

COMBATING TRAFFICKING IN HUMAN BEINGS (SEXUAL EXPLOITATION) IN EU LAW: CURRENT CHALLENGES / Andrej Beleš

Assoc. Prof. JUDr. Andrej Beleš, PhD.
Institute of European Law
Comenius University Bratislava
Faculty of Law
Šafárikovo námestie č. 6
810 00 Bratislava
Slovakia
andrej.beles@flaw.uniba.sk
ORCID: 0000-0001-8418-0106

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Abstract: *Trafficking in human beings is a serious organised crime that appears in several forms. Sexual exploitation is the most common form of trafficking in human beings. The European Union combats sexual exploitation by harmonising substantive criminal law (Directives 2011/36/EU and 2011/93/EU) and certain procedural issues and by actively enforcing its policies. Nevertheless, the statistical data from the Member States concerning this crime indicate that the fight against this serious social phenomenon is not sufficiently effective. The European Commission has proposed a reform of Directive 2011/36/EU, but several aspects of this reform are insufficient and problematic.*

Key words: *Trafficking in Human Beings; Sexual Exploitation; Prostitution; Organised Crime*

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1. TRAFFICKING IN HUMAN BEINGS

Organised crime significantly disrupts the rule of law environment. This applies not only to forms of organised crime, which are parasitically connected to state authorities and which are connected to corruption, tax crimes, and crimes related to public procurement.

The essence of the rule of law is also significantly threatened by the so-called classic forms of organised crime, which replaces the market environment with goods or commodities whose trading is prohibited.

Trafficking in human beings satisfies illegally a demand in the market that could not be satisfied by legal means. It is one of the "classic" forms of organised crime that responds to market demand in a systematic and sophisticated way, with social group role sharing and illegal channels - alongside illicit trafficking in weapons, narcotics and psychotropic substances, human organs, etc. (e.g., Dianiška, Strémy and Vráblová, 2016, p. 339). This distinguishes these forms of organised crime from the so-called parasitic forms of organised crime, which focus mainly on the illegal withdrawal of funds from public budgets (tax fraud, damage to the financial interests of the European Union, corruption).

While trafficking in human beings is a profitable form of illicit business for perpetrators, it is a criminal activity that mainly involves the use of violence, the threat of violence, the threat of other serious harm, the abuse of a defenceless or otherwise vulnerable position, deception, lethality, restraint of liberty or other forms of coercion.¹ Trafficking in human beings is thus a violent crime that intensely affects the fundamental rights and freedoms of victims. In particular, the prohibition of slavery and forced labour under Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) and under Article 5 of the Charter of Fundamental Rights of the European Union (the Charter). These crimes may also violate the right to liberty and security of the person (Article 5 of the Convention, Article 6 of the Charter) as well as the prohibition of torture, inhuman or degrading treatment (Article 3 of the Convention, Article 4 of the Charter).

There are several different forms of trafficking in human beings or purposes for which trafficking takes place. However, these forms do not include smuggling. Indeed, smuggling consists in the covert and unlawful cross-border transport of persons, which may involve interference with fundamental rights (in particular the right to liberty) or various forms of fraudulent conduct. In contrast, trafficking in human beings (apart from the possible covert transport of persons) is **associated with the 'use' of persons to carry out various activities, to which they are forced by various forms of violence**. Therefore, human trafficking tends towards the use of a person for forced labour and is also referred to as a modern form of the "classical", i.e. old global slave trade (Orosz, Svák et al., 2021, p. 220; Mano, 2017, pp. 40-41).

As trafficking in human beings is both a serious violent crime and the form of crime most often committed across borders, trafficking in human beings is included among the so-called European crimes for which the Council and Parliament are empowered to harmonise, through minimum rules, the definition of offences and sanctions. On this legal basis, Directive 2011/36/EU on preventing and combating trafficking in human beings was adopted (e.g., Klimek, 2011). Given the prevailing forms of trafficking in human beings, this crime should also be materially seen in the context of commercial sexual abuse of children (e.g., Jelínek et al., 2019, p. 107), which is the focus of Directive 2011/93/EU on combating sexual abuse,² which was adopted in the same period.

In addition to the above-mentioned substantive elements, Directive 2011/36/EU harmonises the bases for the criminal liability of legal persons in relation to trafficking in human beings, the seizure and confiscation of the proceeds of this crime, the exclusion of prosecution of the victim if he or she commits a crime in connection with being a victim of trafficking in human beings, the basic procedural attributes of the investigation and prosecution of the crime (including the right to an effective investigation, which also constitutes a procedural aspect of the State's positive obligations under the guarantees of the fundamental rights and freedoms of the State; see Čentěš and Beleš, 2022), support and assistance to victims of trafficking offences, including their protection during prosecution, special provisions in relation to the protection of child victims, and the

¹ See e.g. the criminal offense of human trafficking according to § 179 of the Slovak Criminal Code or according to § 168 of the Czech Criminal Code. These provisions (among other provisions of CC) – including the enumeration of the forms of conduct by which the offender forces the victim to do or suffer something – constitute a transposition of the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, pp. 1–14).

² Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, pp. 1–14).

prevention of trafficking in human beings. Some of the mentioned provisions of the Directive have lost their relevance in a partial sense, given the later more detailed harmonisation of some specific procedural aspects of the investigation and prosecution of criminal offences (Article 82 TFEU).³

In addition to the above-mentioned legal acts, the fight against trafficking in human beings is also partially related to:

- Directive 2009/52/EC on sanctions against employers who unlawfully employ third-country nationals,⁴ in particular in relation to migrant third-country nationals who are victims of trafficking in human beings;
- Directive 2004/81/EC on permanent residence permits,⁵ which allows Member States to issue permanent residence permits to victims of trafficking in human beings, with access to the labour market and study opportunities, so that these victims can break off contact with organised crime structures and cooperate with law enforcement authorities in the long term;
- Directive 2013/33/EU laying down standards for the reception of applicants for international protection,⁶ this Directive (Articles 21 and 23) obliges Member States to take special account of the situation of applicants for international protection where they are vulnerable victims of trafficking and States are obliged to take into account the safety and security when assessing the best interests of a minor if the minor has been trafficked;
- the Europol Regulation,⁷ which is important from a criminal procedural point of view, as under this legislation the investigation of trafficking in human beings falls within Europol's remit;
- certain proposals for legislation in the sphere of secondary law, which the Commission has submitted to the legislative procedure in 2022;
 - in particular, the proposal for a directive amending Directive 2011/36/EU,⁸ this proposal for an amending directive makes it compulsory for Member States to criminalise the use of services provided by victims of trafficking in human beings, extends the list of forms of trafficking in human beings to be criminalised (forced

³ This primarily concerns:

1. standards of protection, support for victims of crime and their compensation, as this area is specifically harmonised by the directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57–73).

