



## LEGAL CONCERNS OF THE EUROPEAN UNION ON COMBATING TRAFFICKING IN HUMAN BEINGS

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### **Abstract**

*Trafficking in human beings is a form of crime that has spread in the contemporary era. Victims of trafficking in human beings are vulnerable people, especially women, children or jobseekers, lured by promises of advantageous jobs abroad, treatment opportunities or study offers. The European Union promotes international cooperation and makes legislative and institutional efforts to combat trafficking in human beings.*

*The EU Strategy to Combat Trafficking in Persons (2021-2025) focuses on preventing crime, bringing traffickers to justice, protecting victims and strengthening Member States' capacity to act.*

**Keywords:** *human trafficking; organized crime; as a derivative; EU strategy; national strategy*

### **INTRODUCTION. THE EVOLUTION OF THE PRIMARY LAW OF THE EUROPEAN UNION ON THE CREATION OF AN AREA OF FREEDOM, SECURITY AND JUSTICE**

The need for cooperation in the field of justice and home affairs has resulted from the evolution of cross-border phenomena on organized crime, international terrorism, drug trafficking and human trafficking.

The increase in crime at European level has initially led to informal co-operation between security services and police forces in European countries<sup>1</sup>.

\* "Cooperation in the field of justice and home affairs" was initially regulated as a basic policy within the European Union by the provisions of the Maastricht Treaty (Title VI, art. K1 and K9), as well as those contained in art. 100C and 100D of the EC Treaty and declarations on asylum and police cooperation, cooperation in the field of justice and home affairs. The Maastricht Treaty reorganizes the Community architecture into "three pillars", the "Third Pillar of the European Union" being

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<sup>1</sup> In 1972, the Pompidou Group on Drugs was set up.

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represented by "Cooperation in the field of justice and home affairs". This form of cooperation was initially conceived as a way of intergovernmental cooperation, later, its content being progressively communitized by the treaties of Amsterdam and Lisbon.

\* By the Treaty of Amsterdam, cooperation in the field of justice and home affairs was reorganized, some of the areas of this cooperation passing under Pillar I, being communitized, under the Union institutions, establishing as a common goal, the achievement of a space of freedom traffic, security and justice. The Amsterdam Treaty deepens the objectives and procedures for cooperation in the field of justice and home affairs, and introduces new provisions on "closer cooperation" between Member States in this field. In accordance with the Treaty of Amsterdam, the following areas of State cooperation are provided:

- free movement of persons;
- control exercised at the external borders of the states;
- asylum, immigration and protection of the rights of third - country nationals;
- judicial cooperation in the civil field.

\* The Treaty of Lisbon defines the Union as an area of freedom, security and justice, with the fundamental values of respect for human rights and the various legal systems and traditions of the Member States.

The Union shall provide its citizens with an area of freedom, security and justice, without internal frontiers, within which the free movement of persons is ensured, in conjunction with appropriate measures on external border control, asylum, immigration, crime prevention and control. this phenomenon<sup>2</sup>.

The Treaty renounces the architecture structured on the three pillars, including issues related to the "Area of Freedom, Security and Justice" in the Union's internal policies and actions. In this area the treaty contains regulations on:

- "Policies on border control, asylum and immigration"<sup>3</sup>;
- "Judicial cooperation in civil matters"<sup>4</sup>;
- "Judicial cooperation in criminal matters"<sup>5</sup>;
- "Police cooperation"<sup>6</sup>.

As regards the competence of the Union to adopt regulations in this field, the Treaty establishes a shared competence between the Union and the Member States<sup>7</sup>.

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<sup>2</sup> Article 3 paragraph 2 TEU.

<sup>3</sup>art.77 -79TFEU

<sup>4</sup> art.81-TFEU

<sup>5</sup> art.82-86TFUE

<sup>6</sup> art.87-89TFEU

<sup>7</sup> Art.4 para.2 lit j) - TFEU. According to Article 2 (2) TFEU, where the Treaties confer on the Union a shared competence with the Member States in a given field, the Union and the Member States may legislate and adopt legally binding acts in that field. Member States shall exercise their competence to the extent that the Union has not exercised its competence. Member States shall exercise their competence again to the extent that the Union has decided to cease exercising it.

