

**EESC Public hearing on the revision of the
EU Anti-trafficking Directive 16 February 2023**
Presentation Suzanne Hoff – La Strada International

La Strada International is a European NGO Platform comprising 30 AT NGOs in 24 European countries, including 14 EU countries. Our members assist a large part of the detected and assisted trafficking persons in Europe each year. Through their direct assistance and prevention work, they also monitor the situation on the ground and the implementation of legislation in practice. Next to monitoring the implementation of the EU anti-trafficking Directive, since it has been adopted back in 2011, we have been closely following its revision process. The evaluation has revealed the remaining bottlenecks and the lack of implementation, next to ways for improvement.

La Strada International can generally support the amendments proposed by the Commission, with the exception of the binding criminalisation of the knowingly use. We however regret that the revision was not used more as an opportunity to strengthen trafficked persons rights.

We see in particular the need to strengthen the provisions on **non-punishment** (article 8); **Assistance and support for victims** including children (art 11, 13 and 14) including their **access to residence; victim compensation** (art.17) and **prevention** (art. 18). I will elaborate on this further, but let me first provide some feedback on the proposed amendments by the Commission.

Feedback on the current proposal

Firstly as for amendments to the definition (article 2 of the directive) - we understand the reasons for **including forced marriage and illegal adoption** among the types of exploitation. We however underline that these possible forms fall within the definition of trafficking, only when one of the acts, one of the means and the purpose of exploitation can be established.

We therefore see the need for more guidance on the interpretation of these forms to avoid a further lack of clarity and different approaches towards the application of the definition in the different EU Member States. Currently we see that an exploited person can be recognised as a victim of human trafficking in one EU country, while not being identified as such in another EU MS.

To promote more clarity, we would propose more reference to labour exploitation or particular exploitative working conditions, as referenced to in the EU Employers Sanctions Directive. Especially as we see how difficult it actually is, to get cases of severe labour exploitation recognised as human trafficking. There are currently some positive developments in various EU countries to better define severe forms of labour exploitation in national criminal law.

We can also support the **proposed explicit reference to human trafficking offences committed or facilitated through information and communication technologies**. Still very little is known on the use of technologies for the different forms of human trafficking, also as details on this are often not registered by those providing support to trafficked persons. We believe more reliable data needs to be collected, also to prevent all kind of claims made that are currently not based on much evidence.

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Extending mandates of law enforcement to address online recruitment and online exploitation of persons, should be carefully monitored for its **impact on data and privacy protection of persons**. The same goes for the proposal for an **EU wide annual data collection on human trafficking**. Also here it should be ensured that harm preventive measures are embedded.

In relation to the **formalizing and establishment of NRMs**, and a possible **European Referral Mechanism**, we believe that civil society actors should be involved in both their development and implementation. Such a European Referral Mechanism should primarily focus on the adequate and safe referral of victims conducted from a human rights-based approach, including needs and risk assessments.

It should not be (mis)used as a vehicle for victim return, including an increase of Dublin returns of victims of trafficking. We are concerned about this, not only as we see how often trafficked persons with a Dublin claim are returned, but also in the light of the current negotiations around the EU Pact on Migration and Asylum, where we clearly hear the call for increased return and deportation of TCNs.

We welcome the **Mandatory sanctions for legal persons¹**, believing that this measure together with the proposed **EU ban on forced labour products** and the **due diligence proposal** can hold companies and employers more to account. All these proposals we would like to see assessed for its impact on all potential affected workers, while we also call for more reference to workers' rights and engagement of workers in implementation of proposed measures, as well ensuring that workers have access to remedies in case of exploitation or other severe human rights violations, or as a result of the measures, due to which for example they have lost their jobs and income.

One of the amendments proposed, **we cannot support**. This is the proposal **for a binding criminalisation of 'knowingly use' of services of trafficked persons**. We though realise that the current national EU practice is also not desirable. Currently two-thirds of the EU Member States have already introduced this provision in national legislation and mostly apply this criminalisation only to users of sexual services. This seems more an attempt to tackle prostitution. than human trafficking.

We oppose the binding criminalisation of knowingly use for several reasons:

Firstly, according to research conducted by La Strada International, there is **currently no proven impact of this criminalisation on combating human trafficking**. There is only very limited prosecutorial activity and few convictions across the EU also because of the **practical difficulty** to proof the knowingly use. This has also been acknowledged by the **Commission and by the OSCE**, who are though still advocating for a binding provision.