2. the seizure and confiscation of proceeds derived from trafficking in human beings, as the details of confiscation are harmonised by Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, pp. 39–50).

⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, pp. 24–32).

⁵ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, pp. 19–23).

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, pp. 96–116).

⁷ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, pp. 53–114).

⁸ 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. COM/2022/732 final.

marriages, illegal adoptions), extends the obligations relating to the criminalisation of legal persons, etc. (see below);

- o the proposal for a Directive on combating violence against women and domestic violence,⁹ which also refers to the sexual exploitation (sexual abuse) of women as a legal basis under Article 83 TFEU; the proposal for a Directive complements the measures under Directive 2011/36/EU.

2. PROSTITUTION, SEX WORK AND SEXUAL EXPLOITATION AS A FORM OF TRAFFICKING IN HUMAN BEINGS

Forms of trafficking in human beings are characterised by forced begging and forced petty property offences, exploitation for forced labour, mainly in the textile, agriculture and tourism sectors (which also include construction, tourism, catering, nursing and domestic services) and, above all, the most widespread form of trafficking in human beings is sexual exploitation, which is closely linked to the practising of prostitution. Sexual exploitation is thus an act whereby the perpetrator coerces another person to engage in prostitution (or other activities that are part of the sex industry)¹⁰ by various violent or fraudulent means, or the perpetrator coerces the person who engages in prostitution to provide material or immaterial benefits in return for real or perceived protection or other services.

It is now necessary to conceptually distinguish between the **concepts of prostitution and sex work**. In the past, in professional and scientific publications exclusively the term prostitution was used, and this term was identical in content to today's understanding of the term sex work. For example, Osmančík, who in the 1960s studied prostitution in the contemporary criminological context of Czechoslovakia, defined (1969, p. 92) defined the term as "a socio-pathological phenomenon consisting in the mass occurrence of the lending of one's own body to another person for practices which have sexual or erotic significance for the other person, whereby the lending of one's own body is motivated exclusively or predominantly by the desire to satisfy needs other than sexual needs, but especially material needs". Similarly, the criminologist Vlček (1975) viewed prostitution as sex work, stating that it is "the providing of extramarital sexual intercourse or other forms of sexual gratification by a woman or a man for reward (any material benefit) with frequent changes of partners". A criminological definition of prostitution, which was intended to denote sex work, was also attempted (albeit with several problematic elements) by, for example, Madliak (1991, p. 363). In his view, prostitution is "committed by one who, for remuneration or for the purpose of obtaining some advantage or interest, has sex or performs an activity for the purpose of sexual gratification of a partner, without an emotional relationship and regardless of the choice

⁹ Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence. COM/2022/105 final.

¹⁰ In terms of the collection and evaluation of statistical data on sexual exploitation in the territory of EU Member States, the concept of sexual exploitation is broadly defined (see Eurostat, Statistical Working Papers, Trafficking in Human Beings, 2015 Edition, p. 29). In the context of violent or fraudulent conduct, the term is intended to include:

- all types of prostitution, in particular street prostitution, window prostitution and prostitution in brothels, hotels and private houses (so-called private flat prostitution), escort prostitution, segments related to modelling that lead to the provision of services corresponding to prostitution,
- strip clubs and bars,
- the pornography industry,
- massage services,
- other or unknown.

of the partner." The criminological identification of the terms prostitution and sex work by a multitude of other definitions with different nuances.¹¹

It is clear from the above definitions that the conceptual identification of prostitution and sex work can be **stigmatising** for those who perform sex work and thus provide sex services. Indeed, if a person provides sexual services voluntarily, which may sometimes be under pressure from certain personal adverse life circumstances, the designation of such persons as prostitutes may act as a stigma. In the definitions given above, the term prostitution has an *a priori* negative connotation, since it is supposed to be a *'socio-pathological phenomenon'* in which *'one's own body is lent out'* and there is frequent changing of partners *'without an emotional relationship'*, i.e. promiscuous behaviour, *'regardless of the choice of partner'*.

Therefore, it is appropriate to use the term sex work as a relevant term for the voluntary provision of sexual services for compensation in the current professional and scientific discourse. In comparison, it is appropriate to use the term prostitution in the sense of sex work only:

- in the historical context or research on historical legislation or research on the criminological aspects of sex work in the past, or
- if it is a contemporary context of sexual exploitation, i.e. prostitution – as the providing of sexual services for compensation – is carried out in the context of the use of violence, the threat of violence, fraudulent conduct or other actual or potential violent conduct by the perpetrator.

Prostitution, as a social and legal phenomenon of our times, must therefore be seen as an activity towards which the actions of perpetrators of sexual exploitation are directed, sexual exploitation being a form of trafficking in human beings. Simply put, from the current perspective, prostitution is an activity to which is directed a criminal offence (trafficking in human beings), whereas sex work is not linked with a criminal offence and is an activity of employment or self-employment.

This distinction can be supported by the harmonisation provisions of the legal acts of the European Union as well as the provisions of national law transposing these legal acts. According to Article 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings, sexual exploitation means at least and above all the exploitation of other persons for prostitution. In the latter act, Article 2(d) of Directive 2011/93/EU on combating sexual exploitation defines the concept of child prostitution,¹² while Article 4 of that Directive requires Member States to criminalise the inducement, enticement or coercion of a child into child prostitution, the obtaining of benefits from such activity or other exploitation of a child in connection therewith, as well as engaging in sexual activities consisting of child prostitution. Prostitution in these acts is thus an activity that is the object of criminal offences (trafficking in human beings, sexual abuse), which Member States are obliged to criminalise and to provide for appropriate, effective and dissuasive penalties.

Of course, the professional and scientific debate on these issues is more varied and there are positions that consider all sex work to be essentially involuntary (performed in distress, under the influence of negative life situations, or under the influence of gender

¹¹ For example, Trávníčková (1995, p. 12), similarly to Madliak, defined prostitution for the purpose of her research as "a specific type of trade, where the aim and means of earning money consists in sexual gratification of another person, without emotional relationship and regardless of the choice of partner".

¹² Child prostitution under this provision means „the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party“.

hierarchy),¹³ and thus the distinction between prostitution and sex work loses its validity. Furthermore, in some countries where the practice of sex work is regulated by law (the '*reglementation model*', e.g., Germany),¹⁴ prostitution is the legal term for sex work. For the purposes of this article, we use the **term prostitution in the context of sexual exploitation** as a serious unlawful activity.

