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## **Addressing human trafficking in the digital era: Amendments to the EU anti-trafficking directive**

Handel ludźmi w erze cyfrowej. Zmiany w dyrektywie UE w sprawie handlu ludźmi

**Abstract:** This article examines the European Union's legal response to the technological dimensions of the evolving crime of human trafficking, focusing on the digitalisation-related amendments to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. It explores the factors driving the technological expansion of this crime and the legislative changes introduced in response, while emphasizing the importance of addressing the demand-driven nature of trafficking as a key preventive measure. The paper aims to demonstrate how the European Union, as a law-based community, is responding to the challenges posed by the digitalisation of this crime by amending its key legal framework against human trafficking.

**Keywords:** human trafficking, digitalisation, trafficking directive, online crime

**Abstrakt:** Przedstawiony artykuł stanowi analizę reakcji prawnej Unii Europejskiej na technologiczną ewolucję przestępstwa handlu ludźmi, koncentrując się na zmianach związanych z digitalizacją w dyrektywie 2011/36/UE w sprawie zapobiegania handlowi ludźmi i zwalczania tego procederu oraz ochrony ofiar. Artykuł bada czynniki napędzające technologiczny rozwój tego przestępstwa

oraz wprowadzone w odpowiedzi zmiany legislacyjne, podkreślając znaczenie zwalczania popytu na usługi ofiar jako kluczowego środka prewencyjnego. Celem artykułu jest ukazanie, że Unia Europejska jako wspólnota oparta na prawie reaguje na wyzwania związane z cyfryzacją tego przestępstwa poprzez zmianę kluczowego, w walce z handlem ludźmi, aktu prawnego.

**Słowa kluczowe:** handel ludźmi, digitalizacja, cyfryzacja, dyrektywa w sprawie zapobiegania handlowi ludźmi, cyberprzestępczość

## 1. Introduction

Trafficking in human beings is a dehumanising crime that directly violates the fundamental freedoms granted to individuals in the European Union (EU), such as the right to life, liberty and personal security.<sup>1</sup> It is a global issue that equally affects the EU, where legislation is now facing increasing challenges in combating human trafficking in the digital era. The crime has become increasingly digitalised, with traffickers adopting advanced technological methods to facilitate their operations. Digitalisation enables perpetrators to act from anywhere while maintaining anonymity, thereby complicating detection and enforcement efforts. This article aims to analyse the EU's legislative response – the amendment of Directive 2011/36/EU<sup>2</sup> (2011 Directive) – to the challenges posed by the digitalisation of human trafficking. The analysis is divided into two parts: the first examines the factors driving the digitalisation of trafficking and the need for legislative reform; the second explores the digitalisation-related amendments to the 2011 Directive and their potential contribution to combating human trafficking. For the scope of this article, only amendments connected to digitalisation are addressed, leaving other legislative changes outside its analysis.

<sup>1</sup> Charter of Fundamental Rights of the European Union, OJ C 202, 7.06.2016, art. 2, 6.

<sup>2</sup> Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011 (2011 Directive).

## 2. Rise in human trafficking and its factors

Human trafficking is a complex crime, that resulted in an equally intricate definition within the 2011 Directive. It is based on the Palermo Protocol,<sup>3</sup> meaning that trafficking concerns an act (e.g. recruitment or transfer) undertaken by any of the means indicated in the definition (e.g. threat or use of force) for the purpose of exploitation (e.g. sexual exploitation, forced labour or services).<sup>4</sup> Despite the international legislation efforts on the crime,<sup>5</sup> it has continued to evolve, adapting to new challenges and technologies and showing a worrying upward trend. In January 2024, Eurostat released the statistics for human trafficking in 2022: the number of registered victims of trafficking in human beings in the EU was 10,093, reflecting an increase of 41.1% compared to 2021 and the highest recorded value between 2008 and 2022.<sup>6</sup> This data illustrates that human trafficking is a persistent crime showing no signs of regress and requiring urgent action.

