

**Working together to address
trafficking in human beings**

Key concepts in a nutshell



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The EU has intensified its efforts against trafficking in human beings. The adoption of Directive 2011/36/EU (hereinafter the Anti-Trafficking Directive) was a major step towards a comprehensive approach focusing on prosecution, protection, prevention and partnership. The European Commission Communication *EU Strategy 2012-2016 towards the Eradication of Trafficking of Human Beings* was aimed at further developing a coherent response to trafficking involving all instruments available to the EU. In December 2017, the European Commission adopted a set of priorities to step up EU efforts against trafficking in human beings (the 2017 Communication). These priorities are: A) Disrupting the business model and untangling the trafficking chain; B) Provide better access to and realise the rights for the victims of trafficking; and C) Intensify a coordinated and consolidated response both within and outside the EU. Additionally, improving the understanding of the phenomenon and providing adequate funding have been identified as priorities common to all aspects of trafficking.

Trafficking in human beings: the crime

Trafficking in human beings is a violation of fundamental rights, and as such, it is explicitly prohibited under Article 5 of the Charter of Fundamental Rights of the European Union. Trafficking in human beings is also referred to in Articles 79 and 83 of the Treaty on the Functioning of the European Union, which require the adoption of legislation at EU level to combat this crime.

Art. 2.1 of Directive 2011/36/EU (hereinafter, the Anti-Trafficking Directive) **includes three constitutive elements of this crime**: acts, means and purpose. The act is linked to the establishment of control over a person; it consists in the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over them. The means are the way in which control is attained: 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. The purpose is the exploitation of the trafficked person.

The Anti-Trafficking Directive contains minimum rules concerning the definition of criminal offences, including a non-exhaustive list of forms of exploitation: prostitution and other forms of sexual exploitation, forced labour or services, including begging, slavery and similar practices, the exploitation of criminal activities and the removal of organs. Other forms of exploitation can take place. A number of Member States refer to additional forms of exploitation in their laws, such as trafficking for forced marriage, pornography or the extraction of human tissue.

A comprehensive approach to trafficking in human beings needs the close cooperation of a wide range of actors at all levels. It encompasses work on many fields, including law

enforcement, border management, labour, gender, children's rights, data collection and the EU external relations. **The EU Anti-Trafficking Coordinator contributes to a coordinated and consolidated Union response against trafficking in human beings.**¹ In this context, the EU Anti-Trafficking Coordinator ensures close cooperation at EU level among all the organisations and bodies participating in networks, notably the **EU Network of National Rapporteurs or Equivalent Mechanisms**, composed of EU Member States, the **EU Civil Society Platform against Trafficking in Human Beings**, and the **Coordination Network of the EU Agencies' contact points in the relevant EU agencies.**² Within the European Commission, those services whose mandate has an impact on the fight against trafficking work together to achieve a coherent result.

The EU Anti-Trafficking Coordinator contributes to the reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings, based on Member States' reports on trends, initiatives and statistics.³

Why is prevention so important?

Preventing trafficking from happening is at the core of all EU law and policy priorities. As noted in the 2017 Communication 'given the harm caused to the victims, prevention should remain a cornerstone of the EU anti-trafficking action'. Prevention of trafficking is multifaceted and can target many actors in the complex trafficking chain. Prevention includes actions to reduce risks associated with victims' vulnerabilities and the factors that foster them. In this respect, EU law obliges Member States to prevent trafficking by reducing demand that fosters all forms of exploitation and offers a set of tools and approaches. It provides for an obligation to raise awareness and train those who could come in contact with victims or people at risk, but also to consider punishing those who knowingly use services provided by victims.

Since trafficking in human beings is a crime driven by profit, demand reduction requires undermining the economic attraction of the institutions in which traffickers exploit their victims. In this respect, a foundation for any decisive deterrent action for trafficking in human beings is the accountability of the perpetrators.