Sexual exploitation as a form of trafficking in human beings is the most common form of trafficking in human beings, according to the Commission's First Report (2016),¹⁵ Second Report (2018),¹⁶ Third Report (2020)¹⁷ and Fourth Report (2022)¹⁸ on progress in combating trafficking in human beings¹⁹ since 2008, when data from Member States on trafficking in human beings have been collected, and in recent years approximately 50 to 60% of the victims of trafficking offences have been victims of sexual exploitation.

According to the **First Report**, the Commission has set the following tasks and objectives in the area of combating trafficking in human beings, including sexual exploitation:

- in the field of criminal law
 - increase the number of prosecutions and convictions for the crime of trafficking in human beings,

¹³ In the scientific research (among others in the context of feminist and gender criminology) two basic positions are basically profiled [summarised according to Havelková and Bellak-Hančilová (2014, pp. 12-13)]:

1. The position of sex work (as distinguished from prostitution), which is basically what we base our theoretical definition of sex work and prostitution on above. This position is established on the assumption that sex workers are free in their decision-making, i.e. they have the ability and opportunity to make and implement their decisions without (negative) external influences. From the perspective of this position, prostitution and sex work can be conceptually identified (but this is not necessarily the case). However, sex work, which is a profession, must not be stigmatised. This position advocates the decriminalisation of sex work (prostitution) and the adoption of legislation to regulate it. On the contrary, forced sex work (prostitution) must be criminalised (as sexual exploitation).
2. Position against sexual domination. This position is based on the vulnerability of those engaged in sex work/prostitution and their social disadvantage. Vulnerability and disadvantage mean that the decision to engage in or continue sex work/prostitution can never really be a truly free decision under the influence of negative circumstances (social and financial deprivation, history of family violence, addictions, etc.). These negative circumstances are aggravated by the performance of sex work / prostitution. Sex work/prostitution, according to this position, is seen as one of the consequences of gender hierarchy and sexual domination and is also one of the mechanisms to maintain them. This position seeks to eliminate sex work/prostitution by eliminating its legal regulation, prohibiting it, criminalising those who practice it, or criminalising customers.

¹⁴ See German legal regulation *Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten (Prostitutionsgesetz - ProstG)* of 2001 and *Gesetz zum Schutz von in der Prostitution tätigen Personen (Prostituiertenschutzgesetz - ProstSchG)* of 2016.

¹⁵ 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. COM/2016/0267 final. **Hereinafter referred to as the "First Report"**.

¹⁶ Second report on the progress made in the fight against trafficking in human beings (2018) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. COM/2018/777 final. **Hereinafter referred to as the "Second Report"**

¹⁷ Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. COM/2020/661 final, pp. 3-4. **Hereinafter referred to as the "Third Report"**.

¹⁸ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the progress made in the fight against trafficking in human beings (Fourth Report). COM/2022/736 final. **Hereinafter referred to as the "Fourth Report"**

¹⁹ The issuing of these reports is required under Articles 19 and 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings. The information is collected and provided by national coordinators (rapporteurs) or similar mechanisms in the Member States and subsequently provided to the EU Anti-Trafficking Coordinator.

- prosecution of legal persons for this offence in order to reduce the abuse of legal business structures to cover up illegal activities,
- the implementation of financial investigations in line with the recommendations of the Financial Action Task Force (FATF),
- the application of other effective intelligence-based investigative tools that can provide a variety of evidence,
- improving data collection on victims and perpetrators of trafficking in human beings;
- in the area of victim identification, victim protection and victim assistance
 - correct identification of victims and provision of assistance to victims at first contact (with the police); reducing the burden on victims (e.g., through repeated interrogations),
 - involvement of actors in the field of protection of women and children,
 - the involvement of the Schengen Information System in the cross-border exchange of information on victims of trafficking in human beings,
 - practical implementation of strong guarantees for victims that they will not be sanctioned as perpetrators;
- in the area of prevention
 - training of staff (especially 'frontline'), raising awareness of trafficking in human beings [Article 18(1) to (3) of Directive 2011/36/EU],
 - criminalisation of the use of services provided by trafficked persons [Article 18(4)], a measure recommended to Member States to reduce the demand that fuels trafficking; the First Report indicates that around half of the Member States have introduced such criminalisation; this is already being partially achieved by Directive 2011/93/EU, which obliges Member States to ensure that engaging in sexual activities with a child – in the context of prostitution – is a criminal offence;
- in the area of funding, the allocation of sufficient funds for the implementation of preventive measures, victim assistance measures, law enforcement activities, etc.

In the **Second Report** of 2018, the Commission declared the implementation of the "fight against the culture of impunity" and efforts to prevent trafficking in human beings. Compared to the First Report, the tasks and objectives have not changed substantially. The Commission again emphasised:

- the promotion of the criminalisation of the use of services provided by victims as an appropriate preventive tool to reduce the demand for trafficked victims, including sexual exploitation;
- the need to increase the effectiveness of prosecutions and convictions, as 'the overall level of prosecutions and convictions remains very low'; or to encourage the application of financial investigations also in relation to this crime;
- encouraging cross-border cooperation in the fight against trafficking in human beings and the creation of joint investigation teams, including with third countries (e.g., the Western Balkan countries);
- the need to support campaigns and educational programmes;

- the need to provide support to victims, sufficient funding for this support, including granting residence in accordance with Directive 2004/81/EC.

The Commission's **Third report** (2020) also reflects these challenges and objectives and specifies some of the current challenges in combating trafficking in human beings. However, in the report, the Commission acknowledges that "*impunity for perpetrators persists in the EU and the number of prosecutions and convictions of traffickers remains low.*" The Commission said that:

- specifically in the case of sexual exploitation, the gender aspect of this crime needs to be investigated and considered, focusing on the use of electronic communications in the recruitment of victims (grooming), the application of specific investigative techniques such as covert surveillance, internet surveillance, etc.;
- the link between migration and the risk of trafficking in human beings should be addressed, with particular reference to migrant women and minors;
- measures to reduce the demand for services resulting from trafficking in human beings should continue to be applied and expanded;
- the link between the internal and external dimensions of trafficking in human beings (with links to migration operations) must be addressed.