This worrying increase stems from the development of technological tools available to traffickers, which has led to the digitalisation of the crime. Wireless devices with access to the internet created a “mobile revolution” and increased the capacity of criminals to engage in all aspects of human trafficking.<sup>7</sup> A crucial factor in the digital evolution of human trafficking is undoubtedly the COVID-19 pandemic, which has significantly impacted the development of online crime, as various areas of life – including criminal activities – have been digitalised. Factors such as poverty, unemployment, vulnerabilities related

<sup>3</sup> Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000, art. 3 (Palermo Protocol).

<sup>4</sup> A. Bosma, C. Rijken, *Key challenges in the combat of human trafficking: Evaluating the EU trafficking strategy and EU trafficking directive*, “New Journal of European Criminal Law” 2016, vol. 7, no. 3, p. 319, <https://journals.sagepub.com/doi/abs/10.1177/203228441600700306> [access: 2.11.2024].

<sup>5</sup> Universal Declaration of Human Rights of 10 December 1948, art. 4; Convention on the Rights of the Child of 20 November 1989, art. 35; Palermo Protocol; Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005; Charter of Fundamental Rights of the European Union, OJ C 202, 7.06.2016, art. 5(3).

<sup>6</sup> *Trafficking in Human Beings Statistics*, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Trafficking\\_in\\_human\\_beings\\_statistics#of\\_registered\\_victims\\_of\\_trafficking\\_are\\_women\\_or\\_girls](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Trafficking_in_human_beings_statistics#of_registered_victims_of_trafficking_are_women_or_girls) [access: 21.10.2024].

<sup>7</sup> D.M. Hughes, *Trafficking in human beings in the European Union: Gender, sexual exploitation, and digital communication technologies*, “Sage Open” 2014, vol. 4, no. 4, p. 4, <https://journals.sagepub.com/doi/pdf/10.1177/2158244014553585> [access: 23.10.2024]; M. Latonero, *The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking*, USC Annenberg, Los Angeles 2012, p. 29, <https://ssrn.com/abstract=2177556> [access: 23.01.2025].

to migration status and children spending more time online – often without adequate parental supervision and recklessly sharing personal information – intensified during the pandemic, providing traffickers with new opportunities to exploit these conditions.<sup>8</sup> Moreover, Russia's aggression against Ukraine in 2022 led to people fleeing the war into the EU, making them significantly vulnerable to traffickers, who exploit their situation for financial gain. There are particular risks from a growing demand for the services exploited from victims of trafficking, both offline – for instance, malicious offers for private accommodation, transport and assistance – and online, for example, online advertising for sexual services with Ukrainian women.<sup>9</sup> Traffickers constantly adapt and take advantage of crises, preying on the most vulnerable individuals, who are more likely to be deceived by false promises of wealth, better working conditions or asylum.

### 3. EU Anti-Trafficking Strategy – highlighting the need for change

To fully understand the legislative changes discussed in this article, it is crucial to first comprehend the broader EU policy against trafficking and the magnitude of the threat. Human trafficking is often perpetrated by organised crime networks, which pose a significant threat to the EU's internal security.<sup>10</sup> Half of the most threatening criminal networks are mainly involved in drug trafficking; other crime areas include fraud, property crime, migrant smuggling and trafficking in human beings.<sup>11</sup> Fifty-five of the reported most threatening criminal networks engage in human trafficking as one of their main activities. Trafficking for sexual exploitation is the sole focus of 18 networks, labour exploitation for 13 and another 5 specialise in other forms of trafficking.<sup>12</sup> Acknowledging the gravity of crime networks, the European Commission developed the EU Strategy to Tackle Organised Crime 2021–

<sup>8</sup> M.G. Giammarinaro, COVID-19 Position Paper: The Impact and Consequences of the COVID-19 Pandemic on Trafficked and Exploited Persons, <https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/COVID-19-Impact-trafficking.pdf> [access: 23.01.2025].

<sup>9</sup> 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, p. 3.

<sup>10</sup> H. Brady, *The EU and the Fight Against Organised Crime*, Centre for European Reform, London 2007, p. 5.

<sup>11</sup> *Decoding the EU's Most Threatening Criminal Networks*, Publications Office of the European Union, Luxembourg 2024, p. 58.

<sup>12</sup> *Ibidem*, p. 35.

