

## **La Strada International submission for the European Commission's Third Report on the Progress made in the fight against trafficking in human beings**

La Strada International, European NGO Platform against Trafficking in Human Beings, comprising 25 member NGOs and one associate member in 22 European countries, welcomes the opportunity for civil society to provide input for the Commission's Third Report on the progress made in the fight against trafficking in human beings.

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims ('Anti-Trafficking Directive') sets clear measures to be taken by European governments for the protection, assistance, and support to trafficked persons, as well as provisions to prevent the crime, punish perpetrators and monitor and evaluate efforts. The Commission's 2017 [Communication](#) on "Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete action" defined further a set of main priorities for European Member States to fight human trafficking.

Although this 'Anti-Trafficking Directive' and Communication are recognised by civil society as a major step, we - NGOs working at a daily level to support trafficked and exploited persons and risk groups - continue to see serious gaps in the implementation of this directive and other right provisions at European national level. Moreover we have noted that the priorities set in the 'Communication' have still been far from reached. These facts, together with the absence and likely postponement of the development of a new EU Strategy towards the Eradiction of Human Trafficking and the delayed appointment of an EU Anti Trafficking Coordinator, have raised our serious concern.

To ensure an effective EU approach to human trafficking, we urge the European Commission and its Member States to ensure clear and immediate strategic actions without further delay, while taking into account the main European gaps, challenges and emerging trends, which we have outlined below.

### **A predominant focus on trafficking for sexual exploitation persists without sufficient attention for all forms of human trafficking**

Although the definition used in the EU Anti-Trafficking directive refers to all forms of human trafficking, the majority of European countries continue to have a predominant focus on addressing human trafficking for sexual exploitation, both in policy measures, as well as in the prosecution of offenders. In many EU Member States adequate policy measures and strategies to address trafficking for labour exploitation, or for forced criminality, forced begging or trafficking for organs, remain absent. Moreover policy measures related to trafficking for sexual exploitation, often focus on criminalizing prostitution, and not on promoting the rights of sex workers.

A similar strong focus on trafficking for sexual exploitation we have noticed with the European Commission's own anti-trafficking policy. The former European Anti-Trafficking Coordinator (ATC) has during her mandate from March 2011 until February 2020 primarily focused her attention on trafficking for sexual exploitation of women and children. The used argumentation that women and girls continue to be most vulnerable to trafficking, and that trafficking should be recognised as a form

of structural violence against women, supported her narrow focus of attention on the prostitution sector and her repeated call to Member States to discourage the demand, in particular by criminalising the use of services which are the objects of exploitation, which so far has been mainly interpreted as the need to criminalise the demand related to sexual services.<sup>1</sup>

Even though trafficking for sexual exploitation, is still the most detected and reported form of trafficking in the European Union, there are clear indications, including evidence provided by different EU Member States<sup>2</sup> and civil society, for the frequent occurrence of human trafficking and other severe forms of exploitation in other regulated and unregulated labour sectors, for which also men and boys are very vulnerable.

When other irregular and regular sectors continue to receive less policy attention, and fewer efforts are made to control these sectors and their workforce; the identification of vulnerable, exploited and trafficked persons in these sectors will continue to lack behind. The still low level of reported trafficking and forced labour cases in other sectors, should in fact be major reason for the European Commission and the separate EU Member States to urgently expand their focus of attention.

Moreover human trafficking should not only be regarded as an issue of gender based violence. La Strada International recognises trafficking in human beings as a very complex phenomenon that has its roots causes also in global inequality, exclusion, poverty and (armed) conflicts leading to large groups of migrants and refugees seeking work and safety in Europe. The demand for cheap labour and products in general, globalisation and deregulation of labour and non-compliance with labour laws - have made workers more vulnerable to exploitation and abuse, as is seen all over Europe. 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, as acknowledged by the ILO and other international governmental bodies.

### **There is a need for a clear *Human Rights Based* approach including unconditional support**

We see that many of the policy measures taken by European Member States and the Commission remain focussed on fighting crime, restricting migration and repressing prostitution or irregularity of persons. The growing anti-migration sentiments and even xenophobia, by both public and politicians in many European countries cause further discrimination of migrants leading to condoning situations of exploitation and abuse. The criminal justice framework often harms the rights of trafficked persons and vulnerable groups and its scope is far too limited to deal with the complexity of trafficking in human beings. 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.

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<sup>1</sup> See article 18.1 and 18.4 of DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA 'Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2. While the Directive speaks about the need to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings, the EU Trafficking Coordinator referred at numerous occasions mainly to criminalize sexual services provided by trafficked persons.

<sup>2</sup> Several EU countries reported increases of registration figures for trafficking for labour exploitation. See reports submitted by national authorities for the 3rd progress report.

A Human Rights based approach to Human Trafficking also means unconditional access to assistance and support. According to Directive 2011/36/EU, ‘assistance and support should not be made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial.’ However currently most EU Member States provide hardly any unconditional access to assistance and those not able or willing to cooperate with the authorities - often out of fear for the risk this entails - are left without any – even basic - support. These victims even risk deportation or detention.