The Commission's **Fourth report** in 2022 expands on the findings in the sense of the third report and builds on the tasks and objectives set out in the previous reports. In this report, the Commission stated, inter alia:

- trafficking in human beings, including sexual exploitation (and prostitution), has been disproportionately affected by measures related to the covid-19 pandemic (restrictions on movement and travel, increased use of electronic communications); some effects of the pandemic are putting pressure on the demand for forced labour;
- restrictions on movement and travel have in many cases led to the isolation of victims with perpetrators;
- electronic communication (digital space) is increasingly used in all phases of trafficking in human beings; this allows perpetrators to acquire and dispose of more victims (conduct trafficking operations) remotely – a situation which poses a challenge for law enforcement authorities;
- the use of migration to recruit new victims has also been reinforced by the war in Ukraine since 24 February 2022;
- the findings in this and previous reports have led to a proposal to amend Directive 2011/36/EU, to increase financial support for the fight against trafficking in human beings, or are expected to lead to increased activity by the EU Anti-Trafficking Coordinator, who is promoting the Common Anti-Trafficking Plan in the context of migration and the war in Ukraine; this plan reflects the tasks and objectives set out in previous Commission reports.

3. IS THE FIGHT AGAINST SEXUAL EXPLOITATION EFFECTIVE AT THE EU LAW LEVEL?

Although the legal framework for the suppression of trafficking in human beings – in particular sexual exploitation – is relatively well developed at EU law level, as we have presented in the previous text, it is questionable whether national authorities, in cooperation with Europol, are succeeding in effectively suppressing this crime. This fact can be demonstrated by statistical data on the number of victims or potential or

convicted perpetrators of trafficking in human beings offences, with particular reference to the form of sexual exploitation.

These data are derived from the First Report to the Fourth Report from 2016 to 2022, related documents and reports from Eurostat and Europol. The data should be interpreted as indicators of trends (paradigms) and not as absolute values that can be used to accurately examine year-to-year variations or differences between Member States.²⁰ It should also be stressed that the numbers presented are based on records of registered victims and registered offenders, but the actual numbers are significantly higher; **the assumed latent crime rate²¹ is high and may vary significantly from one Member State to another and from one year to another.** Statistically assessing the number of victims is more complicated than the number of perpetrators. The total number of victims consists of the number of so-called identified victims (i.e. victims who have been formally registered by law enforcement authorities and courts) and presumed victims (those who have not been formally registered by the relevant authorities but who meet the criteria under Directive 2011/36/EU).²²

3.1 Statistics on the Number of Victims of Trafficking in Human Beings

The Fourth report from 2022 mainly includes registered data on the extent of sexual exploitation perpetration from 2019 and 2020, taking into account also the Covid-19 pandemic from 2020 to 2022 and social phenomena related to the war in Ukraine since 24 February 2022. In 2019 and 2020, a total of 14 311 victims of trafficking in human beings were registered in the European Union Member States, a higher number than in previous years, including 7777 in 2019 and 6534 in 2020. The proportion of women and girls was 63%, indicating that trafficking in human beings is a gender-specific crime. Around half of the victims of this crime are EU citizens.

Looking specifically at trafficking in human beings in the form of sexual exploitation (SE) over the period, the proportion of such victims was 51%, with the second highest proportion of exploitation for forced labour (28%). The form of sexual exploitation is even more gender-specific, as up to 87% of victims are female. Up to 22 % of the victims of sexual exploitation are children. The highest number of victims of sexual exploitation was recorded in the Netherlands, Romania and Germany. The above figures on victims are subject to certain changes over time, since the Directive 2011/36/EU was in the

²⁰ Increases or decreases in reported numbers of victims or perpetrators may be the result of legislative changes (e.g., changes in the definition of trafficking in human beings), changes in statistical methods or the application of new policies or initiatives. For example, the decrease in the number of victims in Spain between 2010 and 2012 (from 1605 to 234 and 125 respectively) is due to the legislative narrowing of the concept of victim. Similarly, the increase in the number of victims registered in the United Kingdom between 2011 and 2012 (from 331 to 1998 and 2145 respectively) is a consequence of the inclusion of 'potential victims' in the concept of victim (see Eurostat, Statistical Working Papers, Trafficking in Human Beings, 2015 Edition). The 2019 and 2020 statistical indicators (Fourth Report) no longer include UK data due to Brexit.

²¹ The crime latency rate (i.e. the proportion of actual crime that is not registered, that does not come to light) varies considerably from one type of crime to another. The willingness to report crimes depends on the characteristics of the crime, the relationship between the offender and the victims as well as other factors (Grivna, Scheinost and Zoubková, 2014, p. 35). The shift of a significant rate of trafficking perpetration to the online sphere (so-called cybercrime has a classically high latency rate) and the deepening of the victim's dependence on the perpetrator can significantly act to increase the latency rate of sexual exploitation.

²² According to Eurostat, Statistical Working Papers, Trafficking in Human Beings, 2015 Edition, some Member States provide data on both identified and presumed victims (according to this report this was the case for 7 Member States), some Member States provide data only on presumed victims (3 Member States) and most Member States provide data only on identified victims (18 Member States). The data on the total number of victims includes both identified and presumed victims. The way in which the number of victims is reported has varied from period to period in the Member States, so the reminder above applies to any comparisons.

legislative process (2010) or since the obligation for Member States to transpose the Directive expired (2013).

Table 1: Basic statistics on victims of trafficking in human beings in the European Union, with particular reference to sexual exploitation.²³

	Assessment period	Total number of registered victims	Proportion of women and EU citizens	Share of victims in the form of SE	Share of women and children in SE
First report (2016), Eurostat THB (2015)	2010 – 2012	30 146	80 % (75 %) ²⁴ / 65 %	69 %	95 % / 14 %
	2013 – 2014	15 846	76 % / 65 %	67 %	- / 6,5 % ²⁵
Second Report (2018)	2015 – 2016	20 532	68 % / 44 %	56 %	95 % / 23 %
Third Report (2020)	2017 – 2018	26 268 (EU-28), 14 145 (EU-27) ²⁶	58 % / 41 % (EU-28), 72 % / 49 % (EU-27),	46 % (EU-28), 60 % (EU-27) ²⁷	72 % (EU-27) / 14 % (EU-27) ²⁸
Fourth Report (2022)	2019 – 2020	14 311 (EU-27)	63 % / 53 %	51 %	87 % / 22 %

Based on the above comparison, it is clear that it is not possible to clearly identify an upward or downward trend in the absolute number of registered victims. The high

²³ Authors' work based on data published in the First Report, the Second Report, the Third Report and the Fourth Report and related documents: Commission staff working document accompanying the document Report on the progress made in the fight against trafficking in human beings (2016) ... {COM(2016) 267 final}; Commission staff working document accompanying the document Second report on the progress made in the fight against trafficking in human beings (2018) ... {COM(2018) 777 final}; Data collection on trafficking in human beings in the EU Final report – 2018 Lancaster University; Commission staff working document accompanying the document Third report on the progress made in the fight against trafficking in human beings (2020) ... {COM(2020) 661 final}; Commission staff working document Statistics and trends in trafficking in human being in the European Union in 2019-2020 ... {COM(2022) 736 final}.

