

Joëlle Milquet – Special Adviser to President Juncker for compensation to victims of crime

Questionnaire to the participants to the EU Civil Society Platform against Trafficking in human beings

Introduction

On 4 October 2017, President Juncker appointed Ms Joëlle Milquet as Special Adviser for compensation to victims of crime, including victims of trafficking in human beings. The overall objective of the Special Adviser is to explore the possibilities and suggest solutions on how to improve victims' access to compensation.

The Special Adviser will publish at the beginning of 2019 a report on improving victims' access to compensation in the European Union. The work leading up to the report is divided in three stages: (1) the inception stage - aimed at gathering expertise and consulting stakeholders to have a clear picture of obstacles; (2) the second stage - description and analysis of obstacles and (3) the third stage - proposal of solutions. The report will feed into a political debate in the European Union about the functioning of the EU and national policies on compensation to victims of crime and about possible reforms in this area.

It is crucial that the solutions proposed in the report meet the needs of victims of crime, including the specific needs of victims of trafficking in human beings. **The objective of the questionnaire is to give the floor to civil society participants working on the ground with victims of trafficking in human beings (THB) in order to learn about their needs regarding compensation, following the discussions on the meeting of the EU Civil Society Platform against Trafficking in human beings on 29 May 2018**

Personal data and availability of contribution

Please note: The European Commission services will prepare a report summarizing the responses to this questionnaire. Contributions received will be used for the report on improving victims' access to compensation in the European Union. In sending back the questionnaire to HOME-ANTITRAFFICKING@ec.europa.eu, your name and contact details are provided. The name of your organization contributing may be published in the report on compensation to victims of crime possibly together with the contribution. Your name and contact information will not be included in the report. The protection of your personal data is based on Regulation (EC) N 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

I. Objectives of compensation

According to the 2004 Compensation Directive¹, crime victims in the European Union should be entitled to *fair and appropriate* compensation for the injuries they suffered, independently where in the European Union the crime took place. According to the Council of Europe Convention on Compensation to victims of crime², compensation should cover at least the following items: loss of earnings; medical and hospitalisation expenses and funeral expenses; and, as regards dependants, loss of maintenance.

The elements covered by national compensation schemes vary from one Member State to another. Any compensation scheme should aim to repair, as much as possible, the damage caused to victims by the crime. This is why it is important to understand how trafficking in human beings affect victims in order to consider what elements should be covered by compensation.

Further, Article 17 of the **2011 Anti-trafficking Directive**³ requires that Member States ensure that **victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent**. According to Articles 12 and 13 of the Anti-trafficking Directive, Member States shall ensure that victims of trafficking in human beings, including child victims, have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation⁴. **Such legal counselling and representation** could also be provided by the competent authorities for the purpose of **claiming compensation from the State**. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

The Commission's 'Transposition report'⁵ concluded that in certain areas there still remains significant room for improvement including **access to compensation for victims of trafficking**.

¹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF>

² 1983 European Convention on the Compensation of Victims of Violent Crimes
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680079751>

³ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁴ The Anti-trafficking Directive builds on the general rules on victims' rights, such as the Victims' Rights Directive replacing the previous Framework Decision from 2001, but responds more directly to the specific needs of victims of human trafficking. Specific right to a legal counselling for victims of trafficking in human beings is one of such rights.

⁵ Report from the European Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1), (COM(2016) 722)

In light of the above, participants are kindly requested to consider the following questions for victims of trafficking in human beings:

- ***What, in your opinion, constitutes a fair and appropriate compensation? (You may provide examples)***

A fair and appropriate compensation, should comprise compensation for both material and non-material damages. It should take into account the circumstances and type of exploitation and the duration of the exploitative situation, including the use of violence or threats, restriction of freedom and other aggravating circumstances and suffering endured. The (longer term) impact of the exploitation for the person (e.g. physical injuries or consequences, psychosocial condition of the person, but also continuous risks or future economic situation, e.g. will the person be able to return to a former job etc) should also be taken into account, next to background and age of the victim.⁶ Material damages can include costs of medical, physical, psychological or psychiatric treatment required by the victim, costs of physical and occupational therapy or rehabilitation required by the victim, lost income and due wages according to national law and regulations on wages, legal fees and other costs or expenses related to the victim participation in criminal proceedings; costs of necessary transportation, temporary childcare, temporary housing of the victim and or future lost incomes due to loss of earning capacity. For family members and dependents also funeral costs and loss of maintenance can be included.⁷

As for injuries, in some countries, like the Spanish regional compensation funds and the Dutch State Fund for Victims of Violent Crime, make use of a list of injuries for which there are specific amounts of compensation claims. It is difficult to judge whether this is a best practise and it can be questioned whether this ensures equal treatment and a fair and appropriate compensation for all victims, as this also depends how much other factors as mentioned above are then taken into account.