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The provisions of the Treaty are complemented by derivative regulations adopted by the institutions of the European Union.

Currently, the *acquis communautaire* on the area of freedom, security and justice includes regulations on various areas of cooperation, namely<sup>8</sup>: Free movement of persons, asylum and immigration; Judicial cooperation in civil matters, Judicial cooperation in criminal matters; Police and customs cooperation; Citizenship of the Union; Discrimination; Fight against terrorism; Fight against organized crime; Trafficking in human beings; Fight against drugs; Justice, freedom and security.

### **I. EUROPEAN UNION STRATEGY ON COMBATING TRAFFICKING IN HUMAN BEINGS**

Trafficking in human beings is a form of crime that has spread in the contemporary era. Annually, in the world about 600,000 - 820,000 people are trafficked across the state border, not including those who are trafficked within the states, a number that can reach millions. About 70% of the trafficked persons are women and girls, most of whom are forced into prostitution. About 50% of trafficked persons are minors who are sexually exploited, forced labor, or have their organs taken away<sup>9</sup>.

Trafficking in human beings is a form of organized crime, which involves the violation of fundamental human rights. Victims of trafficking in human beings are lured with promises of advantageous jobs abroad, treatment opportunities or study offers. Subsequently, at the place of destination, they discover that they have been misled by traffickers and are forced to work for free or for a ridiculous salary. Women and girls are often recruited to work in the service sector or in the hotel industry, but end up in prostitution.

- The Commission has drawn up the EU Strategy on Combating Trafficking in Human Beings 2021-2025<sup>10</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combating Trafficking in Human Beings 2021-2025).

Regarding the international dimension of trafficking in human beings, the strategy states that in 2020 534 different trafficking flows were identified globally and over 120 countries reported victims from over 140 countries of origin<sup>11</sup>. Trafficking in human beings is a transnational crime and half of the victims identified in the European Union are non-EU citizens, mainly from Africa, the Western Balkans and Asia.

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<sup>8</sup> [https://eur-lex.europa.eu/summary/chapter/justice\\_freedom\\_security.html](https://eur-lex.europa.eu/summary/chapter/justice_freedom_security.html)

<sup>9</sup> <https://www.mfa.gov.md/ro/content/traficul-de-fiinte-umane>

<sup>10</sup> Bruxelles, 14.4.2021 COM(2021) 171 final

<sup>11</sup> UNODC, Global Report on Trafficking in Persons, 2020 (2021). UNODC used the term "flow" for a combination of a country of origin and a country of destination in which at least 5 victims were detected during the period under review. For flows, data from 2018 (or most recent) were used as a reference. For countries where data for 2018 were not available, the most recent data from 2019, 2017 or 2016 were used

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Traffickers take advantage of social inequalities, as well as the economic and social vulnerabilities of people, which have been exacerbated by the COVID-19 pandemic, and this helps criminals find victims more easily. The pandemic has also hampered victims' access to justice, assistance and support, as well as the criminal justice response to this crime. In addition, traffickers have adopted a new business model, namely the recruitment and exploitation of victims via the Internet, which makes it difficult for law enforcement and judicial authorities to respond.

The strategy identifies key priorities, with the aim of effectively combating human trafficking. The strategy proposes concrete actions, which will be developed with full respect for fundamental rights, for the early identification and cessation of trafficking in human beings, for bringing criminals to justice, turning human trafficking from a low-risk and high-profit crime into one with high risk and low profit, as well as to protect victims and help them rebuild their lives.

The Commission renews its commitment and establishes a sound policy framework to protect vulnerable people from trafficking in human beings, to strengthen the capacity of victims to act, to bring criminals to justice and to protect our communities. This commitment is mainly aimed at women and children.

The priorities and actions set out in the strategy will be implemented in the period 2021-2025. In the meantime, the Commission will be prepared to respond quickly to any new developments or trends by continuously monitoring and analyzing the evolution of trafficking in human beings inside and outside the EU. Together, the EU and its Member States must always be one step ahead of criminals, those who use and exploit victims<sup>12</sup>.

## **II. THE EUROPEAN UNION'S SECONDARY LAW ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS**

European Union secondary legislation contains legal instruments on the definition of crime, the establishment of common sanctions and targets for the prosecution of offenders and the protection of victims.