This document is to be seen in the context of contributing to a coordinated and consolidated Union response against trafficking in human beings. Advising on key concepts relating to trafficking in human beings is an important action foreseen in the 2017 Communication. In order to address trafficking comprehensively and ensure an appropriate response, it is crucial to have a clear idea of what we are talking about. This text does not provide an interpretation of EU law, but is intended to disseminate knowledge about trafficking in human beings by providing the conceptual clarity that is necessary for concrete policies, operational action and funding allocations. The following selection of widely used concepts is based on publicly available information on trafficking in human beings published by the European Commission, EU agencies, and international organisations.

Child-sensitive approach

In the EU, girls and boys continue to be trafficked for sexual exploitation, which targets girls disproportionately, forced begging, forced criminal activities, and other purposes. Child victims are trafficked **within national borders, within the EU, as well as to the EU**. Children are particularly vulnerable to trafficking and, **multiple factors may contribute to exacerbating their vulnerability, but those factors themselves do not cause trafficking**.⁴

They are at greater risk of becoming victims of trafficking and the trauma caused by this crime can be life lasting and hamper their overall development.⁵

Children are at the core of the EU agenda. EU Law establishes **special protection for child victims of trafficking regardless of their nationality or status**, including the presumption of childhood in identification procedures, additional measures, including guardianship for unaccompanied children, a tailored approach to support services, and a heightened protection in criminal proceedings.⁶ This has been developed by a number of policy programmes aimed at better protecting and rehabilitating children. It is vital to ensure that the age, gender and particular needs of child victims are taken into consideration, including regarding care, health and education for child victims of trafficking.

Civil society

The important contribution of civil society to the fight against trafficking in human beings is acknowledged and valued in EU law and policy. The Anti-Trafficking Directive makes explicit reference to the important role played by civil society

organisations and requires Member States to work with them. The contributions by civil society organisations are very important for the elaboration of the progress report on the implementation of anti-trafficking policy in the EU. Building and strengthening partnerships has been at the core of EU agenda since 2012.

In this framework, the **EU Civil Society Platform against trafficking in human beings**⁷ (hereafter, the Platform) was launched in 2013, and currently brings together over 100 NGOs from across the EU and beyond. Participant NGOs provide valuable contributions in the context of the biannual meetings and the workshops organised in that context, and through further exchanges on specific processes. The Platform is complemented by an online **ePlatform**⁸, launched in 2014, which includes additional participants and provides continuity to the discussions held in the meetings in Brussels.

Compensation to victims

EU law makes sure that victims of trafficking in human beings have the possibility of claiming compensation. They are entitled to access existing compensation schemes for victims of violent crimes of intent. Victims of trafficking are entitled to information on compensation and should have access without delay to legal counselling and to legal representation, including for the purpose of claiming compensation.⁹ They are entitled to the return of their own property that has been recovered or seized during criminal proceedings.¹⁰ The type of compensation provided, including payment for medical and psychological treatment, loss of income, legal fees and funeral expenses, compensation for non-material damages, such as physical and psychological suffering, and the

procedures to obtain compensation, such as a compensation fund created by the State or via criminal proceedings against the perpetrator, vary across EU countries. Access to compensation is possible also in cross-border situations.¹¹ As trafficking in human beings is a profitable form of crime, the use of seized and confiscated instrumentalities and the proceeds from the offences to support the assistance, protection, and compensation to the victims is encouraged. A Special Adviser to the President of the Commission for the compensation of victims of crime has been appointed to advise on how the Commission can foster a better implementation of the existing rules on the compensation of victims of crime.¹²

Consent

A victim may have consented to being trafficked but this consent is irrelevant when it has been obtained by the means listed in the Anti-Trafficking Directive: threat, use of force or coercion, fraud, deception, abuse of power or taking advantage of a person's vulnerability. This is also the case when a person who has control over the victim has received benefits to surrender her to traffickers. In the case of a child, trafficking is punishable even if none of the above-mentioned means has been used to obtain his or her consent.