Practice shows that even victims who do cooperate, have limited access to protection, support and assistance, if the criminal procedure has not started or is discontinued. As LSI’s member LEFÖ-IBF in Austria reports: ‘Even though the system of assistance is in principle very strong in Austria, the actions we can provide are limited, once the person is in fear of expulsion. Moreover, victims are often still required to give statements to authorities, before being able to recover and make an informed decision. LSI members frequently report that the reflection and recovery period is often not offered to presumed trafficked persons, especially not when authorities suspect that no sufficient evidence might be found for the start of a successful prosecution. This seriously hampers the human rights based approach and the correct implementation of the Trafficking Directive.

### **Many victims of Human Trafficking are not identified**

The number of identified victims of human trafficking in Europe remains low. If compared with the high estimations of the crime by international organisations<sup>3</sup> only a small percentage of the estimated amount of victims is actually identified. This has also been reason for the monitoring body GRETA to urge many European (Council of Europe) countries to improve the identification of victims of trafficking.<sup>4</sup>

According to Article 11 of the Directive 2011/36/EU, Member States ‘shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations’. However in practice we see that many persons which have fallen prey to severe forms of exploitation – with clear indications for human trafficking – are still not recognised as victims.

For specialized anti-trafficking NGOs, like La Strada International’s members, it remains still quite difficult to convince governmental actors of the need to identify severely exploited persons as trafficked persons, in need of adequate assistance and support. It is noticed that the awareness, knowledge and capacity of all those responsible for the (early) identification, including Investigation Services and Public Prosecution Services are not sufficient competent to identify trafficked persons. In many European countries, screening and identification procedures remain insufficient and incomprehensive and civil society is still not engaged by the authorities in the identification of

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<sup>3</sup> According the ILO, at any given time in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage. Source: [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), Geneva, September 2017.

<sup>4</sup> 9th General Report on GRETA’s activities, Council of Europe, March 2020.

trafficked persons. It is therefore very important that joint training and awareness initiatives are further developed, involving actors from different fields, including specialised NGOs.

Member Anti-Slavery International (ASI) in the United Kingdom notes “It is often a matter of luck as to whether victims will be identified. First Responders are untrained and are not equipped to identify possible victims, or resourced to provide interpreters, warm clothes, food, and somewhere safe for victims to rest while they understand what a referral entails. This means that NRM referrals are often made without informed consent and often contain inaccurate, or little information”. ASI also reports that “most First Responders in statutory organisations are not specialists and have not been trained on how to identify and support potential victims or how to complete an NRM form (and a badly written form can result in the likely rejection of a positive decision) and are often unaware that they have this role”.<sup>5</sup>

While capacity problems have always been an issue, we see especially now - due to the COVID-19 restrictive measures taken – a reduction in supervision and inspection activities. The NGO PAG-ASA in Belgium recently raised concern about “undetected victims who are now living in even more hidden situations with their traffickers/exploiters. In Belgium, police and labour inspectors have been working from home, which means that currently nobody is out there to organize controls in risk-sectors”. The same situation occurs in other EU countries.

Moreover cuts in funding for first responders, including police and labour inspectorates – the amount of available labour inspectorates is generally far below the recommended number by the ILO – have aggravated this, resulting in less identification and less registration of potential victims. Lacking awareness and knowledge for all different forms and signals of human trafficking leaves certain groups of victims unidentified. The network KOK in Germany reports that “strong distinctions continue to be made between the various forms of trafficking in human beings and exploitation as well as between different groups of trafficked persons, with frequent stereotypical classifications. While trafficking in human beings for the purpose of labour exploitation and serious labour exploitation in specific industries has tended to be associated with men, sexual exploitation is usually associated with trafficked women. Because of this, women are often not identified as having experienced other forms of exploitation and are therefore often not targeted by counselling/support services (outside of specialised counselling centres)”. LEFÖ-IBF in Austria observes that “women with special needs are particularly targeted for labour exploitation and forced begging. Due to their physical or psychological disabilities, this vulnerable group needs special attention in terms of assistance and support, which is often not acknowledged”. The Romanian NGO Adpare earlier warns for “mixed exploitation types - situations in which victims are exploited for more than one purpose, ‘usually having sexual exploitation as the basis and labour exploitation or coercion to commit illegal activities as a second type of exploitation’”.<sup>6</sup>

LSI members also note that men trafficked for sexual exploitation remain unnoticed. While support organisation in different European countries (e.g. including Germany, Netherlands, Belgium and Austria) support male sex workers that have been exploited, there seem in general no measures in

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<sup>5</sup> The Commission Third Report on the progress made in the fight against trafficking in human beings - UK contribution on 2019 from Anti Slavery International and the AIRE Center (Advice on Individual Rights in Europe), May 2020

<sup>6</sup> Rights at Work report, Tackling Labour Exploitation in all vulnerable labour sectors, La Strada International, March 2019.

place to ensure that male victims of trafficking for the purpose of sexual exploitation are identified. Services aimed specifically at (young) men trafficked for the purpose of sexual exploitation and victims of violence, are almost entirely absent. LSI member CoMensha in the Netherlands acknowledges that “extra attention should be paid to identifying this specific target group and that the approach to sexual exploitation of men requires a completely different (policy) approach from that of women”.<sup>7</sup> In the past, there has been an expert group on Sexual Exploitation of Men at the Ministry of Justice in the Netherlands which was later unfortunately dissolved.