The general legal framework of the European Union on trafficking in human beings contains specific regulations on:

- Preventing and combating human trafficking;
- Issuance of a residence permit for victims of human trafficking;
- International cooperation on preventing and combating illicit trafficking in migrants by land, sea and air.

### ***\* Preventing and combating human trafficking***

The main document in this regard is - *Directive 2011/36 / EU on preventing and combating trafficking in human beings and protecting its victims*<sup>13</sup>, which contains common minimum rules for the determination of offenses of trafficking in human beings and for the punishment of their perpetrators. The document also provides

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<sup>12</sup> Strategy Conclusions - p. 22.

<sup>13</sup> JO L 101, 15.4.2011, pp. 1-11

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for measures to better prevent this phenomenon and to strengthen the protection of victims.

Trafficking in human beings is expressly prohibited in the EU Charter of Fundamental Rights (Article 5), and the EU has created a comprehensive legislative and policy framework to combat this phenomenon, in particular through this Directive (2011/36 / EU) and EU strategy for 2012-2016 to eradicate trafficking in human beings.

The provisions of the Directive criminalize the following intentional acts: recruitment; transport; transfer; housing or receiving persons by force for exploitation.

Exploitation includes at least: sexual exploitation or prostitution; forced labor or service (including begging, slavery, exploitation of criminal activities or organ harvesting).

The Directive sets the maximum penalty for these offenses at least five years in prison and at least 10 years when aggravating circumstances are found, for example if the offense was committed against victims who were particularly vulnerable (such as children) or if it was committed within a criminal organization.

EU countries can prosecute their own citizens for crimes committed in another EU country and can make use of investigative tools such as interception (for example, telephone conversations or e-mails).

Victims receive assistance before, during and after the conclusion of criminal proceedings, in order to be able to exercise the rights conferred on them by the status of victims in criminal proceedings. Assistance may consist of receiving in shelters, providing medical and psychological assistance and providing information and interpretation services.

Children and adolescents (under the age of 18) benefit from additional measures, such as physical and psychosocial assistance, access to education and, where appropriate, the possibility of appointing a guardian or representative. They should be questioned without delay, in premises adapted for this purpose and by specialists trained as such. Victims have the right to protection from the police and to legal aid in order to be able to claim compensation.

EU countries must take preventive measures to:

- discouraging requests that encourage human trafficking;
- launching awareness-raising and training campaigns for officials so that they can identify and deal with victims and potential victims of trafficking in human beings.

An EU Anti-Trafficking Coordinator has been appointed to ensure a coherent and coordinated approach to combating this phenomenon.

To help national authorities combat the abuse of the right to free movement, the Commission has published a handbook on marriages of convenience between EU citizens and non-EU nationals. Some forced marriages, for example, may involve aspects of trafficking in human beings.

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**\* Residence permit for victims of trafficking in human beings**

- Council Directive 2004/81 / EC of 29 April 2004<sup>14</sup> on residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been facilitated by illegal immigration and who cooperate with the competent authorities lays down the procedure for issuing and renewing of the residence permit, the conditions for refusal of renewal or withdrawal, as well as the treatment given to victims before and after a permit is issued.

The provisions of this Directive are coordinated with those contained in Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, which provides a horizontal legal framework for both EU and non-EU citizens (and has strengthened most of the provisions of Directive 2004/81/EC, including the framework for the protection and assistance of children).

Temporary residence permits can be issued for non-EU nationals who are victims of trafficking in human beings or (optionally) who have been the subject of an action to facilitate illegal immigration.

The directive applies to non-EU nationals, even if they have entered the EU illegally. Permits may be granted to those who have reached the age of majority, as defined by the law of the EU country concerned, and may apply to children under the conditions laid down by national law.

Those persons should be informed of the possibilities offered by this Directive by the competent authorities of the EU country concerned.

The competent authorities may issue a temporary, renewable permit valid for a period of at least six months if:

- the presence of the victim can help the investigation;
- the victim shows a clear will to cooperate;
- the victim has broken any connection with the alleged perpetrators of those crimes.

The permit may be renewed if the relevant conditions continue to be met. The permit grants the beneficiary access to the labor market, vocational training and education, under the conditions established by national legislation.