2025 (Anti-Organised Crime Strategy).<sup>13</sup> But how do these broader efforts materialise in the fight against human trafficking specifically? In 2021, the Commission introduced the EU Strategy on Combatting Trafficking in Human Beings 2021–2025<sup>14</sup> (Anti-Trafficking Strategy) in direct response to the broader Anti-Organised Crime Strategy. As a non-binding instrument, the Anti-Trafficking Strategy outlines how the Commission intends to support the Member States in their responsibilities to address human trafficking.<sup>15</sup> It also identifies key EU actions, objectives and challenges in combating this crime. The two strategies are deeply interconnected, with the Anti-Trafficking Strategy addressing the unique aspects of human trafficking.

As mentioned, the Anti-Trafficking Strategy addresses the complex crime of human trafficking by outlining proposals across legislative, policy and operational dimensions. It focusses on critical issues, such as the high demand for exploited services, traffickers' criminal business models and victims' specific needs. With that being said, the Anti-Trafficking Strategy addressed the most significant and foundational instrument for combating human trafficking in the EU: the 2011 Directive. A directive binds Member States to implement minimum standards that must be transposed into national legislation by a specified date. While its goal is to standardise legal frameworks across the EU, it allows and encourages Member States to provide higher levels of protection. In an evolving society, the law must adapt accordingly, and concerns have arisen that the 2011 Directive is no longer fully fit for purpose.<sup>16</sup> This realisation came from the ongoing monitoring of the Directive's implementation, an obligation established within the Directive itself,<sup>17</sup> which revealed its inadequacies in addressing the evolving nature of the crime.<sup>18</sup> Despite preventive initiatives, the demand for using exploited victims' services has not been reduced. The

<sup>13</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 to tackle organised crime 2021–2025*, COM/2021/170 final.

<sup>14</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 combatting trafficking in human beings 2021–2025*, COM/2021/171 final.

<sup>15</sup> A. Bosma, C. Rijken, *Key challenges in the combat...*, p. 317.

<sup>16</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 combatting trafficking in human beings 2021–2025*, COM/2021/171 final, p. 3.

<sup>17</sup> Previous wording of the 2011 Directive, art. 20; the obligation is now regulated in the 2011 Directive, art. 20(2) introduced by 2024 Directive art. 1(18).

<sup>18</sup> Report from the Commission to the European Parliament and the Council, *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, p. 10.

impunity of perpetrators in the EU persists, and the numbers of prosecuted and convicted traffickers remain low. Moreover, traffickers have increasingly shifted their operations online, leveraging technology at every stage of exploitation.<sup>19</sup> Digitalisation has amplified their activities and presented new challenges for law enforcement. In the light of these issues, a reform of the 2011 Directive became urgent. In June 2024, the European Parliament and the Council introduced amendments to the 2011 Directive to address the challenges and proposals outlined in the Commission's Anti-Trafficking Strategy. The introduction of Directive 2024/1712<sup>20</sup> (2024 Directive) brought significant changes to the EU's anti-trafficking policy. However, as mentioned above, this article focusses exclusively on the digitalisation-related amendments. Member States are required to transpose these changes by 15 July 2026.

## 4. Amending the 2011 Directive in response to the technological progress

### 4.1. Broadening the definition of human trafficking

The 2011 Directive had the objective of harmonising substantive criminal law on trafficking in human beings;<sup>21</sup> however, certain forms of exploitation fell outside the scope of the definition in its Article 2(3). These “other” forms of exploitation – such as illegal adoption, forced marriage, illegal surrogacy and benefit fraud – continued to occur and evade effective prosecution. In 2019–2020, these “other” forms accounted for 11% of all trafficking cases,<sup>22</sup> a figure that rose to 17.5% by 2022, according to Eurostat.<sup>23</sup> This increase called

<sup>19</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*, COM/2021/171 final, p. 11.

<sup>20</sup> Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 2024/1712, 24.06.2024 (2024 Directive).

<sup>21</sup> E. Symeonidou-Kastanidou, *Directive 2011/36/EU on combating trafficking in human beings: Fundamental choices and problems of implementation*, “New Journal of European Criminal Law” 2016, vol. 7, no. 4, p. 467.

