

Submission to the European Commission by LSI NGO platform

La Strada International (LSI)'s NGO platform contribution to the second report of the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings, as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

La Strada International is a European NGO network against trafficking in human beings with 29 members and partners in 24 European countries that are united in LSI's NGO platform. All these organisations work independently and from a grass root level against trafficking in human beings and support trafficked persons and vulnerable groups, including migrant workers. La Strada International, its members and many of its partners are member of the Global Alliance against trafficking in Women (GAATW). For this submission all members of LSI's NGO platform were consulted.

Trafficking in human beings addressed by European Member States

Trafficking in human beings is recognised as a gross violation of fundamental rights, and is explicitly prohibited under the Charter of Fundamental Rights of the European Union. This political commitment at EU level is clearly reflected in a large number of initiatives, (policy) measures and binding legislation, including Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. This directive sets clear measures to be taken by European governments for the protection, assistance, and support to victims, as well as provisions to prevent the crime and punish perpetrators and provisions to better monitor and evaluate efforts. Although this directive is recognised as a major step in addressing human trafficking, we - NGOs working at a daily level to support trafficked and exploited persons and risk groups - see major bottlenecks in the implementation of this directive at European national level. The number of identified victims remains low and many victims of human trafficking are not identified and so cannot exercise their rights. All over Europe, we see that in cases of severe forms of exploitation, where there are clear indications for human trafficking, persons still are not recognised as victims of this crime. In general the link between migrants' vulnerabilities to labour exploitation and human trafficking is not been acknowledged.

Ensure sufficient focus on all forms of human trafficking

Although the definition used in the EU trafficking directive refers to all forms of human trafficking, many European countries continue to have a predominant focus on addressing human trafficking for sexual exploitation. Even though this is still the most detected and reported form of trafficking in the European Union, there are clear indications, including increases in registration figures, for the occurrence of human trafficking in other regulated and unregulated labour sectors. Next to the sex industry, vulnerable sectors in Europe include agriculture, construction, domestic work and care work, transport, textiles and garments, food manufacturing, processing and packaging and the hotel and service industry sector. Vulnerable sectors can differ per country.

Moreover frequently we see cases in which persons fall prey to multiple forms of exploitation, e.g. they are trafficked for labour exploitation, but also sexually abused or exploited. In 2018, the Dutch organisation FairWork published a [report](#) on the vulnerability of Polish female migrant workers in the Netherlands to sexual harassment at work. Sexual harassment is one of the signals that could indicate bad working conditions and/or labour exploitation. Although migrants' vulnerabilities to labour exploitation are generally known, these are ignored or accepted, as shown by cases of exploitation in

both regulated and unregulated sectors. We therefore call upon the EU member states to pay equal attention to all forms of human trafficking, to ensure full detection of the crime and increase identification of victims. In that regard, more focus should be put on monitoring and field work in all identified vulnerable sectors in European countries.

Concern for vulnerability for human trafficking among migrants and refugees

Over the last years, we have noted an increased vulnerability to exploitation and abuse of migrants and refugees. Several recent studies, including reports published in the framework of EU (AMIF) funded projects TRAM¹ and SAFE!² and a [policy paper](#) by the German NGO Network KOK provide evidence and information about the particular risks faced by migrants and the lack of (early) identification of their vulnerability and possible victimhood.

Already long before the increasing migration flows of 2014 - 2016 there was evidence of vulnerabilities among migrants and refugees for trafficking in human beings, often closely linked to the restrictive European migration policies. Challenges related to the identification and protection of victims of trafficking in persons in the current migration context are not adequately addressed at the national, regional or international level and the protection of (potential) victims of trafficking in persons is often not prioritized when countries are confronted with irregular migration movements.

Lack of self-identification of victims and the fact that there is limited time for proper identification and support – also as migrants move on - seem to be major challenges. Persons are reluctant to come forward to be identified as victims of trafficking, fearing that their identification would prevent them from reaching their intended destination or result in their deportation. They often decline support, as frequently has been noticed, for example by Open Gate/La Strada Macedonia, which provided support services in a transit centre Tabanovce in Macedonia (FYROM). Due to the Dublin treaty, persons fear to be sent back to countries like Bulgaria, Romania, Greece or Italy, countries with lower economic perspectives for new migrants, or to their countries of origin.

