



COUNTERING TRAFFICKING IN HUMAN BEINGS, PROTECTING VICTIMS AND ENHANCING FINANCIAL INVESTIGATIONS

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TRAFFICKING IN HUMAN BEINGS – THE LEGAL FRAMEWORK

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EU FRAMEWORK

- Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims
- Core EU instrument on THB

MEASURES IN THE DIRECTIVE

Definition of THB

Penalties

Liability of legal persons

Law enforcement (including non-punishment)

Assistance and support for victims of THB

Measures to protect children

Prevention

National rapporteurs or equivalent mechanisms

DEFINITION OF THB

- Article 2
- “The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

POSITION OF VULNERABILITY

- A situation in which the person concerned has no real or acceptable alternative but to submit to the abuse

EXPLOITATION

- As a minimum:
 - Exploitation of the prostitution of others or other forms of sexual exploitation
 - Forced labour or services, including begging
 - Slavery or practices similar to slavery
 - Servitude
 - Exploitation of criminal activities
 - Removal of organs

RELEVANCE OF CONSENT

- Any apparent consent is irrelevant where any of the means have been used – consent cannot be a defence

CHILDREN

- No requirement to prove the means element for THB involving children

COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (2005)

- All EU members are parties
- Significant measures on victim protection and assistance
- Effective monitoring mechanism – GRETA
- <https://www.coe.int/en/web/anti-human-trafficking/greta>

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 action to facilitate illegal immigration, who cooperate with the competent authorities

DIRECTIVE 2012/29/EU OF 25 OCTOBER 2012

- Establishing minimum standards on the rights, support and protection of victims of crime
 - Right to understand and be understood
 - Right to be informed about their rights
 - Right to information about their case
 - Right to interpretation and translation
 - Right of access to support services
 - Rights in criminal proceedings

EU STRATEGY TOWARDS THE ERADICATION OF TRAFFICKING IN HUMAN BEINGS 2012-2016

- **Priorities**

- Identifying, protecting and assisting victims of THB
- Stepping up the prevention of THB
- Increased prosecution of traffickers
- Enhanced coordination and cooperation among key actors and policy coherence
- Increased knowledge and effective response to emerging concerns related to all forms of THB

COMMUNICATION FROM THE COMMISSION

- Reporting on the follow-up to the EU Strategy towards the eradication of THB and identifying further concrete actions, December 2017, COM (2017) 728 final

PRIORITIES IN THE COMMUNICATION

- Disrupt the business model
 - Encourage the criminalisation of the knowing use of services extracted from trafficked persons
 - More effective prosecutions – capacity building
 - Promote sustainable business practices and working conditions in production countries

PRIORITIES IN THE COMMUNICATION

- Provide better access to and realise the rights of victims of THB
 - Commission to publish guidance on gender-specific measures for helping and supporting victims of THB
 - To develop practical guidance to enhance transnational cooperation to prevent trafficking of children and to support child victims
 - Capacity building to improve cooperation through border and migration management tools to identify trafficked persons

PRIORITIES IN THE COMMUNICATION

- Intensify a coordinated and consolidated response, within and outside the EU
 - Identify priority countries and regions for action against THB
 - Work towards achieving Agenda 2030 Sustainable Development Goals, especially targets 5.2, 8.7 and 16.2 on THB

REGULATION ON THE MUTUAL RECOGNITION OF FREEZING AND CONFISCATION ORDERS

- Adopted June 2018
- Rules apply 24 months after Regulation enters into force

MAIN POINTS

- A single regulation covering freezing and confiscation orders, directly applicable in the EU.
- The general principle of mutual recognition, meaning that all judicial decisions in criminal matters taken in one EU country will normally be directly recognised and, enforced by another member state.
- A wide scope of types of confiscation in criminal matters such as value based confiscation and non-conviction based confiscation, including certain systems of preventive confiscation, provided that there is a link to a criminal offence.
- Standard certificates and procedures to allow for speedy and efficient freezing and confiscation actions.
- A deadline of 45 days for the recognition of a confiscation order and in urgent cases a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders.
- Provisions to ensure that victims' rights to compensation and restitution are respected in cross-border cases.