The permit may be withdrawn for several reasons, including if the victim reconnects with the alleged perpetrators or ceases to cooperate, or if the proceedings are interrupted.

**\* International cooperation on preventing and combating trafficking in human beings**

• Council Decisions 2006/616 / EC and 2006/617 / EC approve the UN Protocol against Trafficking in Migrants (by Land, Air and Sea), in addition to the UN Convention against Transnational Organized Crime.

This Additional Protocol to the United Nations Convention against Transnational Organized Crime aims to prevent and combat illegal trafficking in migrants, promote cooperation between signatory countries and protect the rights of illegally introduced migrants.

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<sup>14</sup> JO L 261, 6.8.2004, pp. 19-23

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The signatory countries must establish as criminal offenses the following acts, if they are committed intentionally, for the purpose of financial or material gain:

- illegal trafficking in migrants, in the illegal introduction of a person into a State which is neither the State of the person's nationality nor the person of permanent residence;

- the production, procurement, supply or possession of fraudulent travel or identity documents for the purpose of permitting the smuggling of migrants;

- facilitating the stay of a person in a state without fulfilling the necessary requirements for legal residence;

- attempts, participation and instigation in the commission of such offenses.

The signatory countries must also consider the following circumstances as increasing the gravity of the crime (aggravating circumstances):

- endangering the life or safety of the migrants concerned;

- subjecting those migrants to inhuman or degrading treatment, including for the purpose of exploitation.

Victims of illegal migrant trafficking must not be prosecuted.

Countries must take steps to strengthen their border controls and have the right to refuse entry to anyone involved in illegal migrant trafficking. Countries with common borders or located on routes used by criminal groups must exchange certain information such as the following:

- point of departure and destination of traffickers;

- routes and modes of transport used;

- methods and means of:

- hiding and transporting people;

- misuse of travel or identity documents.

- Regarding the prevention, repression and punishment of trafficking in human beings, especially women and children, the following have been adopted:

- Decision 2006/618 / EC on the conclusion by the EU of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in addition to the United Nations Convention against Transnational Organized Crime<sup>15</sup> - within the scope of Articles 179 and 181a of the Treaty establishing the European Community

- Decision 2006/619 / EC on the conclusion by the EU of the Protocol on the Prevention, Punishment and Punishment of Trafficking in Persons, Especially of Women and Children, in addition to the United Nations Convention against Transnational Organized Crime - within the scope of Part Three Title IV of the Treaty establishing the European Community

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<sup>15</sup> The UN Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000, entered into force on 23 September 2003. It is complemented by three protocols: the Protocol against Trafficking in Human Beings, which entered into force on 25 December 2003; Protocol against Illegal Trafficking in Migrants by Land, Air and Sea, which entered into force on 28 January 2004; and- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, which entered into force on 3 July 2005.

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These decisions ratify, on behalf of the European Union (EU), the Protocol to Combat Trafficking in Persons supplementing the Convention against Transnational Organized Crime adopted by the United Nations General Assembly on 15 November 2000<sup>16</sup>.

The objectives of the protocol are:

- preventing and combating transnational trafficking in human beings, especially women and children, by organized criminal groups;
- protection and assistance to victims of exploitation;
- promoting cooperation between countries in this field.

Each signatory country must adopt the necessary laws and other measures to establish as offenses acts defined as trafficking in human beings, including acting as accomplices in such acts.

Disputes between the signatory parties concerning the interpretation or application of the Protocol shall be settled by negotiation and, if this is not possible, by arbitration.

If a dispute arises in arbitration, if no settlement is reached within six months, either party may bring the dispute before the International Court of Justice.

The signatory countries must take measures to prevent and combat trafficking in human beings, in cooperation with relevant civil society organizations. These measures may include information and communication campaigns and social and economic initiatives.

### **III. NATIONAL LEGISLATIVE AND INSTITUTIONAL CONCERNS REGARDING THE PREVENTION OF TRAFFICKING IN HUMAN BEINGS**

Under the legislative aspect, trafficking in human beings is sanctioned by the Criminal Code through 2 distinct articles, for adult victims (art. 165 of the Criminal Code) and for child victims (art. 206 of the Criminal Code).<sup>17</sup>

By HG no. 861 / 31.10.2018, the National Strategy on Trafficking in Persons for the period 2018-2022 was approved. It was developed at the initiative of the National Agency against Trafficking in Human Beings with the participation of public institutions with responsibilities in the field of combating trafficking in human beings and non-governmental organizations that carry out activities to prevent and assist victims of this phenomenon.