Clearly, what fair and appropriate compensation is, seems to depend on the case, the context and the form of human trafficking which amount 'can' be claimed for compensation. E.g. in the Netherlands for a person that was in a situation of forced prostitution, higher amounts can be claimed – and are awarded - in comparison with victims trafficked into any other regular or irregular labour sector. E.g. due to the fact that it is well known that high earnings are made in

⁶ Based on LSI's Legal Assessment: compensation practices – July 2018 (author Liliana Sorrentino) which is not published yet. This assessment is based on desk research and the assessment of 60 European compensation cases, collected via the consortium of the EU funded Justice at Last project. In the framework of this project and the assessment, a focus group meeting was held on June 7, 2018 in Vienna in which all consortium partners of the Justice at Last project participated, as well as other experts.

⁷ See also Table developed on the basis of UNODC, Model Law against Trafficking in Persons, 2009.

the prostitution sector, Dutch lawyers try to claim 100 euro or more a day for victims that were exploited in the prostitution sector.

When persons worked irregular, it can be difficult to claim lost wages, in particular to find evidence and proof for hours made. Sometimes it can be tried to claim standard wages where applicable or still to request a minimum wage for the period the person was not receiving income, depending also on national regulations and criteria for claiming compensation. For victims that were trafficked into forced begging or forced criminality, it is even more difficult to claim 'unpaid earnings'. In these cases it has been tried to claim a non-received unemployment money or other benefits for these victims.

Currently you see that compensation amounts differ enormously. In some, in particular Western European countries high amounts are awarded to trafficked persons, e.g. there are examples of compensation of 100.000, 250.000 euro or more, while in other countries figures are low, around 1000 until 7.000 euro. The differences both between countries and also within countries raise ethical questions and call for more harmonisation.⁸

- ***What was the methodology to define the amount of compensation to victims of trafficking in human beings, in your experience? (Please provide examples, if possible with links to any articles/documents available for the public)***

A recent assessment conducted in the framework of the EU funded *Justice at Last – European Action for compensation for victims of crime* project, revealed that 'a number of critical issues emerged from judicial practice related to methods of calculating material loss in the compensation claims examined for LSI's legal assessment on compensation cases'⁹. Clearly there are significant differences among European countries regarding both the methods and the approaches used to calculate the amount of compensation owed to the victim. Often the judiciary lacks clear or common guidelines or benchmarks that could be used to inform their assessment and calculation of material and moral damages. Yet, prosecutors' and lawyers' practice suggest that the more accurate and documented the figures and estimations presented in the compensation claim, the easier it will be to persuade the judge to grant the requested amount.¹⁰ In some countries, difficulties are encountered in the estimation of moral damages for pain and suffering and lost opportunities, common guidelines for calculation of damage amounts would help ensuring transparency and fairness.¹¹

⁸ Based on discussions of a workshop organised by LSI/LEFO on compensation and facilitated by the Dutch lawyer Annet Koopsen on 6th June 2018, Vienna Austria.

⁹ LSI's Legal Assessment: compensation practices – July 2018 (author Liliana Sorrentino) which is not published yet. – La Strada International 2018

¹⁰ Justice at Last FG Discussion, Vienna, 7 June 2018.

¹¹ Justice at Last FG Discussion, Vienna, 7 June 2018.

The collected cases have been helpful in identifying some of the factors and reasoning followed by prosecutors and judges in the calculation of moral and material damage.

