that the decade old Directive may not be entirely fit for purpose any longer in all relevant aspects. As a consequence, the Strategy sets out as a key action to evaluate the implementation of the Anti-trafficking Directive and if necessary, based on the outcome of this evaluation, propose revising it to make it fit for purpose, including by assessing the possibility of having minimum EU rules that criminalise the use of exploited services from victims of trafficking.

This public consultation will inform the evaluation and a possible revision of the EU Anti-trafficking Directive, providing citizens and stakeholders with an opportunity to voice their opinions on current problems and the future of combatting the trafficking in human beings, including possible ways to reinforce, develop and modernise the existing framework.

The Inception Impact assessment and the Roadmap were already published for a consultation, which can be found here: Roadmap

About you

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published. Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

PART I - QUESTIONS CONCERNING THE EVALUATION OF DIRECTIVE 2011/36/EU ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS AND PROTECTING ITS VICTIMS

1. In your view, is an EU-wide cooperation necessary to effectively combat trafficking in human beings?

Yes

2. In your view, is trafficking in human beings linked to other types of serious crimes as listed below?

Drug trafficking	Yes
Migrant smuggling	Yes
Corruption	Yes
Document fraud	Yes

Money laundering	Yes
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Please indicate any other types of crime and add any comments (maximum 255 characters):

It is well documented that the crimes of THB and SOM are interconnected. Migrant smugglers and Human Traffickers are joining forces (EUROPOL 2021).

3. In your view, has the Directive contributed to reducing the demand for trafficking in human beings in relation to:

Sexual exploitation	I do not know
Labour exploitation	I do not know
Exploitation for criminal activities	I do not know
Removal of organs	I do not know
Forced begging	I do not know

Please indicate any other types of crime or add any comment (maximum 255 characters):

It is well known that the victims' identification rate is rather low. It is therefore difficult to know whether there is a reduction of demand in the absence of solid and methodologically sound prevalence surveys.

4. In your view, have the following measures listed below reduced the risk of people becoming victims of trafficking in human beings?

Training	Small extent
Research	Small extent
Information	Small extent
Awareness-raising campaigns	Small extent
Education programmes	Small extent

Please specify any other measures or add any comments (maximum 255 characters):

Data on the impact of AT initiatives is scarce. This points to the need to increase investments in research that would aim at demonstrating the impact of AT initiatives, particularly in relation to training and awareness raising campaigns

5. In your view, have the existing national laws criminalising the knowing use of exploited services of victims reduced the demand for such services?

Small extent

Comments (maximum 255 characters):

Research, shows that few countries have formulated explicit demand-side policies against trafficking. Importantly, the research shows that there is a lack of clarity amongst relevant stakeholders on how demand, and therefore also demand-side policies, should be understood in the context of THB. Demand should be referred to as demand for a particular service or good provided or produced through trafficking or demand in the context of trafficking in human beings. Formulations such as 'demand for trafficking in human beings' by contrast should be avoided since trafficking is not a good or service that can be bought, but rather a serious violation of human rights and a crime affecting individuals involved in the production of goods or provision of services on various markets.

6. In your view, has the Directive contributed to ensuring that victims of trafficking, including child victims of trafficking, have access to assistance, support, and protection measures?

Moderate extent

Comments (maximum 255 characters):

ICMPD believes that the ATD has had a positive impact at both policy and operational levels in relation to victim protection in some Member States, particularly those who had poor domestic legislation prior to the entry into force of the directive.

7. In your view, has the Directive contributed to the protection of trafficked victims in cross-border cases and within Member States?

Cross-border	Moderate extent
Within Member States	Moderate extent

Comments (maximum 255 characters):

In cross border cases, the ATD resulted in enhanced legal and policy coherence between MS. Moreover, the ATD bolstered the efforts of EU agencies & network (EUROPOL, EJM) from the moment the EU exercised its competence in the THB field.

8. In your view, has the Directive contributed to allowing victims of trafficking to receive adequate compensation?

Small extent

Comments (maximum 255 characters):

Both EC and GRETA reports demonstrate that the compensation of victims remain more an exception than the rule.

9. In your view, has the Directive contributed to ensuring that victims of trafficking are not punished for their involvement in criminal activities that they have been compelled to commit as a consequence of being trafficked?