In many European countries, screening and identification procedures remain insufficient and incomprehensive. Moreover, few countries seem to have specific indicators on vulnerability for the target group in place. Early identification among migrants and refugees is also not mandatory or not part of formal procedures, neither linked with existing National Referral Mechanisms (NRM) or National Action Plans on trafficking in human beings of countries.

Even for well-trained stakeholders it remains difficult to identify trafficked persons among larger groups of mixed migration flows, in particular if not all relevant information can be obtained. Moreover it is noticed that asylum procedures are speeded up, leaving very little time for to check persons vulnerabilities and possible identification of trafficked persons. Further there are challenges related to the identification and referral of migrants in an irregular situation and or asylum seekers living outside the official reception centres. In particular those who have been stranded in a transit country, whose

¹ Forin, R. & Healy, C. (2018). [Trafficking along Migration Routes to Europe: Bridging the Gap between Migration, Asylum and Anti-Trafficking](#). Vienna: ICMPD.

² A report is available on the survey conducted on early identification and safe return, conducted in the framework of the SAFE! Project by La Strada International and Comensha/La Strada Netherlands.

asylum claim has been refused, and who have no access to regular residence status, have become very vulnerable in Europe. They lack sufficient income, lack of employment, access to health care and or decent living conditions.

Early assistance for vulnerable persons

We would like to see a European commitment to realise human rights protection for all. Rather than advocating for early identification, we would like to call for early unconditional assistance for vulnerable persons, including for all those that newly arrive in Europe. Early identification should focus on protection and adequate referral and support procedures should be in place to assist all persons in need or at risk. Remaining gaps of inappropriate support structures and services should be addressed, taking into account specific and different needs of persons. Only once basic humanitarian needs of people are met, there can be an opportunity to initiate a process of building trust, empowering with information and support and eventually recognize people who might have been trafficking or might be at risk of trafficking.

A **human rights approach** calls for placing the protection of the rights of the person at the centre and for taking the best interests of the person as the point of departure in providing support. This also means exploring how to use and combine the anti-trafficking framework and the international protection one to complement each other and increase the protection of rights of people and the chances for them to receive a long term residence permit and an opportunity of integration in the job market. In many European countries this also means exchanging practices and learning how to legally challenge the return of victims of trafficking under Dublin procedures when this is done without consideration for the risks of re-trafficking and without the necessary and required safeguards.

Next to paying specific attention to specific vulnerable groups, including (undocumented) migrants and refugees, as well as minority groups and those working in irregular situations, increased efforts should be made by Member States to provide information in at least the most common languages of countries of origin. This information should be widely disseminated by various stakeholders, including civil society but also law enforcement and labour inspection, to ensure that migrant workers know their (legal) rights and can exercise them effectively. In order to ensure adequate identification of trafficked persons, we consider it essential that Member States improve the cooperation among different actors and monitor implemented responsibilities mandated to the different stakeholders.

The (informal) identification process should not be the responsibility of a single government agency only but should be carried out by multidisciplinary teams including organisations providing services to trafficked persons. Early identification should also not be regarded as a one-step process, as victims often do not come forward at first contact with assistance providers, much less at first contact with law enforcement authorities, especially when they have suffered severe forms of exploitation. Early identification not only focus on entry points to the country, like border points or transit centres, but also at locations where migrants and refugees might live or gather and can be reached.

For example, the case of a Germany-wide raid in April 2018 has shown once again, that the focus of such operations, from the side of the police, is not the protection of victim's rights. According to the German NGO Ban Ying, NGOs were not contacted before or after the raid to offer support to the trafficked persons. Ensuring access to information regarding their rights, and access to a reflection and

recovery period would have been central in this operation. Instead, the victims were arrested for irregular entry and residence, without being provided with support.