The same goes for exploitation of vulnerable (often undocumented) workers that work in various labour sectors in Europe. Not only remains this group often invisible, there are also no special measures in place to reach and identify them. This goes in particular for workers in private households or small family owned businesses, isolated from the outside world, including domestic workers working for diplomats. The German NGO Ban Ying, which has taken up much efforts to reach out and support domestic workers, repeatedly raised concern that diplomats are often not held accountable in case of exploitation, because of their diplomatic immunity. Legal measures should be taken to change this.

### **Insufficient attention for the vulnerability of Third country nationals**

Over the last years, we have noted an increased vulnerability to exploitation and abuse of migrants in need of protection, including refugees and asylumseekers from 3rd countries. As noted by La Strada Czech Republic “While anti-trafficking legislation and measures are up to date to European standards and requirements, the changes in immigration policies and legislation - mainly in the field of labour migration and employment permits and the lack of abilities to change the employer - are pushing literally third country nationals into the situations of high risk of exploitation and trafficking in human beings”. However only few countries seem to have specific indicators on vulnerability for this target group in place. We see that even when severe forms of exploitation are observed, a large part of this group is not referred as presumed victims of human trafficking.

Several of our members<sup>8</sup> reported increasing numbers of presumed trafficked persons from third countries involved in asylum proceedings<sup>9</sup>, which reported severe exploitation and abuse. The majority of these persons seem exploited on route; a smaller proportion of them are exploited in the country of origin or destination country. There are also increasing reports of cases in which exploitation took place in Italy, Spain, France or any other European country of first entry. While EU countries report cases of third country nationals, in particular from Nigeria, Brazil, Vietnam, China<sup>10</sup> and also Morocco<sup>11</sup> — strikingly EU Member States have so far hardly identified cases of trafficking in human beings from countries like Syria, Iraq and Afghanistan.

In Bulgaria, despite several cases of foreign nationals that were supported as presumed victims of trafficking, no foreign 3rd country national has yet been formally identified and there have been no

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<sup>7</sup> Draft paper by Dutch NGOs, united in the Strategic Consultation Human Trafficking (SOM) working group.

<sup>8</sup> Including KOK in Germany; Comensha in the Netherlands and LEFÖ-IBF in Austria

<sup>9</sup> In the Victim of Human Trafficking Monitor 2014-2018, the Dutch National Rapporteur noted the worrying increase in the number of African victims who want to report human trafficking in the Netherlands.

<sup>10</sup> European Commission Data collection on trafficking 2018 in human beings in the EU, page 13.

<sup>11</sup> LSI member organisations Pag-ASA in Belgium and CCEM in France reported to see increasingly cases from Morocco

prosecutions for the crime of human trafficking of victims from outside of the EU, according to our member Animus Association.<sup>12</sup>

In general it is noticed that asylum procedures in Europe are speeded up, leaving very little time to check for persons' vulnerabilities and their possible identification as victims of trafficking. Early identification among migrants and refugees is often 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.

In addition, we see that trafficked and exploited migrants are reluctant to come forward to be identified as victims, as it is unclear whether they will benefit from such identification, or will face more harm. Those on the move, deny support and do not want to be identified, out of fear not to reach their final destination and be sent back. Migrant workers, in particular undocumented workers, fear to lose their jobs or housing, as well as detention and deportation when they would report exploitation and abuse by their 'employers'. "If they try to negotiate due payment and respect of basic working conditions, their employers threaten to report them to immigration and wield over them their inability to access formal complaints mechanisms without risking deportation" reports our partner PICUM.<sup>13</sup> Especially as it is common practice in Europe that labour inspectorate representatives responsible to control compliance with labour laws, also control workers on the possession of a regular residence and work status.

Safe reporting and effective complaints mechanisms<sup>14</sup> for undocumented workers to report exploitation and access justice, are lacking in most European Member States.

In the current context of the restrictive measures and the economic crisis resulting from the COVID 19 pandemic, the position of migrants has become even more vulnerable. Many migrant workers tell us that they have to continue their work, without sufficient preventive measures taken by their employers. Some are forced to continue to work despite being sick. Safety measures are not equally applied to all workers. It is expected that this situation will lead to more vulnerability for human trafficking and exploitation.<sup>15</sup> In general migrant workers are often dependent on employers and / or employment agencies for work, transport, housing and health insurance. Our member FairWork has called for safety protection for migrant workers in the Netherlands and notes that "due to the dependence on income, housing and health insurance from one party, the pressure to continue working is large and the possibility to object to unsafe work situations is very limited for migrant workers".<sup>16</sup> Also member MRCI in Ireland raised recently concern about the safety of migrant workers working in an Irish plant.<sup>17</sup> Structural and targeted efforts to prevent and improve the signalling of

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<sup>12</sup> As reported by LSI's member Animus Association Foundation in Bulgaria

<sup>13</sup> A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice, PICUM 2020

<sup>14</sup> See UNDOCUMENTED MIGRANT WORKERS: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse, PICUM

[https://picum.org/wp-content/uploads/2017/11/WorkerComplaintMechanismLeaflet\\_EN.pdf](https://picum.org/wp-content/uploads/2017/11/WorkerComplaintMechanismLeaflet_EN.pdf)

<sup>15</sup> Statement La Strada International - [The impact of COVID-19 on the protection of rights of trafficked and exploited persons](#), April 2020.