Criminalisation

Not only traffickers are involved in and take advantage of trafficking. There are also those who exploit victims and use their services. The Anti-trafficking Directive provides the option of criminalising those who knowingly use services exacted from victims of trafficking;¹³ this is encouraged by the 2017 Communication. The law at EU level varies, with some Member States

imposing no sanctions at all to some having criminalised those people, others already have prosecuted and convicted perpetrators. **Criminalising the knowing use of services is not only important to discourage the demand on which the trafficking business thrives, but also increases accountability towards the victims** and is an important tool to prevent the crime from happening in the first place.

Culture of impunity

In the context of trafficking, a **culture of impunity occurs when those involved in the criminal business model and/or in the trafficking chain do not face any consequences for their act.**

Arrests, prosecutions and convictions, holding perpetrators accountable, increases the general and specific deterrence constituting an element of prevention. This does not only include the traffickers but also their accomplices and those who knowingly benefit from the services provided by victims. The culture of impunity is sustained by gaps in legislation or the faltering application of existing laws. Countering the culture of impunity and increasing accountability involves intensifying the number of investigations, prosecutions and convictions not only against traffickers but also against those who profit from the crime and exploit the victims.

Early identification of victims

For victims' to exercise their rights meaningfully, they must be identified at an early stage. EU law requires that a person be provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been trafficked. Member

States need to take measures to establish mechanisms aimed at the early identification of, and support for, victims of trafficking.¹⁴ A person's travel arrangements, working conditions, signs of exploitation, living conditions or behaviour regarding freedom of movement and speech may provide indications of victimhood.¹⁵

Early identification should not be regarded as a one-step process, as victims often do not come forward at first contact with assistance providers or law enforcement authorities. It should not only focus on entry points to the country but also on locations where migrants and refugees might live or gather. Targeting high-risk sectors such as the sex industry, agriculture, fisheries, and tourism, as well as specific locations, such as detention centres, can facilitate the early identification of victims. Cooperating with partners such as migrant workers or refugee organisations, can also help to uncover undetected victims.

Gender-specific approach

Trafficking in human beings is strongly gendered: female victims represent a clear majority of the reported victims and they are overwhelmingly the victims of trafficking for sexual exploitation.

The way in which vulnerabilities are shaped, the forms of exploitation and the harms experienced by victims are affected by gender.¹⁶ Sexual and other forms of exploitation are rooted in gender inequalities.

The EU legal and policy framework is gender specific. The European Commission recognises trafficking in human beings as a form of violence against women. The specific situation of

women and girls needs to be addressed in all aspects of anti-trafficking action, from prevention to addressing the victims' needs. This includes taking into account gender in education and awareness raising campaigns, the identification of victims, assistance and recovery measures, and the handling of criminal proceedings.¹⁷ Anti-trafficking measures addressing the specific situation of women and girls need to be aligned with broader strategies combating violence against women.

Migrant smuggling

Trafficking is not per se a migration related phenomenon, nor does it require the crossing of borders. A significant number of victims in the EU are EU nationals, including trafficked within their own Member State, and not all non-EU victims arrive to the EU through irregular migration routes. As a complex crime, trafficking is linked to multiple other crimes, and some may be supporting offences, facilitating the different stages of the trafficking chain in specific contexts.¹⁸ Migrant smuggling is only one example.¹⁹

It is key to bear in mind the differences between these phenomena, trafficking in human beings is a grave violation of human rights, a crime against the person, the goal of which is obtaining financial profits through exploitation. Smuggling of migrants is linked to the irregular movement of people across borders or the facilitation of irregular stay in a country.²⁰ Trafficking in human beings and migrant smuggling cannot be used interchangeably, as the legal consequences of each offence are different.