Unconditional support

According to Directive 2011/36/EU, 'Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial'. Providing unconditional access to assistance, support and protection to victims remains a challenge for most European Member States. Currently Member States provide unconditional access during the reflection and recovery period only and those not able or willing to cooperate with the authorities, often out of fear for this risk this entails, are left without any continued support. Moreover practice shows that victims who do cooperate, have limited access to protection, support and assistance if the criminal procedure has not started or is discontinued. This seriously hampers the human rights based approach. The absence of adequate assistance and support may prevent trafficked persons from reporting to the authorities and may subject them to further trauma and re-victimisation. Recognition and protection of the rights of trafficked persons act as an important incentive to report the crime to the authorities and give testimony.

Safe return

Many difficulties are currently faced to ensure adequate support to clients who have to return to other European countries, when they have not been able or willing to cooperate with the authorities or not identified as trafficked persons and therefore not provided a residence permit. Within the current international protection system, those persons whose applications for international protection have been refused are subject to return to their country of origin.

In several European countries we have assisted trafficked women that fall under the Dublin Regulation. The NGO LEFÖ in Austria observes with great concern that potential victims of human trafficking are returned to the country of first entry, e.g. Italy and Spain. In many cases they return to countries, where they have managed to escape from the network that trafficked or exploited them. Despite the clear indicators that the person is a victim of trafficking within the European Union. However, as the exploitation of the person does not seem to have occurred in Austria, the right to assistance and protection is not prioritized for these persons, even though minimum standards of access to rights should be put in place. Moreover if there is a Dublin return, authorities have to cooperate to ensure adequate transnational referral of the person. Clearly European Member States need to pay more attention to this situation and find a solution for (presumed) trafficked persons that fall under the Dublin Regulation and ensure that they can access their right to a reflection and recovery period and have access to residence.

Lack of funded shelter and support programmes

Even though LSI's NGO platform works on strengthening referral among NGOs and building adequate support structures, difficulties in ensuring adequate and safe referral remain. This is caused due to lack of cooperation, inadequate funding of support structures and NGO support services and other structural gaps. Often no specialized referral support can be offered after return, either it remains unclear who will take further responsibility for the victim's protection and needs.

There is a general lack of financial support for shelter and social support programmes. Much of the counter trafficking funding goes to (research) projects and although this supports knowledge building,

awareness and cooperation, it is felt that the European Commission should ensure that Member States provide more funding to social support programmes. Often, we see that National Action Plans (NAPs) and National Referral Mechanisms (NRMs) are elaborated with requested input and support from NGOs for its implementation, without ensuring adequate financial means to back up measures and structures.

Creating a clear firewall and complaint mechanism

Undocumented migrants are very vulnerable to exploitation and trafficking practices. This is partly because they have limited avenues to seek redress in case exploitation occurs. Facing risks of arrest, detention or deportation makes them extremely unlikely to complain or seek support of relevant authorities or other stakeholders. Safe reporting and effective complaints mechanisms for undocumented workers are lacking in most European Member States. Workers should have an opportunity to report exploitation and access justice, including unpaid wages, without fear of arrest and deportation. We therefore recommend that inspection of violations of labour laws by labour inspectorates, courts and other authorities, should not lead to immigration enforcement. As many victims of human trafficking are undocumented, an effective labour complaints mechanism for undocumented migrants would serve as a mechanism for early identification of, assistance to and support for victims (Article 11). PICUM developed [guidelines](#) for such mechanisms.

Access to legal support

Access to justice is about having the means and legal protection to exercise one's right to seek remedy before a court of law or tribunal for wrongdoing suffered. Although the EU directive requests EU Member States to ensure that victims of trafficking 'have access without delay to legal counselling and to legal representation' and that 'legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources', we still note that victims are very limited in accessing legal aid, due to existing financial barriers in place. Free legal assistance and aid needs to be available and accessible to all presumed trafficked persons to guarantee access to justice and remedies.

