



Proposed amendments to the revision of the Anti- Trafficking Directive

European Disability Forum

April 2023

**EDF's Proposed amendments to the Revision of the Directive
2011/36/EU on preventing and combating trafficking in human beings
and protecting its victims**

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Introduction

This document presents the proposed amendments of the European Disability Forum (EDF) for the [revision of the EU Anti-Trafficking Directive](#). It should be read along with [EDF position paper on combating trafficking in persons with disabilities](#) adopted in March 2022.

The European Disability Forum

The European Disability Forum is an independent NGO that represents the interests of 100 million Europeans with disabilities. EDF is a unique platform which brings together representative organisation of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.

Executive Summary

The European Disability Forum welcomes the revision of the [Anti-Trafficking Directive](#). The Directive adopted in 2011 only makes a few references to disability and does not fully align with the UN Convention on the Rights of Persons with Disabilities (CRPD) ratified by the EU and all its Member States.

Persons with disabilities, including women and girls with disabilities are at a higher risk of exploitation and may be more at risk of being trafficked, than persons without disabilities. Examples of trafficking faced by persons with disabilities are forced begging of persons with physical disabilities, including children, and sexual exploitation of women with intellectual or psychosocial disabilities.¹ Persons with disabilities, especially children with disabilities, also face trafficking into institutions, which can also lead to forced labour and sexual exploitation.²

In December 2022, the [European Commission proposed a revision of the Anti-Trafficking Directive](#) to update and further harmonise the EU’s legal framework, for example by including forced marriage and illegal adoption among the forms of exploitation covered by the Directive.

Unfortunately, the Commission missed the opportunity to strengthen the rights of persons with disabilities and to align with the CRPD.

EDF calls on the European Parliament and the Council of the European Union to strengthen the text of the Directive, by including amendments to:

- Add **trafficking into institutions** under the scope of the Directive
- Include **aggravating circumstances** for trafficking in person, including when it is based on the disability of the person
- Provide **accessible and inclusive prevention and response measures and programmes**
- Require **data collection** disaggregated by disability

Proposed amendments to the EU Anti-Trafficking Directive (Revision)

Article 2: Offences concerning trafficking in human beings

Commission’s proposal	Proposed amendments
Directive 2011/36/EU is amended as follows: (1) in Article 2, paragraph 3, "or forced marriage, or illegal adoption" is added at the end of the paragraph.	Directive 2011/36/EU is amended as follows: (1) in Article 2, paragraph 3, "or forced marriage, or illegal adoption, or trafficking into institutions " is added at the end of the paragraph.
Justification:	

¹ [EDF position paper on combating trafficking in persons with disabilities](#) (2022), pages 4-5.

² Lumos, [Cycles of Exploitation – a full exploration of the devastating links between institutional care and child trafficking](#), page 71.

EDF supports the joint [contribution and proposal lead by Hope and Homes for Children to include trafficking into institutions](#) under the scope of the Directive.

Trafficking into institutions meets the two elements constituting trafficking in human being under Directive 2011/36/EU: the act and the purpose. Thus, it should be covered under the definition of trafficking provided by Art. 2 of the Directive.

The act of trafficking into institutions includes the "*recruitment, transportation, harbouring or reception of persons, including the exchange or transfer of control over a person.*" These actions occur through "*coercion, abduction, fraud, deception, [...] the abuse of power or of a position of vulnerability*".

Trafficking into institutions is driven by exploitative purposes. Children, including children with disabilities, are placed in institutions for profit motives and through the commodification of orphans. Their placement is aimed at attracting donations and benefitting the tourism industry. Children's time is sold through tourism programmes in institutions, and orphans' photographs and stories are used to maximise contributions and sponsorship. Children are sometimes kept in poor conditions to attract donors and tourists.³

NEW – Article 3a Aggravating circumstances

Commission proposal	Proposed amendments
	<p><i>Member States shall ensure that the following circumstances may be regarded as aggravating circumstances to the offences of trafficking in human beings referred to in article 2:</i></p> <p><i>(a) the offence was committed against a child;</i></p> <p><i>(b) the offence was committed against a person made vulnerable by particular circumstances, such as a situation of dependence or a state of physical, mental, intellectual or sensory disability;</i></p> <p><i>(c) the offence was preceded or accompanied by extreme levels of violence;</i></p> <p><i>(d) the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances;</i></p> <p><i>(e) the offence resulted in the death of the victim or severe physical or psychological harm for the victim;</i></p>

³ [Van Doore K E. \(2022\) Orphanage Trafficking in International Law. Cambridge University Press](#)

	<i>(f) the offender has previously been convicted of offences of the same nature.</i>
<p>Justification:</p> <p>The Anti-Trafficking Directive should provide aggravating circumstances for the offences of trafficking in human being based on several factors, such as the vulnerability and marginalisation of the person trafficking (e.g. age, disability), the use of violence or the repetition of the offence. The text proposed aligns with article 13 of the proposed EU Directive on combating violence against women and domestic violence.</p>	