National Rapporteurs or Equivalent Mechanisms

The Anti-Trafficking Directive requires Member States to appoint National Rapporteurs or Equivalent Mechanisms, who are mandated with the following tasks: assess trends in trafficking in human beings, measure the results of anti-trafficking actions, gather statistics, and reporting.²¹ They should transmit this information to the EU Anti-Trafficking Coordinator, on the basis of which, the EU Anti-Trafficking Coordinator contributes to the reporting carried out by the Commission.²² In the context of these coordination efforts, the **EU Network of National Rapporteurs or Equivalent Mechanisms**²³ (NREMs) holds bi-annual meetings and keeps regular contact with the Office of the EU Anti-Trafficking Coordinator. NREMs have different statuses and structures: in some Member States, NREMs that are independent from the government, whereas in others, NREMs are part of the national administration.²⁴ Contacts and other information on the NREMs can be found on the EU Anti-Trafficking website.²⁵

Non-punishment principle

This refers to the non-prosecution or non-application of penalties to the victim. Victims of trafficking may find themselves in breach of the law for example, due to immigration offences, theft or drug trafficking. **The principle of non-punishment entitles national authorities not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities that they have been compelled to commit as a direct consequence of being trafficked.**²⁶ The aim of such

protection is to safeguard the human rights of victims and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a victim has voluntarily committed or participated in.²⁷

Registered victims

In many countries, the relevant authority responsible for the identification of victims of trafficking in human beings is the police. In some other countries, the status of 'victim' can be granted by other authorities, such as the immigration service, or the state agency responsible for social welfare. This role can also be entrusted to mandated NGOs. The term **identified victim** means a person who has been formally identified as a victim of trafficking in human beings by the relevant formal authority in a Member State. However, sometimes, victims will not report to the police or do not want to cooperate with the police. The victim may be in need of assistance and support and for this reason, may contact victim service providers. In these later cases, in which the person has been subjected to the crime of trafficking in human beings, (s)he can be considered a victim of trafficking. In different data collection reports, this category of victims is called **presumed or potential victims** of trafficking in human beings. *Presumed* and *identified* victims are called together **registered** victims for data collection aimed at obtaining a meaningful scale on victims in various administrative proceedings.

The Anti-trafficking Directive requires Member States to gather statistics and report on them. Given the complexity of this criminal phenomenon, there are solid grounds to expect that the actual

numbers of victims of trafficking in the EU are substantially higher than reflected in the administrative data available: research indicates that there may be a higher volume of victims than those coming across the criminal justice and victim support systems. To capture these invisible victims for policy-design purposes, the use of various estimates needs to be based on reliable methods.

Sexual exploitation

The most reported form of trafficking in human beings is sexual exploitation.²⁸ This includes exploitation of the prostitution of others or other forms of sexual exploitation, including street prostitution; window prostitution and brothels; strip clubs/bars; pornography industry; escort services, modelling agencies and massage parlours. It is a strongly gendered form of exploitation, with women and girls being the overwhelming majority. **The European Commission has recognised the sex industry and prostitution as a high-risk sector.** While prostitution and trafficking for sexual exploitation are distinct phenomena, they are inextricably linked: without a prostitution market, there would be no profit for traffickers exploiting women and girls in the sex industry. Europol has reported that where profit taking from prostitution is legal, it is much easier for traffickers to use a legal environment in order to exploit their victims.²⁹ Member States have diverse policies on regulating prostitution. The European Union has no competence over such policies but has full competence to address trafficking for sexual exploitation when linked to prostitution.

Caution needs to be drawn on using concepts, such as survival sex, that might have the unintended effect of obscuring

the physical and psychological harm, as well as the long lasting consequences for the victims of this form of exploitation.

Slavery

Trafficking can have many exploitative purposes, such as forced labour, servitude, slavery and practices similar to slavery. However, trafficking is not synonymous to slavery, forced labour or servitude.