¹ legal persons can be penalized by sanctions that can exclude them from receiving public aid or support, permanent temporary or permanent closure of establishments, or temporary or permanent disqualification from carrying out commercial activities.

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Secondly for the effective use of this offence, it is needed to firstly **successfully prosecute human trafficking**, which is not simple. As we know investigations and prosecutions on trafficking lag seriously behind. We are

concerned that criminalisation of consumers – **who are likely not intending to exploit those that provide their services and not responsible for their exploitation** - will take further away attention and resources to ensure further progress on prosecuting the real perpetrators of human trafficking. This support the current situation of impunity of those responsible for the crime.

We are also worried that literary every European citizen, **could risk criminalisation** as I guess we all know from the media and other sources about the **severe exploitative practices** in Europe. Victims of trafficking have been identified in many different labour sectors in Europe, both regulated and non-regulated sectors.

Further and this is for us very important, we see harmful side effects of this proposed criminalisation **both on victims and precarious (sex) workers and other workers**. Those selling sexual services are compelled to move their activities to more isolated and unsafe places, where they suffer abuses and violation, which often goes unreported. Criminalisation results in **less access to health, social and legal assistance** and **significantly lower chances** to identify individuals who have been trafficked.

Also we see that **criminalisation of sex work or irregular work** is currently often used for immigration enforcement and used to detain and deport workers without any assessment on their victimhood; and as such there are logically low identification figures on trafficking.

Criminalising the knowingly use will not give trafficked persons more rights, not only is it unclear whether they as **witnesses** will actually receive access to protection and support, also we hear they can be requested to testify and contribute to court procedures against users of their services, which can lead to **revictimisation**.

Instead we see **much more** added value in other prevention measures, including the **structural provision of information** including by the labour inspectorate and police and the establishment of **effective safe reporting and complaints mechanisms** to ensure that those facing exploitation and abuse can safely report crime. Such mechanisms - including **a clear firewall between labour inspection and immigration enforcement activities** - are currently lacking in most EU Member States.

Now let me lastly, also reflect shortly on some changes we would like to propose for the EU THB Directive in order to strengthen victims' rights. I will focus on 3 main issues; non-punishment, compensation and access to residence. We have more wishes, but I focus on these.

As for Article 8 - Non-punishment of the victim – We would like to see more stringent obligations for states to ensure the effective implementation of the principle of non-punishment, including the obligation to adopt specific penal provisions and prosecutorial guidelines applying to trafficking cases.

We believe there must be a legal **obligation to apply the non-punishment provision as early as possible**, and thus to discontinue any proceedings and any measures implying restrictions of victims' rights including (but not limited to) detention, as soon as relevant grounds have been found.

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Also it is important to **legally ensure** that the non-punishment principle applies to criminal, civil, administrative and immigration offences, regardless of the gravity or seriousness of the offences committed. Such an approach has been endorsed by the Human Rights Council Special Procedures.

As for article **11 - Assistance and support for victims of trafficking in human beings**

- For nearly 30 years we have **been calling for unconditional support to victims of trafficking**. There should be an additional pathway, based on a victim's personal situation, that provides for assistance and support, not necessarily requiring their cooperation in criminal proceedings.
- Currently, also the **granting of a residence permit is conditional**. A regular **residence status is essential** to enable trafficked persons to claim and exercise their rights. We believe a new provision on residence permit should be introduced, providing access on personal grounds, to ensure that **third-country nationals enjoy the same rights set forth** for any trafficked persons by the directive.
- Furthermore, **trafficked persons must always be allowed** to claim international protection or similar forms of protection provided for by national legislation, including during identification and referral procedures. Trafficked persons who are applicants for or beneficiaries of international protection, must be entitled to assistance and support measures laid down under anti-trafficking and asylum regimes.
- **Then lastly, as for article 17 on Compensation to victims**, we would like to see more binding measures to enhance access to compensation. The directive should reflect that **recovered assets and administrative fines**, including those imposed on companies, should be used to pay compensation to trafficking victims. Further all damages suffered by a trafficked person including **moral damages, medical expenses** and **expenses afforded for legal assistance** and for **victim participation** in criminal procedures should be covered, which is currently often not the case. We would also like to ensure that legal assistance is provided to victims not only to access compensation procedures but also for the execution of compensation orders. In fact it happens that awarded compensation orders are not enforced as a consequence of the lack of a victim's financial resources to afford legal assistance for an execution procedure. This should be corrected in current practice.

Thank you for your attention.