²⁴ Here it is necessary to take into account the different data presented in the First Report and in the Eurostat report, Statistical Working Papers, Trafficking in Human Beings, 2015 Edition.

²⁵ The proportion of female victims of sexual exploitation was specified only by saying that it was a "significant majority". The data is summarised according to the First Report as well as the Situation Report Trafficking in human beings in the EU - Europol, 2016 (hereafter "Europol Situation Report 2016").

²⁶ At that time, the EU had 28 member countries, as the UK did not leave the EU until 31 January 2020. However, given the possibility and relevance of later statistical comparisons, it should be noted that the UK data fundamentally changes the overall statistics on the number of registered victims, as more than 46% of the total number of victims were registered in the UK.

²⁷ We refer to what we said in the previous note. It should be added here that the majority of registered victims of trafficking in the UK are victims of forced labour trafficking. Excluding the UK data, sexual exploitation clearly accounts for a clear majority of cases in terms of the number of victims. These facts are also reflected in the representation of women among victims, as there is a higher proportion of male victims in forced labour.

²⁸ The third report (and the related Commission staff working document ...) does not give a specific figure for the proportion of child victims of sexual exploitation, but the narrative describes it as a "significant figure". However, it is possible to calculate this proportion, as the report specifically on child trafficking (Commission staff working document ..., p. 34) states that children accounted for 22 % of all victims (EU-27) in the period in question, with 64 % of child victims attributable to a form of sexual exploitation.

number of registered victims between 2010 and 2012 and the subsequent decline may be due to changes in the definitions of victim in the individual Member States, the varying degree of cooperation between Member States in providing statistics. The rise in numbers between 2013 and 2018 may be due to the increased rate of identification of victims of trafficking in forced labour in the UK, which is clearly reflected in the absolute numbers of victims in the 2017 and 2018 reporting period, as the EU-27 (excluding UK statistics) shows almost only half the number of registered victims compared to the EU-28. This is also reflected in the proportion of sexual exploitation, which is clearly higher without considering the UK data (where victims were registered to a significant extent for the purpose of forced labour). Consequently, the high proportion of sexual exploitation is also linked to the high proportion of women in the total number of victims of trafficking.

The total number of victims across the EU-27 remains roughly the same between 2017 and 2020, while being substantially lower than in the periods under review between 2010 and 2016. This leads us to conclude **that the elimination of latency (hiddenness of this crime) is not being achieved**. Indeed, reducing latent crime rates (and achieving higher registration) is one of the fundamental prerequisites for successful crime suppression. Particularly in 2020, there was a slight decrease in the number of registered victims, which may be related to the covid-19 pandemic and the increased involvement of information technology in trafficking-related processes, including the recruitment of victims through electronic communication services and, consequently, the providing of victims to customers. In terms of the **share of registered victims of sexual exploitation** in the total number of victims, a gradual decrease can be observed (even at EU-27 level only), but this form of trafficking **remains over-represented**. However, this does not mean that sexual exploitation is less prevalent; on the contrary, sexual exploitation may be more likely to be **committed covertly, including through electronic communication services**. In terms of the countries of origin of victims, the inertia of the trend of migration of victims in an east-west direction can be observed, but due to the migration crises between 2015 and 2018, EU citizens were represented by less than half, and the electronicisation of the perpetration of crime and, from 2022 onwards, the war in Ukraine, enter into these trends. Thus, the victim data above does not suggest that the fight against this victim reduction crime has been significantly successful in the periods under review. **The tasks and objectives** set by the Commission in the First Report (Second and Third Reports) **thus remain largely unfulfilled**.

3.2 Statistics on the Number of Suspects, Prosecuted and Convicted Persons for Trafficking in Human Beings

From the four Commission reports presented, it is also possible to identify trends in relation to the number of suspects, prosecuted and convicted persons in EU Member States in relation to the crime of trafficking in human beings. In terms of the number of persons registered as suspected of having committed all forms of trafficking in human beings offences in EU Member States, this number rose to 15 214 persons between 2019 and 2020. The number of persons prosecuted in this period was 6,539 and the number of convicted persons reached 3,019. Overall, there was a clear predominance of males among suspects, accused and convicted persons: 74% (in each year: 73% and 74%). There were, however, individual exceptions: in Finland, women accounted for 53 % of the number of registered suspects, and in the Czech Republic women accounted for 53 % of the number of prosecutions and 67 % of the number of convictions. EU citizens clearly predominated among suspects, prosecuted and convicted persons (62%, 70% and 66% respectively).

Just as sexual exploitation is the most prevalent form of all forms of trafficking in human beings in relation to victims of this crime, sexual exploitation is also the most prevalent form in 2019 and 2020 in relation to suspects, prosecuted as well as convicted persons. The proportion of persons suspected of sexual exploitation reached a rate of 65%, with the second highest proportion of persons suspected of forced labour (23%). Among those prosecuted, the proportion of those prosecuted for sexual exploitation was 70% (followed by forced labour with 19% of those prosecuted), rising to 86% and 87% in Finland and Spain, and 100% in Hungary. The proportion of persons convicted of sexual exploitation among all those convicted of trafficking in human beings was 63% on average, with the highest proportions in Latvia (82%), Spain (94%) and Finland (100%).

Table 2: Basic statistics on suspects, prosecuted and convicted persons for the crime of trafficking in human beings in the European Union, with particular reference to sexual exploitation.²⁹

	Assessment period	Absolute number of registered suspects or persons who have come into contact with law enforcement	Absolute number of prosecuted persons	Absolute number of convicted persons	Percentage of persons suspected, prosecuted and convicted of sexual exploitation	Percentage of people with EU citizenship
First report (2016), Eurostat THB (2015)	2010 – 2012	12 760 / 5941 ³⁰	8805	3855	71 % ³¹ / 73 %	69 %, 73 %
	2013 – 2014	6324	4079	3129	- ³²	-
Second Report (2018)	2015 – 2016	7503	5979	2927	78 % / 75 % / 72 % ³³	84 % / 87 % / -

²⁹ Authors' work based on data published in the First Report, the Second Report, the Third Report and the Fourth Report and other sources as for Table 1.

³⁰ The figures represent the total number of suspects in the EU according to the statistics on suspects by sex/age. Determining the total number of suspects at EU level for the three years is complicated because not all Member States have provided numbers of suspects by sex or nationality for all three years. See Eurostat, Statistical Working Papers, Trafficking in Human Beings, 2015 Edition.

³¹ The figure is not representative due to the low number of Member States (10) that reported a statistical distribution of the number of suspects according to the form of trafficking in human beings. In addition, persons may be suspected of more than one form of trafficking in human beings.