Factors considered by courts in calculating non-material damages may include:

- Medical report on consequences of physical and or psychological injury
- Expert reports on the psychosocial condition of the person
- Expert reports on the risks involved in the continued exercise of prostitution,
- Duration of the exploitative situation
- Age of the person
- Use of violence or threats, restriction of freedom, other aggravating circumstances
- Guidelines on measuring pain and suffering
- Principle of prohibiting unjust enrichment through compensation for non-material damage
- Background of the victim and circumstances of the exploitative situation
- Type of exploitation

In Austria, courts may consider the guidelines on measuring pain and suffering.¹² In Bulgaria courts rely on a ruling of the Plenum of the Supreme Court (No. 4/1968) which stipulates that in determining the amount to be awarded as compensation for non-material damage, all facts and circumstances related to the damage must be taken into account and should be expressly stated by the courts in their reasons.¹³

- ***Have you heard/been involved in cases for compensating child victims of trafficking in human beings? If so, has this process been different from other compensation cases? Why?***

The EU funded project *Justice at Last* coordinated by La Strada International (2017 – 2019) and implemented with an NGO consortium of another 11 organisations in 10 countries, does not focus on compensation for child victims of trafficking. However the collected cases included a few cases related to minors. Identifying differences in processes for minors or adults was not a focus of this assessment and therefore not specifically looked at. Nevertheless it can be stated that no clear process differences were noted for these cases. In general it seems that more attention is also needed to improve access to compensation for minors.

What are the most important needs in terms of compensation that should be met as a priority? What needs are less important but should also be covered by state compensation?

What the most important needs are, depends on the victim and the context of the case.

¹² See also <http://widab.gerichts-sv.at/website2016/wp-content/uploads/2016/09/Sach-2016-117-117-Schmerzengeld.pdf>

¹³ LSI's Legal Assessment: compensation practices – July 2018 (author Liliana Sorrentino) which is not published yet. – La Strada International 2018

In general, the restorative justice function of compensation is important for victims' recovery. Trafficked persons experience both physical and psychological consequences resulting from abuses they have suffered. Psychological consequences may include: loss of dignity, mental health problems, loss of confidence, and a diminished ability to act autonomously as a consequence of being under constant control and in fear. Enabling, and more importantly, facilitating access to compensation helps to support their psychological recovery. Acknowledging the wrongdoing and recognising the rights of trafficked persons redefines victims as subjects of justice rather than objects of it and opens space for their active role in the process of bringing their traffickers to justice.

Compensation can also mean financial autonomy for former victims of human trafficking and may prevent re-victimisation. Economic independence has been shown to significantly reduce the risk of re-trafficking and compensation empowers victims by placing them in a stronger position to support themselves and their families without having to pursue risky job opportunities. Compensation counters the contributing vulnerability factors of poverty and deprivation in human trafficking.¹⁴

It is difficult to state which (financial) needs should be claimed from the perpetrator via criminal or civil procedures or what should be covered from the State. For some victims it is very important that they receive the compensation directly from their perpetrator, while other victims on the contrary, state not to want to receive any 'dirty money' from their trafficker.

For those that want to claim compensation, next to needs to receive compensation for both material and non-material damages (see what is mentioned above), there are also different needs to be met to ensure that victims can claim compensation, including access to legal aid and representation etc.

II. Access to compensation

Modalities of accessing compensation also vary greatly in different Member States. This includes both: the eligibility criteria - who should be compensated; and the procedure to receive compensation – how the compensation should be awarded.

When it comes to the eligibility criteria, there is no EU-level definition of who is entitled to state compensation. According to the Council of Europe Convention on Compensation to victims of crime, state compensation should be available to those who have sustained serious bodily injury or impairment of health directly resulting from an intentional crime of violence and the dependants of persons who have died as a result of such crime. In the above cases, compensation shall be awarded even if the offender cannot be prosecuted or punished.

¹⁴ Findings and Results of the European Action for Compensation for Trafficked Persons, Toolkit on compensation for trafficked persons, La Strada International 2012.

Regarding the procedure to receive state compensation, there is no EU-level procedure laying down its modalities. The EU already has in place a solid set of rules that deal with victims' rights. Specific set of rules on assistance, protection and support to victims of THB are established under **the Anti-trafficking Directive**. As horizontally applicable instrument, **the Victims' Rights Directive**¹⁵ lays down general principles according to which all victims should be recognised, and treated in a respectful, professional and non-discriminatory manner. One of the major objectives of the Victims' Rights Directive and Anti-trafficking Directive is also to ensure that victims do not suffer secondary victimisation. These general principles of the EU victims' policy are also valid for the EU and national policies on compensation to victims of crime. In particular, any compensation process should be swift, respectful and non-discriminatory.