Article 11: Assistance and support for victims of trafficking in human beings

Text Directive 2011/36/EU	Proposed amendments
<p>7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.</p>	<p>7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.</p> <p><i>8. Support services for victims of trafficking in human beings shall have sufficient capacities to accommodate victims with disabilities, taking into consideration their specific needs, including personal assistance.</i></p>
<p>Justification:</p> <p>The language of paragraph 7 must be revised to align with the CRPD. The terminology “mental or psychosocial disorder” is based on a medical approach which is not compliant with the human rights-based approach to disability. We recommend removing this reference, as it is encompassed under “disability”.</p> <p>In addition, we propose a new paragraph 8 to ensure services can accommodate victims with disabilities in line with the Victims’ Rights Directive and the text proposed under article 35(2) of the proposed directive on combating violence against women and domestic violence.</p>	

Article 18: Prevention

Text Directive 2011/36/EU	Proposed amendments
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2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children **and persons with disabilities**, becoming victims of trafficking in human beings. **Such actions shall be accessible for persons with disabilities in line with EU harmonised accessibility legislation, in particular with Directive 2019/882.**

3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings, **including children and persons with disabilities.**

Justification:

Prevention is essential to combating trafficking in persons with disabilities, but to ensure it works it needs to include the disability perspective. This is in particular important that information and awareness raising campaign are accessible with persons with disabilities. In addition, official likely to come into contact with victims, including victims with disabilities should be trained on their rights and needs.

Article 19a: data collection and statistics

Commission's proposal	Proposed amendments
<p>2. The statistical data referred to in paragraph 1 shall include, at least, the following:</p> <p>(a) the number of registered victims of offences referred to in Article 2, disaggregated by registering organisation, sex, age groups</p>	<p>2. The statistical data referred to in paragraph 1 shall include, at least, the following:</p> <p>(a) the number of registered victims of offences referred to in Article 2, disaggregated by registering organisation, sex, age groups</p>

(child/adult), citizenship, and form of exploitation;	(child/adult), disability, background (ethnic minority/migrant), other vulnerabilities (children without parental care and unaccompanied minors) , citizenship, and form of exploitation;
<p>Justification:</p> <p>To tailor both preventive and responsive measures for people (at risk of) trafficking, it is crucial to have strong disaggregated data collection in place. The EU and its Member States have an obligation to collect disaggregated data by disability under the UN Convention on the Rights of Persons with Disabilities.</p>	

Recitals

Text Directive 2011/36/EU	Proposed amendments
(2) Directive 2011/36/EU of the European Parliament and the Council constitutes the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework to address trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen prevention and protection of victims, taking into account the gender perspective.	(2) Directive 2011/36/EU of the European Parliament and the Council constitutes the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework to address trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen prevention and protection of victims, taking into account the gender and disability perspective.
(4) In order to tackle the steady increase of the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, it is necessary to include forced marriage and illegal adoption in the forms of exploitations explicitly listed in the Directive and to ensure that the Member States address within their national legal systems the widest range of forms of exploitation, insofar	(4) In order to tackle the steady increase of the number and relevance of offences concerning trafficking in human beings committed for purposes other than sexual or labour exploitation, it is necessary to include forced marriage, illegal adoption and institution-related trafficking in the forms of exploitations explicitly listed in the Directive and to ensure that the Member States address within their national legal systems the widest range of forms of exploitation, insofar as these fulfil the

<p>as these fulfil the constitutive elements of trafficking in human beings.</p>	<p>constitutive elements of trafficking in human beings.</p>
	<p><i>4bis. Trafficking into institutions is a form of trafficking that occurs when individuals, in general children, are placed or kept in institutions for the purpose of profit and exploitation. Children are trafficked into institutions so that the respective structures or the actors involved receive more funds from the government or institutional and private donors, or make any profit from their institutionalisation. It can be driven by the overreliance on institutions to address vulnerabilities, the privatisation of the child protection system, lack of enforcement of minimum standards, prioritisation of aid and tourism, and lack of awareness of the harm of institutions, voluntourism and trafficking into institutions.</i></p>
	<p><i>9bis. Persons with disabilities, including women and girls with disabilities, and persons with intellectual or psychosocial disabilities, are at an increased risks of becoming victims of trafficking of human being, including institution-related trafficking. Perpetrators may target them due to their disability and the barriers they face to report the offence and access justice. They are also at risk of being placed and kept in institution-related trafficking much longer than children without disabilities. As Party of the United Nations Convention on the Rights of Persons with Disabilities, Member States must ensure that all forms of trafficking in human being faced by persons with disabilities, including women and children, are criminalised and prosecuted, that support measures are accessible to victims with disabilities and that officials and public services take into account their rights and needs. Services should provide reasonable</i></p>

	<i>accommodation, including personal assistance to victims with disabilities.</i>
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Justification:

We suggest revisions of several recital to aligns with our proposals for articles of the Directive. Importantly, we also propose to add a specific recital on persons with disabilities and compliance with the CRPD now into force in all EU Member States.

Document credits

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