Not all victims of trafficking are held in slavery or forced labour, but also not all people found in slavery in the world are trafficked. Exploitative labour conditions do not necessarily amount to trafficking in human beings. Additionally, people can be trafficked for other purposes, for example the extraction of organs.

At times, concepts referring to different phenomena are often found in advocacy and communication contexts. This is the case of the term 'modern slavery', which is used frequently in relation to a broad range of crimes such as trafficking in human beings, forced labour, servitude, slavery, practices similar to slavery, and child labour. Unlike these crimes, "*modern slavery*" lacks a legal meaning, but it appears frequently in reports and publications. **Precision in the use of terminology is important because it is linked to certainty about victims' rights, state obligations, legal penalties attached to each offence, policy-making and accurate and reliable data collection.**³⁰

Trafficking chain

Trafficking in human beings is considered to be one of the most profitable forms of organised crime. **The trafficking chain includes the complex interplay of economic transactions linked to**

trafficking in human beings: from legal persons or businesses, legal or illegal, to individuals or crime groups, and those benefiting and using the services of the victims, the chain is multi-layered and starts the moment in which the victim falls under the control of the trafficker. The chain has a supply aspect, i.e. the availability of individuals who can fall prey to traffickers and a demand one, i.e. the readiness by consumers to benefit from the services provided by victims. Actors receiving economic profits along the chain may range from relatives of victims, informal or formal recruitment agencies, labour market intermediaries supplying labour in specific sectors or sub-contractors in global supply chains, as well as travel agencies, visa services and taxi or other transport enterprises.³¹

Unaccompanied and separated children

Children, especially unaccompanied and separated children, are a high-risk group for trafficking. It is important to clarify, though, that **unaccompanied and separated children are not per se victims of trafficking**. Unaccompanied and separated children registered as victims of trafficking in the EU are both EU and non-EU nationals, including those trafficked within their own Member State.

Victims

Victims of trafficking are holders of rights. EU law provides for assistance, support and protection to victims, with a gender specific and child sensitive approach. **Victims of trafficking have rights before, during and after criminal proceedings and their right to assistance and support is not subordinate to their participation in**

them. They should be provided information, accommodation, material assistance, medical and psychological support, legal aid and protection during criminal proceedings.³² Some victims may have special protection needs, in view of specific circumstances, including pregnancy, health, a disability, a mental or psychological disorder, or a serious form of psychological, physical or sexual violence a victim may have suffered, and EU law requires Member States to consider them on the basis of an individual assessment.³³ The Commission has published 'The EU rights of victims of trafficking' in all the official EU languages, which gives a practical and comprehensive overview of the rights of victims of trafficking, based on the Charter of Fundamental Rights of the European Union, EU legislation and the case law of the European Court of Human Rights.³⁴

Vulnerable groups

Traffickers, exploiters, perpetrators and abusers profit from all opportunities, whether they manifest in particular challenges or legislative loopholes. They take advantage of vulnerable people, such as women, children, the Roma people, persons with disabilities, and take advantage of vulnerabilities such as poverty, discrimination, gender inequality, male violence against women, lack of access to education, conflict, war, climate change, environmental degradation, and natural disasters. **It is not vulnerability that renders people victims of trafficking:** women and girls are not trafficked because of their gender; girls and boys are not victims because of their age. Trafficking is a crime fuelled by the profits it generates and by the demand for services exacted from the victims.

¹ https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

² The Coordination Network of the EU Agencies' contact points on trafficking in human beings brings together ten EU Agencies, meets regularly to address their anti-trafficking work within their respective mandates. This work has been enhanced by the signing of the Joint Statement of Commitment to working together against trafficking in human beings on 13 June 2018, https://ec.europa.eu/anti-trafficking/eu-policy/heads-ten-agencies-commit-working-together-against-trafficking-human-beings_en

³ Art. 20.