<sup>16</sup> See letter Dutch trade unions FNV and CNV, also on behalf of LSI's members CoMensha and FairWork

<https://www.fairwork.nu/wp-content/uploads/2020/04/20-035-FNV-CNV-Arbeidsmigranten-en-COVID-19-7-4-2020.pdf>

<sup>17</sup> <https://www.mrci.ie/2020/04/29/siptu-and-migrant-rights-centre-raise-concerns-over-safety-at-liffey-meats-in-cavan/>

victimization among groups most vulnerable to human trafficking, undocumented migrants, asylum seekers and labour migrants thus remains very important.<sup>18</sup>

### **Lacking access to assistance and support**

The LSI Platform also notes clear gaps in the provision of assistance and support offered to trafficked persons in Europe, including in the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. 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. Anti-Slavery in the UK reports that “Many victims fall through the gaps between support agencies and struggle to access accommodation, safeguarding, medical services, counselling, and legal advice. There is no guarantee of a residence permit following positive identification as a trafficked person and little information is available as to what happens to victims who have been through the NRM, with fears that many are exploited again’.<sup>19</sup>

As noted, assistance is often conditioned and limited, the same for shelter support. CoMensha in the Netherlands reveals that “there are currently insufficient reception places for (potential) victims of human trafficking, both for victims from outside the EU and for victims of victims from EU countries. This problem remains, also due to the low referral and outflow due to the shortage of housing”.<sup>20</sup> Our members generally report that shelter capacity is limited and that housing facilities are full or have to restrict access – especially now due to COVID-19 safety measures, for example because there are not sufficient facilities for separation of persons staying here. In general we see that shelters for trafficked persons are mainly run by NGOs which have to struggle to continue their services and support those in need, even more in times of crisis. Often these services are not part of national support structures and policies and they are excluded from governmental support and health measure programmes.<sup>21</sup> More (financial and political) support is needed to ensure sufficient access to shelter needs.

### **Severe gaps in access to Justice, including access to legal aid and compensation**

The right to legal aid is defined in the Victims’ Directive 11 (Art. 13) and should be guaranteed to all victims of crime in the EU. In order to overcome existing obstacles in accessing justice for trafficked persons, free legal aid needs to be available and accessible to all presumed trafficked persons. The EU Anti-Trafficking 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’.

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<sup>18</sup> Draft paper Dutch NGOs, united in the Strategic Consultation Human Trafficking (SOM) working group.

<sup>19</sup> The Commission Third Report on the progress made in the fight against trafficking in human beings - UK contribution on 2019 from Anti Slavery International and the AIRE Center (Advice on Individual Rights in Europe), May 2020

<sup>20</sup> Draft paper Dutch NGOs, united in the Strategic Consultation Human Trafficking (SOM) working group.

<sup>21</sup> Statement La Strada International - The impact of COVID-19 on the protection of rights of trafficked and exploited persons, April 2020.

We note however that victims are very limited in accessing legal aid, due to existing financial barriers in place and lack of specialised legal persons. Many NGOs are providing legal assistance, which in turn is dependent on sufficient funding to keep up with the demand for assistance.

Anti-Slavery reports: “Regrettably, many victims of trafficking and modern slavery are currently unable to get legal advice when they need it. This is because legislation too narrowly defines what is in scope for legal aid, procedural issues around how and when cases are funded, alongside poor decision making by the Legal Aid Agency on modern slavery cases. Immigration cases with a trafficking element are considered financially unviable by many legal aid providers due to their length and the lack of clarity around whether the work will be funded by the Legal Aid Agency. As a result, many providers do not take on this work, which leaves survivors and support workers struggling to secure lawyers, with long waits to see an immigration lawyer”.

Access to legal support is even more challenging now, as many organizations providing such legal assistance have had to greatly reduce their services and may be harder to reach for those who need assistance.<sup>22</sup> Victims are often also not adequately informed about their legal rights. Free legal assistance and aid needs to be available and accessible to all presumed trafficked persons to guarantee access to justice and remedies.

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 trafficked persons have an established right to compensation and various compensation mechanisms are in place in EU Member States, in practice the actual receipt of a compensation payment by a trafficked person is extremely rare. Research on the issue<sup>23</sup>, unveiled a number of often interconnecting barriers that prevent trafficked persons from accessing compensation. 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. Other reasons for denying compensation to trafficked persons may be their irregular immigration status or their involvement in the sex industry.

But even when compensation is granted, trafficked persons rarely have the means to ensure a compensation order is actually enforced, so that they receive some payment. The Justice at Last consortium studied 60 cases concerning victims of trafficking or other related crime. From the cases under study, only two out of three of the victims that claimed compensation, were awarded with compensation. Worryingly, only a quarter of them actually received the awarded compensation amount.<sup>24</sup> Another barrier to trafficked persons obtaining compensation is that the traffickers 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. Finally, lack of

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<sup>22</sup> Idem.