<sup>22</sup> 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, p. 5. Forced criminal activities, forced begging and illegal removal of organs were also included in those 11%.

<sup>23</sup> *Trafficking in Human Beings Statistics...*, op. cit.

for a legislative response, leading to the 2024 Directive, which broadened the definition of human trafficking. The new provisions oblige Member States to incorporate surrogacy exploitation, forced marriage and illegal adoption into their national legal frameworks, thus expanding the scope of protection for victims.<sup>24</sup>

However, a notable omission in the expanded definition is benefit fraud, despite its recognition in Eurostat data and trafficking reports as a form of exploitation appearing in some Member States.<sup>25</sup> While the decision to expand the definition to encompass certain forms of exploitation is a positive step, the exclusion of benefit fraud raises questions about consistency and comprehensiveness. Although these new provisions may not seem directly linked to digitalisation at first glance, the Anti-Trafficking Strategy had already highlighted the role of technology in facilitating crimes such as illegal adoption and forced marriages.<sup>26</sup> Digital platforms have expanded traffickers' reach, enabling them to exploit victims across borders more effectively. By facilitating these processes, technology has contributed to a rise in the number of cases, reinforcing the need for provisions to criminalise such expanding forms of behaviour. The broader definition also has a significant practical impact, as it allows more victims to seek justice by bringing these exploitative practices under the scope of human trafficking offences. However, it is essential to note that the provisions concerning illegal adoption and surrogacy only apply when the conduct meets the constitutive elements of human trafficking, including the means criterion. Not all instances of illegal surrogacy or illegal adoption will qualify as human trafficking, and careful application of the 2024 Directive is crucial to prevent misuse. By addressing these emerging forms of exploitation, the 2024 Directive represents an important step forward. However, the omission of benefit fraud and the challenges posed by digitalisation highlight the need for ongoing vigilance and adaptation of legal frameworks to ensure comprehensive protection against trafficking in all its forms.

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<sup>24</sup> New wording of the 2011 Directive, art. 2(3), introduced by 2024 Directive, art. 1(1)(a).

<sup>25</sup> Cyprus, Lithuania and Slovakia – 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, p. 5–6.

<sup>26</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 combatting trafficking in human beings 2021–2025*, COM/2021/171 final, p. 11.



## 4.2. Technological dissemination of sexual content as an aggravating circumstance

The online environment significantly facilitates the circulation of such exploitative content, with the internet playing a crucial role in recruiting victims and advertising their services.<sup>27</sup> For instance, a single trafficker using online advertisements managed to exploit a victim by connecting them with over 100 buyers in just 60 days.<sup>28</sup> In some cases, traffickers do not physically move the victims; instead, they exploit them by livestreaming sexual content featuring the victims. Technology acts as a force multiplier for trafficking activities, since it enables the commercialisation and exploitation of victims on a massive scale. Victims are repeatedly exploited when criminals replicate the same advertisement and livestream on multiple platforms in order to maximise outreach and profits.<sup>29</sup>

The 2024 Directive recognises this threat, highlighting that a rising number of human trafficking offences are being committed or facilitated through information and communication technologies. Traffickers frequently exploit the internet and social media to recruit victims, advertise their services, exercise control and even disseminate exploitative materials.<sup>30</sup> In response, the 2024 Directive introduced an important provision: the use of information and communication technologies to disseminate sexual images or videos of trafficking victims is now classified as an aggravating circumstance in cases of sexual exploitation.<sup>31</sup> This is a significant step towards addressing the pervasive use of technology in trafficking, particularly given the ease with which perpetrators can broadcast content to a wide audience. By establishing this provision, the 2024 Directive acknowledges the grave impact of technology-enabled sexual exploitation and strengthens justice for victims.

However, this provision raises a critical question: why is the aggravating circumstance limited to sexual exploitation? According to Eurostat statistics, human trafficking is a complex crime involving several forms of exploitation, such as forced labour, services and organ removal,<sup>32</sup> all of which pose serious threats. The approach of focussing solely on one form of exploitation should be

<sup>27</sup> OCTA 2011 EU Organised Crime Threat Assessment, European Police Office, Hague 2011, p. 25.