³² Neither the First Report nor other reports or documents (e.g., Europol Situation Report 2016) provide precise data on the share of sexual exploitation as a form of trafficking in human beings in the numbers of suspects, accused and convicted persons. However, these documents show that sexual exploitation is also the predominant form in these indicators.

³³ This figure comes from the report Data collection on trafficking in human beings in the EU Final report – 2018 Lancaster University, p. 15, 95 et seq.

Third Report (2020)	2017 – 2018	11 788 (EU-27), ³⁴ 11 814 (EU-28)	6163 (EU-27), 6404 (EU-28)	2426 (EU-27), 2483 (EU-28)	77 % / 58 % / 54 %	68 % / 56 % / 71 %
Fourth Report (2022)	2019 – 2020	15 214	6539	3019	65 % / 70 % / 63 %	62 % / 70 % / 66 %

As the above data - taken from EU Member States' statistics - shows, there has been a gradual increase in the number of registered suspects over the periods under review. In our opinion, this - compared to the stagnation in the number of registered victims - is a sign of a positive trend in favour of eliminating the latency (hiddenness) of this type of crime in the EU. Also, in relation to the number of prosecutions, an increase can be noted between 2013 and 2020. However, no such clear trend can be identified in the number of convictions. The number of convicted persons decreased slightly between 2010 and 2018, but a slight increase was recorded between 2019 and 2020, bringing the share of convicted persons in the number of prosecuted persons to 46%. The numbers of suspects, prosecutions and convictions were not significantly affected by the exclusion of the UK from these statistics, although there was a significant reduction in the number of registered victims, as we have noted above. Nevertheless, throughout the period under review, the **numbers prosecuted and convicted remain relatively low** according to EU Member State statistics. This problem is particularly relevant to sexual exploitation, which remains the most represented form in the perpetration of this crime. The statistics also do not provide data on prosecuted and convicted legal persons. The **tasks and objectives set out by the Commission in the First Report** (and the Second and Third Reports respectively), which related in particular to the effectiveness of the use of criminal law instruments, **can not therefore be regarded as having been met**.

The prospects for improving these statistics remain unclear. In 2022, there are **additional threats** that encourage the spread of trafficking in human beings. The perpetrators of this crime have started to use the internet and social media to a much greater extent to recruit victims. The war in Ukraine and the related refugee crisis is another major factor contributing to the increase in trafficking in human beings. In addition, it should be considered that these figures only describe the state of registered crime. The actual number of crimes committed and victims of crime is much higher, as the reports themselves admit.

3.3 Statistics on the Numbers of People Suspected, Prosecuted and Convicted for Using Victim Services

At the end of the statistical data analysis, it is interesting to evaluate one more statistic. Given that Directive 2011/36/EU, as in force, leaves Member States discretion under Article 18(4) as to whether to criminalise the **use of services provided by trafficked persons**, the use of services is criminalised in some Member States. The data comes from 11 Member States and in 2019 and 2020 a total of 159 suspects, 46 prosecuted persons and 51 convicted persons were registered.

³⁴ As with data on numbers of victims, the Third Report (and the related Commission staff working document) distinguishes between statistics for EU Member States, including the United Kingdom, and those for Member States excluding the United Kingdom.

Table 3: Basic statistics on suspects, prosecuted and convicted persons for the offence of using the services of a victim of trafficking in human beings in the European Union.³⁵

	Assessment period	Number of EU Member States	Absolute number of registered suspects or persons who have come into contact with law enforcement	Absolute number of prosecuted persons	Absolute number of convicted persons
Second Report (2018)	2015 – 2016	-36	2	135	18
Third Report (2020)	2017 – 2018	11	170	162	153
Fourth Report (2022)	2019 – 2020	11	159	46	51

First of all, it should be noted that the number of Member States that have made it a criminal offence to use the services of a victim of trafficking in human beings remains low. Consequently, their indicative value is limited. In some Member States (e.g., Slovakia), a legislative change is being prepared which will criminalise the use of victim services. The statistics presented are volatile and inconsistent: there was an increase in the number of prosecutions and convictions between the First Report and the Second Report, but then a decrease in the Fourth Report. This decline may have been due to the effects of the covid-19 pandemic, as people's contacts were reduced and service provision may have taken place more covertly. The latency of this type of crime is directly proportional to the latency of trafficking.

On the basis of the above statistics with low indicative value, it is not possible to conclude to what extent the criminalisation of the use of victim services contributes to the fight against trafficking in human beings. In particular, **it is not possible to assess whether the criminalisation of the use of services has such a general prevention effect** that it reduces the demand for victim services, e.g. sexual services provided by victims.

4. POSSIBLE SOLUTIONS? REFORM OF THE DIRECTIVE 2011/36/EU

In December 2022, the Commission introduced a proposal for reform - amending Directive 2011/36/EU, building on the findings presented in the First Report to the Fourth Report from 2016 to 2022 – to prevent and suppress trafficking in human beings, as well as to protect victims more effectively.³⁷

The reform of Directive 2011/36/EU includes the following changes:

a) Extension of the definition of trafficking in human beings.

- i. Forced marriage and illegal adoption are included among the different purposes of exploitation under Article 2(3) of the Directive. The incidence of these forms of trafficking is not high (sexual exploitation

³⁵ Authors' work based on data published in the First Report, the Second Report, the Third Report and the Fourth Report and other sources as for Table 1.

³⁶ The Second Report shows that only three Member States provided the data for 2015 and 2016.

³⁷ 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, 19. 12. 2022, COM(2022) 732 final.

- and forced labour are consistently prevalent) and has not been reflected in the statistics we have presented.
- ii. Member States interpret the purposes of exploitation too narrowly, which is consequently reflected in the transpositions. Such a broadening of criminalisation cannot be objected to.
- b) **Criminalisation of trafficking in human beings if the offence is committed in the online sphere.** According to the new Article 2a, the definition of trafficking in human beings is intended to include any act committed for this purpose through information and communication technologies.
- i. As noted above, all stages of trafficking in human beings are now significantly committed in the online sphere – in particular through electronic communication. The above-mentioned change is aimed at ensuring, from a substantive point of view, that any such conduct is also a criminal offence.
 - ii. However, we consider the solution in substantive criminal law to be only part of the solution. The fact that something is formally established as a criminal offence does not mean that such conduct will not be committed and the problem is solved.
 - iii. Moving the committing of the crime of human trafficking to the online sphere requires advanced technical and procedural solutions. We are of the view that an effective tool can be the acquisition of knowledge about the content of electronic communications and their metadata, including the possibility of **applying automated analysis of electronic communications**. Automated analysis of electronic communications is the bulk monitoring (interception) of communications using technical tools – algorithms that are capable of detecting certain patterns of communications that indicate possible criminal behaviour. The mandatory application of automated analysis of electronic communications in certain circumstances (threats to national security) is also permitted by the case law of the Court of Justice of the EU³⁸ as well as (with more flexible conditions) by the European Court of Human Rights.³⁹
 - iv. Currently, automated analysis can be applied (by electronic communications service providers) on an optional basis in the detection and investigation of sexual abuse - under the Regulation 2021/1232 on the temporary exemption from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse. This specific legislation applies until the adoption of the General Regulation on respect for privacy and the protection of personal data in electronic communications. Automated analysis must be subject to strict guarantees of privacy and informational self-determination (Beleš, 2022, p. 90 et seq.). Given that perpetrators of human trafficking have begun to use the Internet and social media to a much greater extent, we believe that the scope of this regulation should be extended to human trafficking.