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<sup>16</sup> Annexes II to Decisions 2006/618 / EC and 2006/619 / EC specify the competence of the EU with regard to matters governed by the Protocol.

<sup>17</sup> Other provisions on preventing and combating trafficking in human beings are contained in: Law no. 678/2001 on preventing and combating trafficking in human beings, as subsequently amended and supplemented; Law no. 248/2005 on the regime of free movement of Romanian citizens abroad, with subsequent amendments and completions; Law no. 286/2009 on the Criminal Code of Romania, with subsequent amendments and completions; Law no. 135/2010 on the Code of Criminal Procedure, with subsequent amendments and completions; Government Decision no. 293/2003 for the approval of the Regulation for the application of the provisions of Law no. 678/2001 on preventing and combating trafficking in human beings; Government Decision no. 1238/2007 for the approval of the specific National Standards for the specialized services for assistance and protection of victims of human trafficking.

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- The national strategy aims to reduce the impact and size of human trafficking at the national level by prioritizing and streamlining activities in the fight against it. The general objectives of the strategy are:

- Consolidation and diversification of measures to prevent human trafficking
- Improving the quality of protection and assistance provided to victims of trafficking in human beings for social reintegration
- Developing the capacity to investigate crimes of trafficking in human beings and trafficking in minors
- Increasing the quality of disseminated information on the phenomenon of human trafficking
- Developing and expanding the cooperation process between relevant national and international actors involved in the fight against human trafficking, as well as dynamizing efforts of diplomatic action to prevent and combat human trafficking and to protect Romanian citizens in destination countries.

Legislatively, it is necessary to evaluate the normative acts incident to the field of preventing and combating human trafficking, the legislative approaches aiming mainly at clarifying the competences and responsibilities of the structures with attributions in the field, correlating the subsequent fields, as well as Euroconforming with the related European acts. Legislative initiatives to amend and / or supplement higher level normative acts (laws, Government ordinances) and lower level norms (Government decisions, as well as orders and instructions of the Minister of Internal Affairs) will be carried out according to annual legislative plans, based on the new opportunities arising from the National Strategy.

The organizational framework necessary for the implementation, monitoring and evaluation of the National Strategy implies the collaboration of all institutions involved and interested in order to implement, in an efficient way, the directions of action, general objectives and specific objectives provided in this strategy, respectively: Ministry of Internal Affairs specialized structures: (National Agency Against Trafficking in Human Beings, General Inspectorate of the Romanian Police, General Inspectorate of the Border Police, General Inspectorate for Immigration, Prefect's Institution); Ministry of Justice; Ministry of Labor and Social Justice, through its structures: (National Authority for the Protection of the Rights of the Child and Adoption, the National Authority for the Protection of Persons with Disabilities, the National Agency for Employment, the Labor Inspectorate); Ministry of National Education, Ministry of Foreign Affairs, Ministry of Health, Other institutions / authorities that may have responsibilities in the field of human trafficking, involved, as responsible or partner, in the implementation of the National Strategy against human trafficking 2018-2022.

- The National Agency against Trafficking in Human Beings fulfills the role of national rapporteur, collecting in this respect, data from governmental and non-governmental actors carrying out activities in the field of combating trafficking in human beings.

Among the main attributions of ANITP, can be mentioned:

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- elaborates, on the basis of the proposals of the institutions with attributions in the field, the draft of the National Strategy against trafficking in human beings.
  - draws up, with the participation of the other structures of the Ministry of Internal Affairs and on the basis of data provided by public institutions with responsibilities in the field and non-governmental organizations, the Annual Report on the evolution of human trafficking;
  - develops campaigns to prevent trafficking in human beings and programs to facilitate the assistance of victims of trafficking in human beings and collaborates with public and private institutions and non-governmental organizations to implement joint campaigns and programs;
  - facilitates the participation of victims of trafficking in human beings in the activity of criminal investigation and trial in cooperation with the institutions with attributions in the field;
  - conducts studies and research on the diagnosis and evolution of the phenomenon of human trafficking.

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