Moderate extent

10. In your view, has the Directive contributed to bring perpetrators to justice?

Small extent

Comments (maximum 255 characters):

Both EC and GRETA reports demonstrate that the prosecution and punishment of traffickers remain difficult in practice, despite noticeable improvement in relation to Organised Crime Groups (OCGs). A state of impunity continues to prevail across the EU

11. In your view, has the Directive contributed to the confiscation of criminal assets?

Small extent

Comments (maximum 255 characters):

Same as above

12. In your view, to has the Directive contributed to allowing victims of trafficking to effectively report a case?

Small extent

Comments (maximum 255 characters):

Provisions on protection, assistance and support may have created conditions that would incentivise victims to report a crime. However, self-identification remains a challenge. Foreign victims may also be discouraged by the prospect of return. Non-punishment of victims remains a critical parameter

13. In your view, has the Directive contributed to holding legal persons liable for trafficking in human beings?

Small extent

Comments (maximum 255 characters):

Both EC and GRETA reports point at the failure of EU MS to implement provisions aiming at holding legal persons liable. This is particularly true in relation to THB in the supply chain and multinational corporations.

14. In your view, have the penalties foreseen by the Directive, including sanctions on legal persons, have an effective, proportionate and dissuasive character?

General penalties

Effective	I do not know
Proportionate	I do not know
Dissuasive	I do not know

Sanctions on legal persons

Effective	I do not know
Proportionate	I do not know
Dissuasive	I do not know

Comments (maximum 255 characters):

Research has not demonstrated a strong causal link between a stringent penalty and crime reduction in other fields. However, and given that very few legal persons were held liable, it would appear that sanctions proposed are not effective/dissuasive.

15. In your view, were the effects of the Directive achieved at a reasonable cost?

I do not know

Comments (maximum 255 characters):

To the best of our knowledge, a comprehensive cost analysis of the implementation of the directive was not made, across all EU MS that opted in the directive

16. In your view, has the implementation of the Directive caused unnecessary administrative burden?

No

Comments (maximum 255 characters):

Directives are instrument sufficiently flexible to allow EU MS transpose them in a way appropriate for their legal and administrative systems. The ATD is respectful of national specificities and did not contribute to creating additional administrative burden.

17. Do you think that the provisions of the Directive address the current needs of the society? If not, specify.

I do not know

18. Do you consider the Directive is coherent with other relevant EU legislation, for example with the following?

Victims' Rights Directive (2012/29/EU)	No
Employers Sanctions Directive (2009/52/EC)	Yes
Residence Permit Directive (2004/81/EC)	Yes
Child Sexual Abuse Directive (2011/93/EU)	Yes

Please specify any other legislations or add any comments (maximum 255 characters):

While work needs to be done to ensure the coherence of the ATD with the Victims directive, ICMPD considers that the differential treatment of EU victims vs TCN victims regarding residence permits is problematic and should cease

19. Do you consider the Directive coherent with international instruments and standards related to trafficking in human beings?

The United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Yes
The ILO Forced Labour Convention	Yes
Convention on the Elimination of Discrimination against Women (CEDAW)	Yes

UN Conventions on the Rights of Persons with Disabilities (UNCRPD)	I do not know
UN Conventions on the Rights of the Child (UNCRC)	Yes

**Comments (maximum 255 characters):**

We consider the provisions of the ATD to be coherent with international instruments, a number of issues arise in relation to the differential treatment between TCN and EU nationals in relation to residence and protection, especially in relation to children

**20. Does the Directive continue to bring added value in the Member States in combatting trafficking in human being?**

Yes

**Comments (maximum 255 characters):**

The directive remains of paramount importance to the fight against THB, particularly in relation to the protection of its victims. It is therefore important that the revision of the directive does NOT result in a reduction of rights for victims.

**21. In your views, without the Directive would it be more difficult for Member States to tackle trafficking in human beings individually?**

Yes

**Comments (maximum 255 characters):**

It is our view that it would be more difficult for MS to tackle THB individually particularly in cases that concern EU nationals from another EU MS or from a 3d country in relation to protection, or OCGs that operate transnationally.

**PART II - QUESTIONS CONCERNING THE REVISION OF THE DIRECTIVE**

**22. In your view, does the aim of preventing and combatting trafficking in human beings continue to require action at the EU level?**

Yes

**Comments (maximum 255 characters):**

Yes, action at EU level continues to be required, particularly in relation to the external dimension of trafficking, at policy and financial level, more than at legislative level. Policy work aiming at increasing transnational cooperation should be prioritised

**23. Do you think that the gender dimension, in particular the protection of women and girls, should be more prominently articulated in the Directive? If yes, please specify.**

No

**Comments (maximum 255 characters):**

Equal focus of the anti-trafficking policies and measures on all victims and on all forms of exploitation must be ensured. This includes ensuring appropriate and tailored assistance and support for girls, boys, women and men victims of trafficking

**24. Do you think that the situation of vulnerable groups should be more prominently articulated in the Directive?**

Yes

**Comments (maximum 255 characters):**

The specific vulnerability of refugees and migrants should be better reflected in both the recitals and the core of the directive, including by ensuring improved coherence between the ATD and the directives and regulations of the CEAS.