In the light of the above, participants are kindly requested to consider the following questions for victims of trafficking in human beings:

- ***Who, in your opinion, should be compensated?***

All victims of all forms of human trafficking should have access to compensation like other victims of crime. It is further important that also victims of labour exploitation for which the crime of trafficking could not be proven, or for which cases no investigation or prosecution started or these procedures were stopped, have access to compensation. These persons should be allowed to claim compensation in civil procedures or have access to other alternative mechanism or state funds. Currently it is noted that in case trafficking cannot be proven, neither the use of direct violence, these victims can hardly access state compensation funds for victims of violent crimes.

- ***How important is it that the compensation is awarded in a swift, respectful and non-discriminatory manner and how – in your opinion –can this be achieved? (You can provide examples)***

It is very important that compensation is awarded in a swift, respectful and non-discriminatory manner. We continue to see though that undocumented persons that are exploited have in practise less access to safe reporting or complaint mechanisms, and might not report a crime or claim compensation out of fear for detention or deportation or other consequences.

¹⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

According to FRA "...a victim in an irregular situation of residence, when seeking access to justice, faces requirements and restrictions to which other victims are not subjected. Such a differentiation runs counter the non-discrimination principle of Article 1 of the Victim's directive, which states: The rights in the Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status." The FRA report¹⁶ also points out that helpful instruments are implemented only to fairly limited extent. These include the reflection and recovery period and the residence permit for victims of trafficking, set out by the Residence permit Directive 2004/81/EC17 (Art. 6-8), and the granting of permits of limited duration to third country nationals subjected to particularly exploitative conditions in accordance with Article 13 (4) of the Employer Sanctions Directive^{18, 19}

Safe reporting and adequate complaint mechanisms should be in place for all victims of crime and exploitation. Further, it is needed that more focus is put on victim protection, including protection in court, and that police, lawyers, prosecutors and judges are specialised on the issue of human trafficking and also well aware of the need of adequate treatment of victims and the importance of compensation. Further it is important for victims that they receive adequate information before and during procedures and that procedures are shortened. Often, it takes still years before victims get compensation granted, and even longer to see the compensation order executed, if executed at all.

- ***Have victims been requested to support their claim by relevant documentation (medical certificates etc...). If yes, was this experience a positive or negative one? Have victims received assistance in the process?***

From the assessment conducted in the framework of the EU funded Justice at Last project, it seems that medical certificates or expert opinions are often used, as evidence for damage in compensation cases. Often victims receive assistance in this process from Legal counsellors of NGOs or lawyers. NGOs seem often to bear (part of) the costs for legal aid and representation and for obtaining relevant documentation.

- ***What is your experience to giving access to victims of trafficking in human beings without delay to legal counselling, and to legal representation, including for the purpose of claiming compensation, including claiming compensation from the State?***

Trafficked and or exploited persons require legal assistance and representation to effectively claim their rights including their right to compensation, as they are entitled to according

¹⁶ FRA (2015) [Severe labour exploitation: workers moving within or into the European Union](#) ,p.78

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3AI33187>

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0052>

international and European standards. Together with the right to assistance, the right to legal advice and representation is key to empowering victims and enabling them to evaluate their situation and make an informed decision about their options and possible forms of legal redress. National law generally does not provide an automatic right to free legal aid, this depends on domestic law requirements and it is often conditioned to a financial means test. In some countries the right to legal aid is tied to having legal residence or a stay or residency exceeding 90 days, as a result irregular migrants even if they are victims of crime are excluded.²⁰

Victims participating in criminal proceedings are usually referred to existing pro-bono services. However, state funded legal aid is not always completely free and is also limited in scope and quality. For example, state funded legal aid is often provided only in criminal proceedings, and often it is not available at an early stage of the proceedings (e.g. first questioning or interview); or it foresees representation in court only under specific circumstances. In addition, the low fees paid to pro bono lawyers are a disincentive in dealing with lengthy and complex trafficking cases. Trafficked persons require specialist casework for the whole duration of proceedings including in relation to immigration and administrative law, criminal and civil proceedings and pursuing compensation.²¹

Given the complexity of trafficking cases, NGOs therefore seek to mobilise specialised legal aid to assist their clients. In the majority of cases analysed for the assessment, the NGOs made different arrangements to secure such expertise, for example by employing specialised lawyers, establishing partners with law firms, engaging and partnering with specialised pro-bono lawyers. NGOs usually have to secure their own funding for legal aid and representation through projects; and hence without state funding their capacity is limited. In some countries, funding from the national anti-trafficking budget is allocated to cover the cost of a lawyer who works on trafficking cases only.²²