<sup>28</sup> Case Law Database, [https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/can/2013/r\\_v\\_byron.html](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/can/2013/r_v_byron.html) [access: 18.01.2025].

<sup>29</sup> *The Challenges of Countering Human Trafficking in the Digital Era*, Europol, Hague 2020, p. 3.

<sup>30</sup> 2024 Directive, recital 8.

<sup>31</sup> 2011 Directive, art. 4(3)(b), introduced by 2024 Directive, art. 1(2)(b).

<sup>32</sup> *Trafficking in Human Beings Statistics...*, op. cit.



critically examined, especially since the 2024 Directive itself notes that a growing number of human trafficking offences, not only sexual-related offences, are committed or facilitated through information and communication technologies. Sexual exploitation is undoubtedly the most common form, however introducing aggravating provisions for only one form of exploitation undervalues the harm done by the other forms. The legal framework should recognise that these harms are equally serious and are often perpetrated using the same technological tools. According to Eurostat statistics, while sexual exploitation remains the most reported form of trafficking (41.4% in 2022), forced labour and services are on the rise, reaching their highest prevalence to date, at 41.1% in 2022.<sup>33</sup> This narrowing gap underscores the evolving nature of trafficking and calls for equal legislative action that would address all forms of exploitation.<sup>34</sup> Traffickers exploit vulnerable individuals to generate immense profits, often using the same technological tools across different forms of trafficking. Such crimes demand an equally rigorous legal response, regardless of the form of exploitation involved. The 2024 Directive advocates for a multidisciplinary and comprehensive approach<sup>35</sup> while introducing a provision that focusses exclusively on one form of exploitation. Nevertheless, as noted above, while a directive establishes minimum standards for transposition, Member States have the discretion and should be encouraged to adopt higher standards in their national legislation. The provision to classify the digital dissemination of human trafficking-related content in general as an aggravating circumstance is an excellent example of enhancing and further strengthening victims' protection.

#### **4.3. Criminalisation of the “knowing use” of services provided by a human trafficking victim**

Another crucial amendment is the criminalisation of knowingly using services provided by a human trafficking victim.<sup>36</sup> This change addresses the need to combat the demand-driven nature of human trafficking, as outlined in the Anti-Trafficking Strategy,<sup>37</sup> which is further fuelled by the ease of online platforms. The amendment criminalising the knowing use of victims' services

<sup>33</sup> In 2022, organ removal and other exploitative purposes – including use for benefit fraud, criminal activities, and forced begging – accounted for 17.5% of cases.

<sup>34</sup> *Trafficking in Human Beings Statistics...*, op. cit..

<sup>35</sup> 2024 Directive, recital 5.

<sup>36</sup> 2011 Directive, art. 18a, introduced by 2024 Directive, art. 1(15).

<sup>37</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 combatting trafficking in human beings 2021–2025*, COM/2021/171 final, p. 6.

aims to make trafficking less profitable and to deter those who knowingly benefit from such exploitation. This amendment is significant, as it criminalises individuals who are not traffickers themselves, but contribute to the demand and fuel the trafficking process.

The 2011 Directive included a provision that Member States should consider imposing sanctions on the users of any service exacted from a victim, with the knowledge that the person has been trafficked.<sup>38</sup> A progress report on combating human trafficking<sup>39</sup> indicated that some Member States had in fact adopted legislation criminalising the intentional use of such services prior to the 2024 Directive establishing it as a minimum standard. However, this legislation was often limited to sexual exploitation, once again highlighting the disproportionate focus on a single form of exploitation. When negotiations for the revision of the 2011 Directive began, several concerns about criminalising knowing use were raised. Research conducted by the non-governmental organisation La Strada International on existing provisions that criminalise knowing use revealed that, as of 2022, its practical impact remained low. La Strada interviewed 19 experts from 10 Member States,<sup>40</sup> most of whom expressed doubts about the practical effectiveness of criminalising knowing use.<sup>41</sup> Thus, the practical outcomes of making this provision a binding obligation require further analysis.