<sup>23</sup> The EU funded project ‘Justice at Last – European action for compensation for victims of crime’, 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. [www.justiceatlast.eu](http://www.justiceatlast.eu)

<sup>24</sup> [https://www.justiceatlast.eu/wp-content/uploads/2019/06/Justice-at-Last-LSI-2019-Policy-Paper\\_240519\\_DEF.pdf](https://www.justiceatlast.eu/wp-content/uploads/2019/06/Justice-at-Last-LSI-2019-Policy-Paper_240519_DEF.pdf)



residence status, lack of information, lack of means and lack of access to legal aid prevent many trafficked persons from claiming their rights, including the right to compensation.<sup>25</sup>

In all EU member states we see the need to adjust criminal and civil law compensation options for those affected in order to make them more effective. It is further urgently needed to create more awareness on the right to compensation – as well as the right of claiming back wages - of all actors involved in criminal proceedings and victims' assistance, including for the need for early financial investigation and confiscation of assets in order to ensure financial payments to trafficked and exploited persons. This recommendation is strongly supported by the monitoring mechanism GRETA. In its 9<sup>th</sup> general report, published in March 2020, GRETA stresses that “failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat human trafficking and guarantee victims' access to justice”.<sup>26</sup>

### **The private sector is not held accountable**

As noted human trafficking occurs across a wide variety of regulated and unregulated labour sectors in Europe, in particular sectors which are largely dependent on migrant workers. Especially now, with the outbreak of COVID-19, it became very clear how many labour sectors in Europe are dependent on migrant workforce and how migrant workers are keeping European economies functioning. As acknowledged by the European Commission itself, much vital work is conducted by migrant workers, both from within the EU by mobility workers as well as by workers from third countries. Referring to information recently published by the European Commission ‘on average 13% of key workers are immigrants in the EU. In some occupations - e.g. cleaners and helpers and labourers in mining and construction - up to a third of key workers are foreign born. Migrant are over-represented in low-skill key professions (e.g. personal care workers in health service, drivers, transport and storage labourers, food processing workers).<sup>27</sup> Nevertheless there is still not much effort taken by the Commission or EU Member States to ensure adequate working conditions of migrant workers or a structural regularisation of undocumented migrants workers that have played such vital roles. Several EU Member States have though recently extended periods of working permits or offered residence or regularisation to specific groups of vital workers. We would welcome more of such actions.

Migrant workers in vulnerable sectors face poor working conditions and lacking labour standards, including lack of payment, health and safety measures and in the worst case they face situations of severe forms of exploitation, like forced labour or human trafficking. La Strada Poland assisted migrant workers from various countries and noted that Ukrainians seem mostly exploited in restaurants, the food-processing industry and shops; while Asian migrant workers are often employed and exploited in restaurants.

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<sup>25</sup> See further La Strada International, Working Paper: Legal Assessment: compensation practises, Amsterdam, October 2018 and Strengthening victims' rights: from compensation to reparation,” written by Joëlle Milquet, Special Adviser to President Juncker on compensation for victims of crime, March 2019,

<sup>26</sup> GRETA 9th General Report on GRETA's Activities, March 2020

<sup>27</sup> [https://ec.europa.eu/knowledge4policy/publication/immigrant-key-workers-their-contribution-europes-covid-19-response\\_en](https://ec.europa.eu/knowledge4policy/publication/immigrant-key-workers-their-contribution-europes-covid-19-response_en)

Loopholes in enforcement or control of legislation on work permits, visas, labour rights and working conditions are misused and legitimate business structures and regulations are abused to conceal illicit activities. Via subcontracting, the misuse of the EU 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. There are also indications that political and social acceptance of exploitative working conditions, particularly among migrants, contributes to the lower profile of such conduct. As the European Fundamental Rights Agency (FRA) reported in 2019, “workers are being severely exploited for their labour across the EU, and inspections are not effective at stopping this reality”. As a result 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.<sup>28</sup>

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. Control mechanisms should be set up to monitor businesses compliance with labour standards and human rights and sanctions for businesses that do not respect human rights and the law should be enacted. 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 Member States can promote. These range from implementing (binding) due diligence procedures, improving purchasing practices and scrutinising recruitment agencies, to conducting audits, raising awareness of employees and consumers to providing resources for the sector to prevent of trafficking.

The European Commission should make a clear stand against exploitative labour conditions in Europe and commit to introducing rules for mandatory corporate environmental and human rights due diligence, also to ensure that the Commission and EU Member States do not knowingly or unknowingly make use of the services provided by trafficked and exploited persons.

### **Prosecution lacks seriously behind and labour exploitation is hardly prosecuted**

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 for human trafficking remains generally worryingly low. The punishment of traffickers remains also unsatisfactory. While all European Member States have criminalised human trafficking, not all forms of exploitation are adequately covered in practice. In general trafficking cases are challenging to investigate and prosecute and take a long time, due to lengthy procedures.