**25. Do you think that the Directive should explicitly refer to new types of exploitations? If yes, please specify.**

I do not know

**Comments (maximum 255 characters):**

The open ended character of the paragraph describing forms of exploitation falling under the scope of the directive is allowing flexibility, yet inclusion of additional forms of exploitation may be considered

**26. Do you think that the Directive should criminalise the knowing use of exploited services?**

Yes

**Comments (maximum 255 characters):**

Yes, but it should come with guidance on how to ascertain the "knowing" use. Moreover, more comprehensive provisions addressing THB in the supply chain should be considered (due diligence, procurement).

**27. Do you think that the Directive should introduce specific provisions to address the online dimension of trafficking in human beings, including the online recruitment, advertisement and exploitation of the victims?**

Yes

**Comments (maximum 255 characters):**

It is recommended to ensure that elements linked to the online dimension of the crime of trafficking are introduced, particularly in relation to the difficulties that this brings in terms of jurisdiction

**28. Do you think that the Directive should require Member States to establish formal national referral mechanisms for the early identification of, assistance to and support for victims?**

Yes

**Comments (maximum 255 characters):**

ICMPD research documented a number of gaps and challenges in relation to the operationalisation of NRM, which impacts on the effectiveness of TRM. Acknowledging the difficulty of imposing a specific NRM format on MS, more can be done at policy level

**CONCLUDING REMARKS**

**29. If you wish to add further information — within the scope of this consultation — please feel free to do so here (maximum 255 characters).**

ICMPD, in its capacity of co-chair of the Inter Agency Coordination Group against Trafficking in Persons (ICAT), coordinated the development of a position paper that has been shared with the EU ATCEC as part of this public consultation

30. Please feel free to upload a concise document, such as a position paper. The maximum file size is 1MB. Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this public consultation. The document is optional and serves as additional background reading to better understand your position.

ICMPD has uploaded two documents:

1. The first one named "ICMPD submission" is made on behalf of ICMPD and should be read in conjunction with the answers provided in the questionnaire.

2. The second is submitted by ICMPD in its capacity of co-chair of the Inter Agency Coordination Group against Trafficking in Persons (ICAT) in 2022, coordinated the development of a position paper that has been shared with the EU ATC as part of this public consultation. As the format of the on-line public consultation is not suitable for joint submissions, the document is uploaded together with ICMPD's submission noting that it should be treated separately and not read in conjunction with the answers provided above in the questionnaire.

Section Title

## Related Publication

External Reference	THB_Consultation
Type	Public consultation
Lead Service	Migration and Home Affairs
Initiative title	Trafficking in human beings - Evaluation and Revision of the Directive
Short title	Preventing and combating trafficking in human beings - review of EU rules
Feedback start date	14/12/2021 09:33:08
Feedback period	14 weeks
Feedback end date	22/03/2022 23:59:59
Author phone	90788
Unit	SECRETARIAT-GENERAL
Internal Reference	PLAN/2021/11112
Target Groups	The consultation aims to ensure that all citizens and stakeholders can provide their views and input. This will improve the evidence base underpinning the initiative. The Commission is inviting all interested stakeholders, including civil society, public authorities, social partners and citizens, to contribute to this consultation.
Consultation objective	<p>Trafficking in human beings is a particularly serious cross-border crime that can only be effectively tackled by common minimum rules across the European Union. Recent reports have highlighted that trafficking in human beings has further evolved and the available means are not sufficient to fight it effectively. According to the latest available data, between 2017 and 2018, there were more than 14 000 registered victims within the European Union. The actual number is likely to be significantly higher as many victims remain undetected.</p> <p>The EU Anti-Trafficking Directive ('Directive', 2011/36/EU) has been the backbone of the EU's efforts in combatting human trafficking since 2011. The Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims as well as to reinforce investigation and prosecution.</p> <p>The Commission acknowledged in the EU Strategy on combatting trafficking in human beings 2021- 2025 adopted on 14 April 2021 that the decade old Directive may not be entirely fit for purpose any longer in all relevant aspects. As a consequence, the Strategy sets out as a key action to evaluate the implementation of the Directive and if necessary, based on the outcome of this evaluation, propose revising it to make it fit for purpose, including by assessing the possibility of having minimum EU rules that criminalise the use of exploited services from victims of trafficking.</p> <p>This public consultation will inform the evaluation and a possible revision of the EU Anti-trafficking Directive, providing citizens and stakeholders with an opportunity to voice their opinions on current problems and the future of combatting the trafficking in human beings, including possible ways to reinforce, develop and modernise the existing framework.</p>