In this context, the mental element (*mens rea*) and the limited practical impact need to be addressed. The first issue involves the difficulty of establishing *mens rea* – specifically, proving that the user had knowledge of the fact that the person providing the service was a trafficking victim. While it may be challenging to ascertain this in some cases, certain elements can provide strong indicators. The notion of “knowledge” must be interpreted in accordance with national law and evaluated on a case-by-case basis.<sup>42</sup> Circumstances can include factors related to the victims, such as their lack of language proficiency or visible signs of psychological or physical harm, fear or unfamiliarity with their loca-

<sup>38</sup> Previous wording of the 2011 Directive, art. 18(4), now removed by the 2024 Directive, art. 1(14).

<sup>39</sup> 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.

<sup>40</sup> Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Italy, Ireland, the Netherlands and Romania.

<sup>41</sup> For more, see *The Impact of Criminalising the “Knowing Use” on Human Trafficking*, La Strada International, Amsterdam 2022, <https://documentation.lastradainternational.org/lisidocs/3476-LSI%20-%20Policy%20Paper%20-%20Knowing%20Use%20on%20Human%20Trafficking%20-%202022.pdf> [access: 21.10.2024].

<sup>42</sup> 2024 Directive, recital 27.

tion. The conditions under which services are provided, e.g. substandard living and working conditions or premises, can also be considered. Signs of trafficker control may involve restricted freedom of movement, external measures of control or victims being deprived of identity documents or passports.<sup>43</sup> Due to the complexity of the crime, the *mens rea* must be evaluated in each case based on the evidence gathered; nonetheless, it can be established.

Regarding the issue of limited practical impact, research indicates that existing provisions in some Member States have had minimal impact on human trafficking. However, it also highlights the problem of low public awareness, noting that at the time only Bulgaria had launched a public awareness campaign to inform citizens about this new criminalisation.<sup>44</sup> In order to create a deterrent effect and tackle primary demand, it is essential to educate the public about such provisions.<sup>45</sup> To discourage and reduce the demand that fosters trafficking, it is important that Member States consider measures such as tailored awareness-raising campaigns targeting potential and current users. A related issue is the very limited prosecutorial activity and the small number of convictions associated with prior obligations. However, this provision should not be evaluated solely based on convictions but also on its preventative potential, which is equally important. The online world should not only be seen as a platform for circulating crime-related content, but also as a powerful tool for raising awareness among those who might be inclined to engage in criminal activities. To effectively combat human trafficking, the crime must be made unprofitable and its demand-driven nature must be addressed.<sup>46</sup> The criminalisation of a “knowing user” as an EU standard has the potential to contribute significantly to this aim. Despite the challenges associated with this provision, its potential deterrent effect must be recognised.

#### 4.4. Technological capabilities for investigators or prosecutors

Technological advancements have transformed the way human trafficking is perpetrated, necessitating that the individuals and units responsible for investi-

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<sup>43</sup> Ibidem.

<sup>44</sup> *The Impact of Criminalising the “Knowing Use”*..., p. 7.

<sup>45</sup> A. Aronowitz, A. Koning, *Understanding human trafficking as a market system: Addressing the demand side of trafficking for sexual exploitation*, “Revue internationale de droit penal” 2014, vol. 85, no. 3, p. 685, [https://www.researchgate.net/publication/276104632\\_Understanding\\_human\\_trafficking\\_as\\_a\\_market\\_system\\_Addressing\\_the\\_demand\\_side\\_of\\_trafficking\\_for\\_sexual\\_exploitation](https://www.researchgate.net/publication/276104632_Understanding_human_trafficking_as_a_market_system_Addressing_the_demand_side_of_trafficking_for_sexual_exploitation) [access: 23.01.2025].

<sup>46</sup> Ibidem, p. 687.

gating and prosecuting such crimes possess adequate expertise and technological capabilities.<sup>47</sup> Traffickers increasingly rely on encrypted communications, anonymising technologies and sophisticated tools to evade detection, which creates significant challenges for law enforcement agencies.<sup>48</sup> These mechanisms demand specialised training and advanced technological skills to effectively counteract trafficking networks. As new trends and pressing technological challenges continue to emerge, it becomes essential for law enforcement agencies to adapt in order to remain ahead of these developments.<sup>49</sup> Some Member States<sup>50</sup> have adopted various approaches to detect human trafficking cases involving the use of technology. These include monitoring both the surface web and the dark web, combined with real-time open-source intelligence analysis. They have also established specialised cyber-units for combating human trafficking and have deployed “cyber-patrols”, where trained officers conduct investigations online.<sup>51</sup> However, although these steps are commendable, there is a pressing need to further expand law enforcement’s digital capabilities and fully leverage existing technological tools in combating this crime.