The potential breadth and narrowness of the definition has raised several issues to which States have taken quite different positions. The lack of legal guidance and absence of alternative offences prevents that many serious cases of severe forms of labour exploitation have been recognised as trafficking in human beings; the high threshold of proof makes it difficult to successfully prosecute, and in many cases prosecuting is not possible due to lack of evidence. The excessive burden which is

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<sup>28</sup> See also article “Criminal Liability of Cooperations for Trafficking in Human Beings for Labour Exploitation” [“Strafrechtliche Haftung von Unternehmen für Menschenhandel zum Zweck der Ausbeutung von Arbeitskräften”] Julia Planitzer and Nora Katona.

currently placed on victims before and during criminal proceedings is another challenge. Rights in place are therefore only available to a very limited number of victims of human trafficking.

A major challenge identified for prosecution in most of the countries is the lack of specialisation among prosecutors combined with the lack of sensitization towards the rights of the victims. Further the victims' testimony is often the central piece of evidence, and failure of the prosecution to support the victim's statement with other evidence leads to the exoneration of the defendant or prosecution for other offences.<sup>29</sup>

CoMensha and FairWork in the Netherlands both note that in practice it is difficult to provide evidence for labour exploitation under Dutch Article 237f of the Criminal Code. Partly as a result of this, many investigations are not prosecuted as trafficking for labour exploitation under criminal law, but settled under administrative law, while criminal law would offer victims more rights and benefits.<sup>30</sup> Also Animus Association in Bulgaria states that it remains difficult to get severe cases of labour exploitation investigated when human trafficking cannot be proven. "In case there is no proof of force, or physical threat or violence and the worker consented to the work to be conducted – even though consent is considered irrelevant in the UN Palermo Protocol – Bulgarian prosecutors seem to hesitate to investigate cases of labour exploitation as human trafficking, even if there are clear indicators of severe exploitation. Cases are then dropped and dealt with mainly as labour violation cases, which is not a crime defined in the Bulgarian penal code."<sup>31</sup>

In other European countries, the number of convictions for labour exploitation remain also worrying low, in part due to the difficulty in proving exploitation or the use of force according national legislation. Another reason might be the fact that decisions to investigate and prosecute are still taken on moral grounds and that sexual exploitation is still perceived and judged as 'a more severe form of exploitation' than other forms of human trafficking.

Non-compliance with the non-punishment provision, is another severe gap noticed. It is reported that victims still are punished – e.g. through administrative detention and the imposition of fines amongst other means - and prosecuted for crimes which were committed as a direct consequence of their trafficking, such as for immigration offences, the use of false documents and drug cultivation.<sup>32</sup> Still not all EU countries have specific legal provisions concerning the non-punishment of victims of trafficking in place and GRETA urged 16 European (Council of Europe) countries to take action in cases there was no specific legal provision or guidance on the non-punishment provision, and there were indications that victims of trafficking were punished for unlawful activities committed by them while

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<sup>29</sup> Council of Europe, 9th General Report on GRETA's Activities, March 2020

<sup>30</sup> Also the Dutch report The Offenders of Human Trafficking Monitor (2013-2017) shows that perpetrators of exploitation outside the sex industry (in the Netherlands a collective term for labour exploitation and criminal exploitation) are less often subjected to criminal charges than perpetrators of sexual exploitation. This means that these perpetrators are less often summoned, convicted and punished. An explanation for this, is that 'it is not always certain whether behaviour was really punishable as human trafficking'. The Dutch National Rapporteur reported that only about 23 cases of labour exploitation and criminal exploitation are brought to justice every year. Only half of those cases actually convict anyone, which indicates that tackling these forms of human trafficking occurs less frequently than for sexual exploitation.

<sup>31</sup> Rights at Work, Tackling Labour exploitation in Poland, Bulgaria and Romania, La Strada International, March 2019

<sup>32</sup> Council of Europe, 9th General Report on GRETA's Activities, March 2020

they were under the control of their traffickers”. The European Commission and European Member States should assess how the non-punishment principle can be effectively implemented.<sup>33</sup>

### Victims of Trafficking are forcibly returned, partly due to ‘Dublin Claims’

Directive 2004/81/EC regulates the granting of a residence permit to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate irregular migration and who cooperate with the authorities against suspected traffickers. However, the laws or policies determining which trafficked persons are granted residence permits vary substantially between different EU countries. Huge differences are noted between the numbers of identified victims and issued residence permits. Victims may be issued a renewable residence permit if their personal situation requires so, or if they need to stay in the country in order to co-operate with the authorities in the investigation of the trafficking offence. In general there are only few possibilities to obtain (permanent) residence on personal grounds in the different European countries.

Many difficulties are currently faced to ensure adequate support to (presumed) trafficked persons 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.<sup>34</sup>

In several European countries LSI members have assisted trafficked persons that fell under the *Dublin Regulation*. We have observed 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.