³⁸ CJEU, judgment of 6 October 2020, *La Quadrature du Net and others*, C-511/18, C-512/18 and C-520/18, ECLI:EU:C:2020:791, par. 2 of the operative part of the judgment.

³⁹ ECtHR, *Big Brother Watch and others v. United Kingdom* [GC], app. no. 58170/13, 62322/14, 24960/15, 25 May 2021, par. 361 et seq.

- v. **Automated analysis of electronic communications could be applied to identify electronic communications that take place at all stages of the trafficking process** – in the solicitation of victims (*grooming*), in the management of distance transactions, in the offering of victims to potential customers, as well as in the communication with customers. Some Member States apply 'covert surveillance, Internet surveillance' (Third Report, p. 4), but these procedural procedures would need to be at least partially unified across the EU in view of the regulation of electronic communications.
 - vi. On the basis of the above, **we do not consider that limiting the new Article 2a to the substantive law area alone is a sufficient solution** to the perpetration of trafficking in human beings in the online sphere.
- c) **Enforcement of criminal liability of legal persons.**
- i. According to the Commission reports on the implementation of Directive 2011/36/EU, legal corporate structures are often abused to conceal trafficking-related activities.
 - ii. Under the new wording of Article 6, certain types of sanctions imposed in criminal or non-criminal proceedings are made mandatory (not merely optional);
 - iii. We consider the change in the sanctioning mechanism to be correct, but **the list of sanctions could be extended to include other types of sanctions** – e.g. disclosure of a conviction, which has a negative effect on the reputation of the legal person, or forfeiture of all or part of the legal person's assets.
- d) **Seizure and confiscation of property.**
- i. The effective extraction of the proceeds of trafficking in human beings is a useful tool to weaken the structures of organised crime;
 - ii. The new wording of Article 7 clarifies the wording to establish the authority of Member States to detect, freeze, dispose of and final confiscation of assets in line with the new proposed *Directive on asset recovery and confiscation*.
- e) **Establishment of reference mechanisms for the identification of victims.**
- i. The statistics on the number of victims, as we have presented them, show that there remains a lack of identification of victims and that many real victims remain in the latent sphere.
 - ii. The establishment of referral mechanisms is a useful tool for more detailed identification of victims in all Member States.
 - iii. However, **we do not consider such a measure to be sufficient in terms of overall victim protection**, as in order to identify victims on a large scale, it is necessary to provide them with a safe environment with professional assistance in the first place, thereby motivating them to disengage from organised crime structures.
 - iv. In relation to victims of sexual exploitation, which is the most widespread form of trafficking, consideration should be given to the **establishment of a clear, strict and secure legal framework for the providing of sexual services (sex work)**, which could motivate those engaged in prostitution to step out of the grey zone and engage in legal and regulated activity outside the influence of organised crime. Legal regulation should cover a range of issues, such as health surveillance or licensing of businesses that provide such services.

- v. Prostitution and sexual exploitation is a serious social problem that EU law in the context of trafficking aims to combat, but sex work is part of the internal market, as confirmed (in the context of free movement of workers, services or freedom of establishment) by the CJEU.⁴⁰ Thus, the conditions for sex work could potentially be **harmonised at EU level under Article 114 TFEU**. The purpose of this provision in the TFEU is to create a Union competence rule that allows for the effective removal of barriers in the internal market resulting from divergent national regulations. Because of its broad scope, this competence rule has been criticised (Streinz et al., 2018, p. 1441 et seq.). Sex work, which is part of the internal market, is an obvious example of such divergent regulations resulting in barriers to the internal market.
 - vi. Such harmonisation could only be carried out **on the basis of a detailed analysis of the impact of the regulation of sex work in some Member States on the fight against sexual exploitation**.⁴¹ The adoption of legal regulation of sex work is supported globally by some major expert organizations (Amnesty International, World Health Organization) and legislation in some countries (e.g. New Zealand) has shown a positive impact on safety, reducing the incidence of violence or transmissible diseases (Armstrong and Abel, 2020, pp. 2, 89 et seq.).
 - vii. It would also be necessary for some Member States (e.g. the Czech Republic or Slovakia) to withdraw from an international agreement that prevents the adoption of legal regulation of sex work.⁴²
 - viii. Critics of legal regulation of sex work object that in some EU Member States where prostitution is regulated, there is a proliferation of sexual exploitation of both adults and children in legal businesses (Second Report, p. 4). Harmonisation of this nature could, of course, be criticised on the grounds that it conflicts with the principles of subsidiarity and proportionality. Indeed, the regulation of sex work in European countries has not - compared to other moral policies - been subject to a clear and prevailing trend of liberalisation (Euchner, 2015, p. 33). A possible argument against the adoption of such harmonisation could also be that legislation on public morality is part of the national identity of the Member States.⁴³
- f) Unification of data collection and creation of statistics.**
- i. According to the new Article 19a, Member States are obliged to collect specified data, produce statistics and provide these to the

⁴⁰ In several judgments, the Court of Justice has identified differences in national regulation as barriers to the internal market. In each case, the performance of sex work falls within the scope of the internal market freedoms referred to above: CJEU, judgment of 20 November 2001, *Jany and Others*, C-268/99, ECLI:EU:C:2001:616, par. 49 et seq.; CJEU, judgment of 1 October 2015, *Trijber and Harmsen*, C-340/14 and C-341/14, ECLI:EU:C:2015:641, par. 67-77; CJEU, judgment of 8 May 2019, *PI*, C-230/18, ECLI:EU:C:2019:383.

⁴¹ In the context of German regulation of sex work, see e.g. Bundeskriminalamt: Menschenhandel und Ausbeutung. Bundeslagebild 2020; Reglementierung von Prostitution: Ziele und Probleme – eine kritische betrachtung des Prostitutionsgesetzes, 2007. See also Kontos, 2014.