A crucial element in this context is enhanced cross-border cooperation. Data sharing and joint operations between Member States and EU agencies like Europol and Eurojust are vital to address trafficking’s transnational nature.<sup>52</sup> Europol has identified several technological challenges, such as traffickers’ use of cryptocurrencies to collect, transfer and launder profits, as well as encrypted communication platforms. Additionally, the rapid development in artificial intelligence (AI) and deepfake technology presents emerging threats that demand immediate attention.<sup>53</sup> A deepfake is content generated by AI that appears authentic to human eyes, and it primarily relates to content generated by an

<sup>47</sup> New wording of the 2011 Directive, art. 9(3), introduced by the 2024 Directive, art. 1(7)(b).

<sup>48</sup> The Challenges of Countering Human Trafficking..., p. 1; *European Migrant Smuggling Centre 6th Annual Report*, Publications Office of the European Union, Luxembourg 2022, p. 17.

<sup>49</sup> M. Latonero, *The Rise of Mobile...*, p. 32.

<sup>50</sup> Such as Spain, France, Croatia and the Netherlands.

<sup>51</sup> 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, p. 13.

<sup>52</sup> S. Lannier, *Using US artificial intelligence to fight human trafficking in Europe*, “EUCRIM” 2023, no. 1, p. 70, <https://eucrim.eu/articles/using-us-artificial-intelligence-to-fight-human-trafficking-in-europe/> [access: 23.01.2025].

<sup>53</sup> *Tackling Threats, Addressing Challenges – Europol’s Response to Migrant Smuggling and Trafficking in Human Beings in 2023 and Onwards*, Publications Office of the European Union, Luxembourg 2024, p. 12–13.

artificial neural network, a branch of machine learning.<sup>54</sup> The word *deepfake* is a combination of the words “deep learning” and “fake”.<sup>55</sup> Traffickers may use deepfakes to commit document fraud, to intimidate victims by threatening the release of explicit deepfake content or to impersonate trusted individuals in order to groom and manipulate victims into trafficking situations.

Given these risks, it is essential to educate both potential victims and those tasked with investigating and prosecuting such crimes about the dangers of deepfakes and other technological tools that traffickers may exploit.<sup>56</sup> At the same time, it is important to recognise that AI is not solely a tool for criminals; it can also be a powerful asset for law enforcement. AI can be utilised in data analytics to identify patterns, trends and connections in enormous datasets; in digital forensics to investigate criminals’ digital footprints; and in biometrics, which is particularly valuable in the context of human trafficking.<sup>57</sup> Biometrics, through the use of physiological (e.g. facial recognition or fingerprints) or behavioural attributes (e.g. gait or handwriting), can aid in identifying both victims and traffickers. As the 2024 Directive emphasises, early detection and identification are critical in preventing trafficking from occurring in the first place.

In conclusion, enhanced cooperation between Member States and EU agencies is essential, alongside the development of law enforcement’s technical capabilities, to strengthen online monitoring and improve evidence-gathering in criminal investigations.<sup>58</sup> Educational initiatives and analytical efforts, such as those already undertaken by Europol<sup>59</sup> – an institution that plays a key role

<sup>54</sup> Y. Mirsky, W. Lee, *The creation and detection of deepfakes: A survey*, “ACM Computing Surveys” 2020, vol. 1, no. 1, p. 1 [https://www.researchgate.net/publication/348178897\\_The\\_Creation\\_and\\_Detection\\_of\\_Deepfakes\\_A\\_Survey](https://www.researchgate.net/publication/348178897_The_Creation_and_Detection_of_Deepfakes_A_Survey) [access: 23.01.2025].

<sup>55</sup> Ibidem.