In Austria, The Netherlands, Germany and other European countries we have seen that cases are not sufficiently investigated and that presumed trafficked persons have been told that they should report their victimhood in the countries of return, in particular when there is no or not sufficient evidence for exploitation to have occurred in the country where they are residing. This means that the right to assistance and protection for trafficked persons is overruled by the Dublin convention.<sup>35</sup> Worrying is that returned victims often have no access to adequate protection and support. In Italy, the main issue is that art 18 of the 1998 Immigration law requires that the person is in immediate danger to be able to access the protection program. This condition is often not present when the person is returned ‘with a Dublin claim’, some time after experiencing human trafficking in Italy. In many cases the trafficked person is unable to provide circumstantiated information about the trafficking experience and so

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<sup>33</sup> As also recommended in the 2013 paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team, Published by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2013

<sup>34</sup> Submission for the upcoming thematic report on innovative and transformative models of social inclusion for victims of trafficking, La Strada International, November 2018

<sup>35</sup> See submissions by LEFÖ-IBF and KOK for the Commission’s Third Report on the progress made in the fight against trafficking in human beings.

cannot cooperate with law enforcement and does not easily enter the protection program. Moreover the 'famous social path for victims of trafficking in Italy' is often not implemented and even when applied, this requirement of danger remains to exist.<sup>36</sup>

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. European attention is required to ensure an effective approach to human trafficking committed against foreign victims with a Dublin status, as well as to address the emergence of inequality between foreign victims without and foreign victims with a Dublin status, due to policy adjustments in several EU countries.

Further it should be explored how to use and combine the anti-trafficking framework and the international protection system 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.

### **Lack of access to residence and social inclusion for victims of trafficking**

Social inclusion of trafficked persons is of major importance and needs to be realised, whether in countries of destination or after return to the country of origin or another third country. Economic empowerment refers to strengthening the economic position of trafficked persons, providing them with skills, resources, and confidence to financially support themselves and their families in the short- and long-term. Comprehensive support and integration programs should include empowerment through vocational training and job placement or start-up support. Clearly access to employment and economic independence is key in the mental well-being and health of trafficked persons, as it impacts personal identity, self-esteem, and social recognition and contributes to social integration. Regretably we see that many victims of trafficking, including those with a valid residence permit, still have no adequate access to legal employment.

In Austria, LEFÖ-IBF informs that the temporary residence permit on special protection allows access to the labour market only with a granting of work permits. "The employer must apply for the work permit which is tied also to this specific employer. The work permit has to be renewed each year and a new work permit is required for every new job. Even for contractual changes within the same company, may it be a change of positions or a change in the amount of weekly working hours, a new work permit must be issued. This leaves trafficked persons vulnerable to dependency of employers. If after a year, the legal proceedings are still active and the woman is able to establish a secure livelihood and can prove that their German language skills are at least at the level of A2, they have the

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<sup>36</sup> Notes from LSI members' discussion on Dublin returns. See also [article](#) by Finish Immigration Services – 'The assistance system for victims of human trafficking in Italy is over-strained – the returning of persons to be considered more carefully', 2017

option to switch to a Red-White-Red Card plus (para 41a NAG) with free access to the labour market. However, the barriers to meet all the requirements are high due to the condition of an ongoing criminal proceeding".<sup>37</sup>

Counter trafficking NGOs in Europe work on ensuring access to employment. However national employment programmes and opportunities differ and again are often much dependent on financial resources, as well as the skills and educational background of the victim. There are also several other challenges, e.g. limited job opportunities and competitive labour markets as well as preconceptions of employers etc.

It is needed to increase of access to employment and vocational training for victims of trafficking and to monitor the impact of vocational training and employment programmes, also at individual level to ensure long-term success of the program and preventing re-victimization. Best practises that support the reintegration of trafficked persons and other vulnerable groups, including regularisation programmes, information desks for migrants and migrant and refugee employment and integration programmes should be promoted.<sup>38</sup>

### Hampering coordination and referral

A last issue of concern, that we would like to raise, is the lack of adequate European and national coordination. While EU Member States have established national coordination mechanisms, national strategies and actions plans to address human trafficking, as well as established national referral mechanisms (NRMs), we see still gaps in adequate coordination, cooperation of relevant actors and the referral of victims, via established NRMs. As mentioned we are concerned about the current absence of an EU Strategy and the delays in appointing a new EU Anti-Trafficking Coordinator. We also note that some EU countries still have no adequate coordination structures in place, or lack strategies, national plans or effective referral mechanisms.

For example LSI's member KOK reports that Germany still has neither a national nor a government-led political coordinating body, responsible for addressing trafficking in human beings, nor corresponding bodies in its federal states. According to the government, the creation of such a coordinating body at national level, is being discussed. There is also no national German anti-trafficking action plan.<sup>39</sup>

In most EU countries we further see no nationwide care referral coordination and or observe clear regional differences. While, it cannot and should not be the case that it depends on the region or city where a victim is identified, what the support provided entails. It is further noted that established action plans or mechanisms lack sufficient funding for adequate implementation.

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<sup>37</sup> Submission LEFÖ-IBF for the Commission's Third Report on the progress made in the fight against trafficking in human beings, May 2020.

<sup>38</sup> Submission for the upcoming thematic report on innovative and transformative models of social inclusion for victims of trafficking, La Strada International, November 2018

<sup>39</sup> See KOK's submission for the Commission's Third Report on the progress made in the fight against trafficking in human beings, May 2020

In 2018 the EU commissioned a report for a study to evaluate the existing NRMs in place, several of our member organisations contributed to this report, unfortunately it still has not been published by the Commission. It would be good to publish the results, so Member States can address the bottlenecks in existing NRMs, especially also related to support and funding offered.

European countries should improve central operational coordination by ensuring an adequate coordination structure involving all relevant actors with agreements on responsibility, e.g the private sector, trade unions and migrant rights NGOs should be more engaged in common action.