⁴ As mentioned by Europol, "Prostitution of minors can be very profitable for human traffickers, as clients are generally prone to pay more to have sex with a child", Europol Situation Report on Criminal Networks involved in the Trafficking and Exploitation of Underage Victims p. 3, <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu>

⁵ See Recital 8 of the Anti-Trafficking Directive.

⁶ See arts. 12 to 16 of the Anti-Trafficking Directive and Art. 24 of Directive 2012/29/EU 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 (hereinafter the Victims' Directive).

⁷ Implementing a key action of the EU Strategy towards the eradication of trafficking in human beings 2012-2016 (Priority D, Action 3), and currently brings together over 100 participants from across the EU and selected non-EU countries, https://ec.europa.eu/anti-trafficking/media-outreach-els/eu-civil-society-e-platform_en

⁸ Participants of both the Platform and the ePlatform have applied to the calls for expression of interest launched by the European Commission and have been selected through the respective processes.

⁹ Arts. 12.2 and 17 of the Anti-Trafficking Directive.

¹⁰ Art. 15 of the Victims' Directive.

¹¹ See the EU rights of victims of trafficking in human beings p.8, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_rights_of_victims_of_trafficking_en_1.pdf and Report from the Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1) p. 14-15, More effective mutual recognition of freezing and confiscation orders (press release, 6/11.2018), https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_member_states_compliance_with_directive_2011-36_en.pdf

and <https://www.consilium.europa.eu/en/press/press-releases/2018/11/06/more-effective-mutual-recognition-of-freezing-and-confiscation-orders>

¹² http://europa.eu/rapid/press-release_MEX-17-3711_en.htm

¹³ Art. 18.4.

¹⁴ Art. 11(2) and 11(4). Numerous policy documents support its practical realisation.

¹⁵ <http://www.iomfrance.org/tact/>

¹⁶ Study on the Gender Dimension of dimension of trafficking in human beings, p. 8 at <https://ec.europa.eu/anti-trafficking/eu-policy/study-gender-dimension-trafficking-human-beings>

¹⁷ The European Institute for Gender Equality (EIGE), in cooperation with the European Commission, has developed practical guidance on implementing the Anti-Trafficking Directive in a gender-specific manner, <https://eige.europa.eu/rdc/eige-publications/gender-specific-measures-anti-trafficking-actions-report>

¹⁸ Europol Review 2016-2017 p. 24, <https://www.europol.europa.eu/sites/default/files/documents/europol-review-2016.pdf>

¹⁹ Other examples being corruption, drug trafficking, cybercrime and online sexual exploitation, production of material involving the sexual abuse of children, financial crime, document fraud, credit card fraud, and benefit fraud.

²⁰ Council Decision 2006/616/EC of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime.

²¹ Art. 19.

²² Art. 20.

²³ http://ec.europa.eu/anti-trafficking/national-rapporteurs-and-or-equivalent-mechanisms_en

²⁴ Commission Staff Working Document accompanying the document 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 p. 6, SWD(2016) 159 final.

²⁵ http://ec.europa.eu/anti-trafficking/national-rapporteurs-andor-equivalent-mechanisms_en

²⁶ Art. 8 of the Anti-Trafficking Directive.

²⁷ Recital 14 of the Anti-Trafficking Directive.

²⁸ In the UN Secretary General Bulletin Special measures for protection from sexual exploitation and sexual abuse, sexual exploitation is defined as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.” (SG BULLETIN 2003 - ST/SGB/2003/13).

²⁹ Europol, Situation Report “Trafficking in Human Beings in the EU” p. 11, February 2016, <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu>.

³⁰ See UNODC Global Report on Trafficking in Persons (2016) p. 16, https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

³¹ Study on comprehensive policy review of anti-trafficking projects funded by the European Commission p. 75, http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf

³² Arts. 11 and 12 of the Anti-trafficking Directive.

³³ Art. 11.7 of the Anti-Trafficking Directive and Art. 22 of the Victims’ Directive.

³⁴ http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_rights_of_victims_of_trafficking_en_1.pdf