- ***In what cases is this access free of charge?***

In many cases this access is not free of charge. State funded legal aid is not always accessible, it may be available upon certain conditions such as a decision of the judge on its necessity, on a financial means test or on whether the case has a reasonable chance of success. State funded legal aid and interpretation are not provided systematically in civil proceedings for compensation, the costs of the proceedings constitute a strong barrier hindering victims' access to remedy. Specialist legal case work is usually arranged through an NGO but funding for this is often limited. The assessment of collected cases also revealed that no legal aid is available to help victims with

²⁰ European Parliament, The Victims 'Rights Directive 2012/29/EU. European Implementation Assessment, EPRS, 2017, p.62.

²¹ LSI's Legal Assessment: compensation practices – July 2018 (author Liliana Sorrentino) which is not published yet – La Strada International 2018

²² Idem.

the execution of compensation orders.²³

- ***In your experience, what are the key challenges in accessing compensation for victims of THB?***

Evidence obtained from earlier research shows that very few victims seek compensation and even fewer receive a compensation payment. Obstacles include lack of awareness among police and the judicial system, lack of access to legal aid and adequate information for victims, the postponement of trials and long duration of criminal and civil proceedings, and, in the case of foreign victims, their return or deportation to their country of origin before a verdict is reached. But even when compensation is granted, victims rarely have the means to ensure a compensation order is actually enforced, so that they receive some payment. Another barrier for victims obtaining compensation is that the perpetrators are not found, or are not prosecuted, or have moved their assets abroad and/or have declared themselves bankrupt to avoid confiscation of their assets and having to pay compensation. For different reasons victims can also have no access to existing state compensation funds. Lack of residence status, lack of information, lack of means and lack of access to legal aid prevent many victims from claiming their rights, including the right to compensation.²⁴

- ***In your experience, is compensation equally accessible for EU and non EU victims of THB?***

It is expected that it is more accessible for EU victims of human trafficking, however La Strada International has no clear data available, to proof this.

- ***In your experience, does the form of exploitation to which victims of THB have been subjected create specific challenges to be considered for compensation?***

There are specific challenges for those working and exploited in irregular sectors or who have been trafficked for forced criminality or forced begging, to claim compensation and to proof damage and lost earnings. Moreover also for persons that worked irregular and became victims of trafficking for labour exploitation, there are specific challenges when claiming compensation. See also key challenges mentioned above.

Reporting a labour law violations by undocumented migrants in most EU countries, constitutes a significant risk of deportation and there are very limited safeguards²⁵. In Belgium an undocumented worker may go directly to the labour inspectorate and file a complaint without

²³ Idem.

²⁴ Findings and Results of the European Action for Compensation for Trafficked Persons, COMP.ACT, Toolkit 2012 – La Strada International

²⁵ See assessment conducted by LSI on access to compensation in cross border context (author Irena Konecna, this report is not yet published) – La Strada International 2018

fear of being reported to the police and immigration authorities. However, this undocumented worker often faces the challenge of proving that a working relationship exists between him/herself and the employer. Various types of evidence collected by the worker are often not considered admissible although they do indicate a working relationship. The clearest proof is the labour inspectorate actually witnessing the worker at the worksite. Without the evidence provided by the labour inspection, the labour inspector will rarely pursue the case and the undocumented worker will not be able to claim any outstanding wages. However, arranging with the labour inspector an inspection at the workplace, s/he risk being reported to the immigration authorities.²⁶

III. Cross-border access to compensation

The 2004 Directive on compensation sets up a system of cooperation to facilitate access to compensation to victims of crime in cross-border situations. It operates on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. According to this Directive, crime victims should be able to turn to an authority in their Member State of residence to claim compensation in the Member State where an intentional and violent crime took place.

Facilitated access to compensation in cross-border situations is particularly important for victims of trafficking in human beings, as THB is transnational, serious and organised crime. For the victims who do not know the languages and national procedures, access to information about available compensation schemes is often more difficult. Furthermore, access to compensation for cross-border cases is sometimes more difficult due to additional procedural requirements.