<sup>56</sup> M. Latonero, *The Rise of Mobile...*, p. 31–32.

<sup>57</sup> For more, see *The Second Quantum Revolution – The Impact of Quantum Computing and Quantum Technologies on Law Enforcement*, Europol Innovation Lab Observatory Report, Publications Office of the European Union, Luxembourg 2023.

<sup>58</sup> *New Network to Target Migrant Smugglers in the Digital Domain*, <https://www.europol.europa.eu/media-press/newsroom/news/new-network-to-target-migrant-smugglers-in-digital-domain> [access: 21.01.2025].

<sup>59</sup> The Netherlands, supported by Europol, coordinated a three-day long operational action targeting online criminal activities that enable human trafficking. The 2023 Hackathon involved 85 experts: law enforcement officers from 26 countries (22 EU Member States and 4 third countries) as well as representatives from the European Labour Authority, CEPOL, INTERPOL, the OSCE and the International Justice Mission. Targeted: *Human Traffickers Luring Victims Online*, <https://www.europol.europa.eu/media-press/newsroom/news/targeted-human-traffickers-luring-victims-online> [access: 23.01.2025]; In April 2024, experts from law enforcement, prosecutors’ offices, the judiciary, the EU and international organisations gathered at Europol headquarters to discuss the digital aspect of migrant smuggling. Over 100 participants from 23 EU Member States and 12 non-EU countries, as well as representatives from the

in coordinating EU law enforcement – are vital to achieving these objectives. By leveraging all available resources, the EU can strengthen its response to the technological dimensions of human trafficking and better protect victims from this evolving threat.

## 5. Conclusions

The digitalisation of everyday life has brought the crime of human trafficking to a different dimension, making it easier than ever before for traffickers to lure their victims. The crime has shown an upward trend since the process has become digitalised, and the EU, acting as a community of law, has responded by amending the key legal measure for combating the crime: the 2011 Directive. Among the most significant changes in the 2024 Directive is the expanded definition of human trafficking, which now includes exploitation for illegal adoption, forced marriage and illegal surrogacy. While this broader definition strengthens victim protection, it raises questions about the comprehensive nature of the EU's approach, since certain forms – such as exploitation for benefit fraud – remain unaddressed despite being documented.

Disseminating sexual content via information and communication technologies will now be considered an aggravating circumstance. This is a positive step, but reflects a disproportionate focus on sexual exploitation. While the 2024 Directive acknowledges the diversity of trafficking by broadening its definition, it disproportionately focusses on one form of exploitation in its aggravating provision, overshadowing the harm caused by other forms of exploitation. A more comprehensive approach is essential to effectively address the multidimensional nature of this crime.

The criminalisation of the “knowing use” of services provided by trafficking victims is another significant, though controversial, development. While this provision aims to combat the demand-driven nature of trafficking, establishing it as an EU standard has been viewed with scepticism due to, *inter alia*, the challenges of proving intent (*mens rea*) and its limited prosecutorial success in some Member States. Despite these issues, the provision holds preventive potential to target those who support trafficking networks. Key actions for creating a deterrent effect on potential “users” include raising awareness and implementing educational initiatives by Member States.

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European Commission, Eurojust, the European External Action Service, Frontex, Interpol and UNODC took part in the meeting. *New Network to Target Migrant...*, op. cit.

The individuals and units responsible for investigating and prosecuting such crimes must possess adequate expertise and technological capabilities, which, in an era of rapid development (particularly with the growing role of AI) has become essential. To address the challenges posed by traffickers' evolving *modus operandi*, cross-border cooperation with EU agencies is crucial. This includes not only the development of technical capabilities, but also the strengthening of online monitoring and evidence-gathering processes. Tackling this evolving threat requires the EU to leverage all available resources, foster collaboration between law enforcement agencies and technology platforms, ensure continuous oversight by EU institutions, agencies and bodies and – last but not least – raise awareness among the public. Human trafficking is a global crime that threatens fundamental human rights: the right to life, liberty and personal security. Legislation remains the key measure to promote and secure these values, as well as to help society adapt to the challenges posed by digitalisation. The EU is fully aware of this.

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