⁴² *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. Art. 6 of this Convention practically excludes the adoption of legal regulation of sex work in contracting States.

⁴³ However, this is questionable, as the concept of national identity is not fully clarified in the Court's case-law. National identity cannot be interpreted in the context of history, culture and language, but national identity is close to the constitutional identity of member states (Kiššová, 2021). Thus, the concept of protection of public morality would have to be part of the constitutional identity of member states.

Commission annually; given the inconsistency and incompleteness of the statistics we have presented in the previous text, this change should be viewed positively.

g) Criminalising the use of the services of trafficked persons.

- i. The optional discretion of Member States to criminalise the use of the services of trafficked persons is transformed under the new Article 18a into a mandatory obligation to criminalise such conduct, i.e. to criminalise customers who (intentionally) use the services of trafficked persons.
- ii. The criminalisation of the use of services is intended to serve as a preventive measure - criminalisation has the effect of general prevention, and thus is intended to reduce the demand for the services of trafficked persons. This measure has the same ideological basis as a more general measure - the criminalisation of any demand for sexual services, which began to be applied in the late 1990s in Sweden on the grounds that prostitution (sex work) is inherently harmful and (in general) is a form of violence against women (see more in Havelková and Bellak-Hančilová, 2014, pp. 44-63).
- iii. The problem with this measure is that **the statistics we have analysed above do not show the effectiveness of the preventive effect** of such a measure, the comparisons of data according to the Second Report, Third Report and Fourth Report are **inconsistent and it cannot be concluded** from them that in Member States where such a measure has already been introduced, it is a measure that has been widely applied with a significant effect on reducing the number of victims of trafficking in human beings. Moreover, the success rate of the application of such a measure seems to be decreasing with the shift of service providing to the online environment (Fourth Report); a more detailed analysis of the application in the Member States where such a measure has already been introduced would be necessary to decide that such a measure is necessary to be mandatorily introduced at a EU law level.
- iv. For example, Section 232a (6) of the German Criminal Code StGB (as part of the offence of forced prostitution – *Zwangsprostitution*) punishes the intentional⁴⁴ or negligent⁴⁵ use of the services of a victim of sexual exploitation, but with the possibility of extinction of criminality if the perpetrator voluntarily reports such conduct to the police authorities. However, this legislation is part of a broader legal context - the regulation of sex work in Germany - under two separate laws, and a breach of this legal framework may constitute the offence of forced prostitution (Sec. 232a) or trafficking in human beings (Sec. 232) or exploitation of prostitutes (Sec. 180a of the German Criminal Code StGB; see Fischer, 2018, p. 1259 et seq.).

Under Slovak criminal law, a new provision of the Criminal Code criminalising the use of the services of a victim of trafficking in human beings – with intentional culpability

⁴⁴ Punishable by three months to five years.

⁴⁵ Punishable by up to three years.

and with a number of qualifying facts⁴⁶ – is in the draft phase before the adoption and entry into force of the reform of Directive 2011/36/EU; the qualification of the offence may interfere with the offence of trafficking in human beings (the perpetrator obtains a greater/substantial benefit for himself or another) as well as with the offence of sexual abuse [the perpetrator commits an offence against a child – in which case the offence is already child prostitution under Art. 202 par. 1 (b) of the Slovak Criminal Code].

5. CONCLUSION

Although the institutions of the European Union have set themselves important tasks and objectives in the fight against trafficking in human beings, in particular in the areas of more effective enforcement of criminal law, increasing the number of prosecutions and convictions, better identification of victims of this crime and expanding victim assistance, these tasks and objectives have only been achieved to a limited extent through the harmonisation of criminal law with Directive 2011/36/EU. The statistics presented show the continued high latency of this crime in the European Union and the stagnation in the number of prosecutions and convictions. This applies in particular to sexual exploitation, which has long been the most common form of trafficking in human beings. In addition, new threats to trafficking in human beings are emerging, such as the shift of crime to the online space and increased migration, to which the current Directive 2011/36/EU fails to respond adequately.

In December 2022, the Commission presented a reform of Directive 2011/36/EU, which in principle brings positive changes. However, these changes are – in the light of the statistics presented - insufficient or insufficiently justified in a number of respects. In view of the widespread perpetration of trafficking in human beings through information and communication technologies, changes in the substantive sphere alone are not sufficient, but effective procedural instruments need to be adopted. A suitable procedural

⁴⁶ The offence of using the services of a victim of trafficking in human beings under Section 179a of the Criminal Code should have the following wording (according to the working materials of the Ministry of Justice of the Slovak Republic, December 2022):

- 1) Whoever, knowing that he or she is a person who is a victim of trafficking in human beings, uses the services of a person who is a victim of trafficking in human beings resulting from the exploitation of such a person referred to in Section 179, shall be punished by imprisonment for one to five years.
- 2) The offender shall be punished by imprisonment for a term of three years to eight years if he or she commits an act referred to in paragraph (1)
 - a) and obtains a greater benefit for himself or for another,
 - b) and by such act places another in danger of serious bodily harm or death,
 - c) as a public official,
 - d) on a protected person other than a child,
 - e) for a special motive, or
 - f) in a more serious manner.
- 3) An offender shall be punished by imprisonment for a term of between four and ten years if he commits an act referred to in subsection (1)
 - a) and obtains by it a substantial benefit for himself or for another, or
 - b) and causes serious bodily injury or death or another particularly serious consequence.
- 4) An offender shall be punished by imprisonment for a term of between seven and twelve years if he commits an act referred to in paragraph (1)
 - a) and obtains by it a benefit of a large amount for himself or for another
 - b) on a child; or
 - c) as a member of a dangerous group.
- 5) An offender shall be punished by imprisonment for a term of ten years to fifteen years if he commits an act referred to in paragraph (1)
 - a) and obtains by it a benefit for himself or for another of an extremely large amount, or
 - b) and causes serious bodily injury to more than one person or the death of several persons.

tool may be the automated analysis of electronic communications, which could be primarily applied by extending the material scope of Regulation 2021/1232. In terms of extending protection to victims of sexual exploitation, it would be appropriate to consider the creation of a clear, strict and secure legal framework for the provision of sexual services in the context of the harmonisation of the internal market under Article 114 TFEU. However, such a solution has both factual and legal obstacles. With regard to the Commission's proposed measure to criminalise the use of services provided by trafficked persons, it should be noted that it cannot be concluded from the available statistics that extending criminalisation is an appropriate and sufficient instrument to reduce the demand for such services.

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