In the light of the above, participants are kindly requested to consider the following questions:

- ***As victim of cross-border crime of trafficking in human beings, have victims encountered any additional obstacles when claiming compensation? If yes, what obstacles have they encountered?***

Victims of cross-border crime of trafficking might encounter different obstacles when claiming compensation, these can related to bottlenecks in access to support and legal aid, including lack of access to a recovery and reflection period and or residence, lack of access to information on being able to claim compensation or available procedures or information on ongoing court procedure. There can also be issues related with the execution of the compensation grant.

²⁶ PICUM: [Summary of findings in Belgium and the Czech Republic on the implementation of the Employer's Sanctions Directive](#), 2017

The (draft) assessment report on cross border cases, highlights that when a victim is residing in another state than where proceedings take place, NGOs do not necessarily see this as a challenge or problem, as long as the NGO can stay in touch with the client. Similarly, for civil proceedings, return is not necessarily a bottleneck. Most important is to stay in touch with an NGO or a lawyer, prosecutor or an attorney representing the victim on her/his behalf based on the power of an attorney. This would ensure that the procedure and the compensation claim will continue even in a case of voluntary/involuntary return.²⁷

- ***If victims have not encountered any additional obstacles when claiming compensation, please explain how the process was facilitated?***

For successful cross border claims of compensation, it is important that all relevant actors work together and inform each other. Also it is needed that contact is kept with the victim and the victim is informed about possibility to claim compensation in the different countries and continues to be informed.

IV. Encouraging the use of criminal proceeds to compensate victims of THB access to compensation

The approach in recital (13) of the Anti-trafficking Directive lays down that the use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities should be encouraged.

In the light of the above, participants are kindly requested to consider the following question:

- ***Do you have experience with the approach that proceeds confiscated or seized from the trafficking offence are used for compensating victims of trafficking in human beings? If yes, have there been any obstacles?***

While legislation to this end exists in most countries, in practice there is very limited practice with confiscation in relation to trafficking offences or where such confiscation occurs it is quite limited in scope. The evidence from the cases collected indicates that States face huge challenges in identifying, tracing, seizing and confiscating proceeds of crime. It is striking that even in cases where convictions for THB were achieved, including for organised crime type of trafficking and other serious crime, the value of confiscated assets is minimum in most cases. Such failures in states investigative and prosecuting efforts result in practice in the victim having no real possibility of recovering the awarded compensation.

²⁷ See assessment conducted by LSI on access to compensation in cross border context (author Irena Konecna, this report is not yet published) – La Strada International 2018

There have been cases in which criminal assets are seized, perpetrators convicted and ordered to pay compensation, yet the execution proves not always possible. A specific challenge, which is not uncommon in trafficking cases given their often transnational character, concerns then recognition and enforcement of judgments in civil matters in a different member state than where a judgment was given. These issues are regulated in various European instruments. Knowledge and use of these instrument seems limited.

In addition, where criminal proceeds are confiscated, in many countries mechanisms are lacking to ensure that these are used to pay victims compensation or to contribute to a fund for victims' compensation. As the Victims' Rights Directive requires States to promote measures to encourage offenders to provide adequate compensation to victims (article 16.2), some countries established a fund that is paid for by offenders and which directly benefits victims.²⁸

What should be achieved to improve the use of seized and confiscated instrumentalities to support victims' compensation?

More awareness (and training to improve knowledge) on international related instruments and criminal courts could make more use of the possibility to order ex officio and as part of the sentence an ancillary financial penalty on the trafficker, the court could also impose specific conditions to ensure the victim receives compensation.²⁹

Amsterdam, 27 July 2018 – La Strada International/NGO platform.

²⁸ LSI's Legal Assessment: compensation practices – July 2018 (author Liliana Sorrentino) which is not published yet – La Strada International 2018

²⁹ Idem.

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.

This submission draws upon the findings of two international EU funded projects coordinated by La Strada International on the issue of compensation, including COMP.ACT (2009 – 2012) and Justice at Last – European Action for compensation for victims of crime (2017 – 2019), in particular from two – still internal - drafts reports, related to an ongoing assessment on the issue of compensation. All partners of the Justice at Last Consortium have contributed to these assessments by collecting compensation cases and providing other data and participating in a focus group meeting on June 7, 2018 in Vienna, Austria. All project consortium partners are members or LSI NGO platform, in addition also SICAR CAT from Spain is member of the Project Consortium. Other partners of La Strada International's Platform have also contributed to the project by attending the focus group meeting or by providing feedback. 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**
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)