

The Reform of the EU Anti-Trafficking Directive: Good Approaches and Missed Opportunities

The reform of the EU Anti-Trafficking Directive came into effect in July 2024. By renewing the 2011 directive, the European Commission (EU-COM) is responding to changes in the socio-political and economic conditions of human trafficking and at the same time to findings from evaluations of the regulations in the EU and the member states. The KOK Information Service presents the most important changes thematically and classifies them from perspective of KOK. The results show that while some of the approaches of the reform of the EU Anti-Trafficking Directive are positive, the reform as a whole has missed the opportunity to thoroughly strengthen the rights of trafficked persons.

In particular, the EU-COM's amending directive fails to strengthen the rights and position of trafficked persons in an extensive, human rights-based and needs-based manner. Despite all the demands from civil society, research and practice, the EU has missed an opportunity to encourage trafficked persons to report human trafficking through secure and confidential reporting channels, to strengthen their right to non-punishment and to offer them access to sustainable, low-threshold and individually appropriate support and protection, including a secure right of residence. It is also questionable whether the criminalization of the knowing use of services under Art. 18a will lead to the containment of human trafficking according to the current state of research. In addition, a clearer link to and alignment with related regulations and initiatives would have been desirable. These include the EU Directive on Protection against Violence, which was adopted in May 2024, and the EU's reform efforts with regard to the Victim Protection Directive.

At the same time, KOK particularly recognizes the EU's efforts to better capture the diversity and complexity of human trafficking by including additional forms of exploitation and improving data collection and analysis. KOK also welcomes the fact that the EU has recognized the need to address the impact of digitalization and ICT on human trafficking, prevention work, prosecution of perpetrators and support for trafficked persons and to make legal entities more accountable overall. KOK is also pleased about the obligation to introduce National Action Plans (NAPs), national referral mechanisms and training for contact persons, including those outside the police. This is an important basis for coherent regulation, structured cooperation and consistent implementation of the provisions of the Anti-Trafficking Directive in the EU member states. At the same time, KOK emphasizes the poor baseline conditions that are currently being envisioned for those affected by the reform of the Common European Asylum System (CEAS reform) and other EU migration policies. The German government must strongly oppose these and counteract the increasing deprivation of rights of refugees and the criminalization of individuals and organizations that work on their behalf, and recognize the complex interrelationships between flight and human trafficking.

The reform gives the member states a great deal of leeway in the form and choice of means of implementation. KOK calls on German lawmakers to take decisive action now in implementing the EU directive and to make use of their options.

KOK recommends:

- to take the extended scope of the forms of exploitation in Art. 2 as an opportunity to thoroughly reform §§ 232 ff. StGB (German Criminal Code);
- an independent and scientific monitoring of the implementation of Art. 18a in Germany;
- a complete decoupling of the rights of those affected from participation in criminal proceedings, such as the right of residence and the right to support;
- to work towards ensuring the reflection and stabilization period is applied fully and extended to minors;
- to consider the opinion of a specialized counselling centre regarding indications of human trafficking as sufficient for granting the reflection and stabilization period;
- to provide appropriate accommodation for trafficked persons; there is a need for nationwide, needs-based accommodation options that are legally and financially secure and facilitate access to further support measures for trafficked persons; this must be enshrined in the NAP in particular;
- to provide specialized civil society with the necessary resources for a sustainable and impactful participation and contribution of expertise and experience with other actors;
- to expand the support system for victims of labour exploitation;
- to develop an ambitious NAP with the collaboration of professionalized civil society that uses synergy effects with parallel, related initiatives, such as the NAP on combating labour exploitation and forced labour, rather than creating parallel structures;
- to introduce safe and confidential reporting channels for all trafficked persons;
- to introduce a National Referral Mechanism and a political coordination authority with the collaboration of professionalized civil society as part of the implementation of the Amending Directive and the development of the NAP on Trafficking in Human Beings;
- to develop cooperation between the state and professionalized civil society, taking into account proven guidelines, manuals, promising best practice examples and successful and reliable partnerships;
- to enshrine the Human Trafficking Reporting Office at the German Institute for Human Rights (DIMR) in law and ensure its independence;
- to implement far-reaching and effective education and information campaigns;
- to increase the awareness of those who potentially come into contact with trafficked persons in order to facilitate early identification and trauma-sensitive support for trafficked persons;
- when implementing the adapted sanctions and other measures against legal entities, to ensure integrated implementation with regard to related legal policy projects, in particular the revision of the Supply Chain Due Diligence Act (LkSG);
- to use fines that have to be paid by legal entities because they are involved in human trafficking to support victims and compensate for lost wages.