Efficient monitoring mechanisms to evaluate the impact of measures taken are often absent. European governments should examine the possibility of establishing an independent National Rapporteur or designating another mechanism as an independent organisational entity, to ensure a critical monitoring of efforts and effectiveness of anti-trafficking activities of state institutions.<sup>40</sup> The same goes for the evaluation of joint European actions and strategies, coordinated by the Commission.

### Recommendations

We hope that the European Commission is taking these concerns of La Strada International and its members into 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. Based on the gaps highlighted above, we would like to make the following recommendations:

1. Develop without further delay a new and effective EU Strategy to Eradict Trafficking in Human Beings, to be adopted in 2020.
2. Appoint a new qualified EU Anti-Trafficking Coordinator according a transparent procedure.
3. Ensure that policies and measures addressing human trafficking are based on a human rights based approach, and that policies and measures focus on all forms of human trafficking,
4. Entitle trafficked persons to protection and support without the condition to cooperate with authorities and ensure that for their identification, the initiation of criminal proceedings is not required.
5. Strengthen inter-agency cooperation to improve the identification of all forms of human trafficking. Identification should not be the responsibility of a single government agency only, but should be carried out by multidisciplinary teams including (civil society) organisations providing services to trafficked persons. All actors responsible for identification should be comprehensively sensitized and trained in this capacity.
6. Increase efforts to proactively reach and inform all vulnerable persons, including asylum seekers, refugee and other migrants from 3rd countries, as well as undocumented migrants, minority groups and minors, those working in private and diplomatic households, as well as those working in other sectors that are vulnerable for exploitation; like domestic and care work, agriculture and construction.

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<sup>40</sup> See also recommendation by GRETA, 9th General Report on GRETA's activities, March 2020

7. Create legal measures to hold diplomats accountable in case of their involvement in the exploitation of (domestic) workers.
8. Explore the potential of co-ethnic communities to raise awareness and reduce risks of exploitation and human trafficking, as such communities might be able to assist and facilitate migrants in their search for employment.
9. Create opportunities for workers, including undocumented workers, to safely report exploitation without fear of arrest and deportation and to have access to adequate complaint mechanisms;
10. Delink the inspection of violation of labour laws from the control of migration or residence status of workers.
11. Ensure that Informal and unregulated work is brought within the protection of labour laws and that labour rights are applied to all workers irrespective of migration or residence status.
12. Step up efforts to regulate (inter) national placement agencies for skilled workers and unskilled personnel and temporary employment agencies.
13. Adjust criminal and civil law compensation options for those affected in order to make them more effective and promote training and awareness among all relevant stakeholders, including prosecutors, judges and social workers about the possibilities for claiming and granting compensation.
14. Make adequate free legal support available for all exploited and trafficked persons and ensure that legal aid is available for the full length of the court process, including for enforcement of compensation orders;
15. Ensure more efficient and effective investigations in order to increase the number of arrests, and thereby the number of suspects and successful prosecutions.
16. Apply the non-punishment clause: ensure no criminal prosecution or impunity for crimes and administrative offenses committed in connection with human trafficking or coercion of the victims.
17. Encourage financial investigation, freezing and confiscation of assets at the initial stages of inquiry, including by monitoring the implementation by Member States of Directive 2014/42 on confiscation of criminal assets. Money claimed should be used to compensate victims directly or used for funds supporting victims.
18. Realize the establishment of a compensation fund, in case of absence of such fund.
19. Increase funding for victim support services and NGOs to inform and assist victims and to create safe shelter opportunities.
20. Increase access to employment and vocational training and economic empowerment for victims of trafficking and monitor the impact of vocational training and employment programmes to ensure long-term success of the program and preventing re-victimization.
21. Best practises that support the reintegration of trafficked persons and other vulnerable groups, including regularisation programmes, information desks for migrants and migrant and refugee employment and integration programmes should be promoted.
22. Develop and adopt legislative proposals that compel businesses to make their supply chains transparent and disclose what actions they are taking to avoid exploitation in their operations.
23. Set up control mechanisms to monitor businesses compliance with labour standards and human rights, especially the monitoring of contractors and subcontractors and job recruitment agencies in particular high risk sectors for trafficking in human beings and enact sanctions for businesses that do not respect human rights and the law.



24. Be transparent about government' procurement policies and critically assess own supply chains and services to ensure these are free of forced and exploitative labour. Additional care should be taken for monitoring and preventing human rights abuses by business enterprises owned, controlled, or subcontracted by the state.
25. Raise awareness and provide information about the origins of products and services, to enable European customers to make informed decisions about their purchases and promote products and services made without labour exploitation and human trafficking.
26. Provide temporary residence to all presumed trafficked persons; when applying the Dublin Convention, take in consideration the right of safe return or referral and ensure that persons with a Dublin claim can report the crime of human trafficking in any European country and receive access to a protection and support.
27. Ensure that at national level a political coordinating body is responsible for all forms of human trafficking; and that adequate national strategies, action plans and effective referral mechanisms are in place and are financially supported.
28. Where absent, establish independent national Rapporteurs whose independent responsibilities should be clearly outlined to distinguish it from political organs and other official representatives, making it a valuable addition to the existing system.