Compensation has a restorative and preventive function and is a crucial tool in combating human trafficking. Article 17 of the Directive 2011/36/EU requires Member States to ensure that trafficked persons have access to existing schemes of compensation available to victims of violent crimes. Although this established right and various compensation mechanisms in place in EU Member States, in practice the actual receipt of a compensation payment by a trafficked person is extremely rare. A range of barriers obstruct the consistent translation of the right to compensation into practice. Consequently, many trafficked persons are left without justice. A new EU funded project '[Justice at Last – European action for compensation for victims of crime](#)', currently coordinated by La Strada International and implemented with an international consortium with partners in 10 European countries, includes further research and work on the issue. Earlier research unveiled a number of often interconnecting barriers that prevent trafficked persons from accessing compensation. Next to the obstacles mentioned above, including significant gaps in the availability and quality of victim support services which are vital for the rehabilitation of trafficked persons and their ability to claim and receive compensation, there is also a need for more awareness and training of relevant stakeholders, such as support workers, police, solicitors and judges.

Make corporations accountable

So far there have been only few cases where legal representatives of the private sector or companies have been directly prosecuted for trafficking in human beings in Europe. There are a number of measures that businesses can and should be legally required to take to address human trafficking, in particular in their supply chains, which the European Union and their Member States can and should promote. Labour standards and decent working conditions should be in place and monitored by Member States to protect (migrant) workers. Informal and unregulated work should be brought within the protection of labour laws and it should be ensured that labour rights are applied to all workers irrespective of their migration and residence status.

We further recommend the Commission to hold corporations more accountable for complicity for trafficking in human beings and would like to see control mechanisms to be set up to monitor businesses compliance with labour standards and human rights; enacting sanctions for businesses that do not respect human rights and the law. Also binding due diligence procedures should be promoted as well as improving purchasing practices and scrutinising recruitment agencies, next to the conduction of audits and raising awareness of employees and consumers. Awareness should be raised and information provided about the origins of products and services enabling customers to make informed decisions about their purchases and to promote products and services made without labour exploitation, forced labour and human trafficking.

Prosecution of perpetrators

Clearly traffickers use loopholes in enforcement or control of legislation on work permits, visas, labour rights and working conditions. Legitimate business structures and regulations are abused to conceal illicit activities. Via subcontracting, the misuse of the posted workers directive and or the establishment of letter box companies, national legislation and control is avoided, as well as liability for exploitation and abuse. Regardless the recognition of both the European Commission and the individual Member States that investigation and prosecution of human trafficking is a key priority and needs to be further enhanced, the level of prosecutions and convictions remains worryingly low. The excessive burden which is currently placed on victims before and during criminal proceedings should change. We further see an urgent need to extend effective investigations including financial investigations and assets recovery of perpetrators. Money claimed should be used to compensate victims directly or used for funds supporting victims.

We hope that the European Commission is taking these concerns in account, when evaluating the Member States' progress made in the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

La Strada International,
Amsterdam, June 15, 2018

La Strada International's NGO Platform consists of

1. **Gender Perspectives** (Belarus)
2. **Animus Association** (Bulgaria)
3. **La Strada Czech Republic**
4. **Open Gate** (Macedonia)
5. **La Strada Moldova**
6. **CoMensha** (The Netherlands)
7. **La Strada Poland**
8. **La Strada Ukraine**
9. **Association of Young Azerbaijani Friends of Europe**
10. **Anti-Slavery International** (UK)
11. **ASTRA Anti-Trafficking Action** (Serbia)
12. **Hope Now** (Denmark)
13. **Human Resource Development Foundation** (Turkey)
14. **KOK** (Germany)
15. **Lefö** (Austria)
16. **Living for Tomorrow** (Estonia)
17. **Migrant Rights Centre Ireland (MRCI)**
18. **Novi Put** (Bosnia and Herzegovina)
19. **Pag-Asa** (Belgium)
20. **PICUM** (Europe, International)
21. **Pro Tukipiste** (Finland)
22. **Proyecto Esperanza** (Spain)
23. **FIZ** (Switzerland)
24. **ALC** (France)
25. **ADPARE** (Romania)
26. **FairWork** (Netherlands)
27. **Ban Ying** (Germany)
28. **Victim Support Finland** (Finland)
29. **CCEM** (France)