



**ERA training – Reducing Demand and preventing  
Trafficking in Human Beings,  
5 – 6 June 2023, Krakow Poland**

**Presentation Suzanne Hoff, International Coordinator La  
Strada International**

La Strada International, a European NGO Platform against trafficking in human beings that represents 31 anti-trafficking NGOs in 24 European countries. We are working in the field for 28 years and provide direct support to trafficked persons and groups vulnerable to human trafficking. We also work on information and knowledge exchange, capacity building of NGOs and other stakeholders and cross-sectoral cooperation. The focus of the international secretariat in Amsterdam is in particular on monitoring and advocacy for change to ensure accountability for the effective implementation of European Anti-Trafficking policies and regulations.

## **Addressing Demand**

In our 'watchdog role' we have been quite critical about the demand approach in the human trafficking field and actually question the positive impact of this approach. While the term was introduced in anti-trafficking legislation more nearly 23 years ago, we see so far very little added value of the demand approach and related measures, mainly due to the interpretation of 'demand', the lack of implementation and the limited impact so far of these measures on the prosecution of human trafficking or the strengthening of trafficked persons rights.

La Strada International has followed the 'demand debate' in the anti-trafficking field, from the start and we have joined several studies conducted related to the issue, including a large EU funded research project back in 2014 – 2017, called DEMANDAT which was coordinated by the International organisation ICMPD in Vienna, Austria. This project was run by a multi-disciplinary consortium, comprising actors across 7 European countries.

The aim of this project was to analyse (the impact and potential) of demand-side policies and practical measures. Research areas focused on the concept of demand; policy Instruments in steering Demand; Demand related to different forms of THB including a comparative country analysis on governmental responses; as well demand campaigns and impact.

It focussed on multiple forms of human trafficking (domestic work policies and impact, prostitution policies) and role, potential and limits of actors including law enforcement actors as well as on human trafficking in global supply chains.

### **The research findings of this project made very clear that:**

- Demand remains a vague, artificial, political term. "Demand" in the context of human trafficking is often an ideologically loaded term for which there is no precise agreed upon definition and understanding.
- Relevant stakeholders look differently at 'demand'; for example we noticed that law enforcement bodies often described all their prevention work as a demand related measure. Similarly all policies that set conditions for labour sectors, including the prostitution sector or measures to ask businesses to conduct due diligence are seen as demand measures, while it is often not clear, whether these measures really address demand, or rather are actions to prevent or combat human trafficking.
- Clearly the term 'demand' used in the AT field is not in line with its original economic term, which is "Demand is the desire, willingness and ability of consumers to pay a certain price for a product or service at a given period".



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- Secondly, there is often no distinction made between demand for services or products versus the actual exploitation, neither a good assessment conducted prior to establishing policies and measures, which defines which demand fosters or leads to exploitation and abuse?
- Thirdly, the demand measures taken often strongly focus on **criminalisation**, in particular the criminalisation of prostitution, while Anti Trafficking Legislation is quite clear that measures should discourage all the demand that fosters exploitation. You see that generally demand measures and policies focus much less on workers' rights and empowerment of workers, including sex workers, domestic workers etc. Also it is clearly noted that in the demand discussion, sex work **is still very often conflated** with human trafficking and no difference is made between forced and voluntary prostitution.
- The conflation of trafficking with prostitution and the strong focus on anti-prostitution measures also ignores the fact that many persons are trafficked for economic purposes other than sexual exploitation. **According to the latest ILO estimated, this is nearly 50% globally.** Moreover exploitation and unjust treatment of workers of any profession are prevalent in the majority of labour markets in Europe, as is the increasingly growing precarisation of work.
- If it is not necessary for demand itself to lead to human trafficking; but sufficient that the exploitation fostered by the demand leads to trafficking, as the OSCE states, should we then criminalise all the demand for services and products related to all labour sectors where severe exploitation exists? These are nearly all labour sectors.
- Lastly, with all policies and measures taken, there is hardly any discussion, **why the demand for a product or services does not lead to better workers rights**, for example the high demand for apple phones and computers, which generated quite some income for the company, seems not to have led to better workers' rights for those producing these products. However the **demand for professional football players and highly skilled personnel**, like IT specialists, seemed to have increased to high income payments and luxury for those that offer these 'specialised' services.

So we can wonder **if it is the demand we should tackle or rather the response to this demand or the supply?** E.g. if we follow the logic of some that sexual exploitation is a result of the demand for sexual services and that legislation of prostitution facilitates this (which we at La Strada International do not agree with), we could also decide that the consumer demand for apple iPhones and computers should be criminalised to ensure that workers are not exploited by apple. We should also question ourselves: why do we not invest in 'exploitative free produced computers and phones', and why do not all anti trafficking stakeholders buy and use a Fair phone yet? If they really want to address human trafficking and labour exploitation.

Another outcomes of the DemandAT research, was that there are **high expectations of demand measures** versus in fact very limited impact assessment conducted. We actually do often not know what the impact of demand side measures have been as this is simply not evaluated. Moreover many claims made, often lack clear evidence.

For example in Sweden, the reduction of identified trafficking victims is promoted as a successful impact of their anti-prostitution policies or so call Nordic Model, while in the Netherlands, where



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prostitution is legalized – or maybe we should say regulated - the number of identified trafficked persons has also declined. Interesting is, that in the Netherlands this decline is actually not promoted as a successful impact of the Dutch legislation, but rather used by stakeholders in the field to raise concern and highlight that more is to be done to ensure more victims can be identified.

## Questionable impact

The different studies done on ‘demand measures and impact’ made clear that we cannot rely too much on demand side measures and that these would only work if these are implemented alongside other measures. Lastly, we saw repeatedly that while there are demand measures defined on paper, **they often lack adequate implementation in practice**. You see this for example also with the criminalising of the knowingly use, about which I will reflect later.

## International obligations to discourage demand

If we look at the international obligations to discourage demand, there is the following international anti trafficking legislation that is relevant.

There is the UN Palermo Protocol of 2000, of which article 9 (5) addresses demand. There is also the CoE Convention, articles 6 and 19 and the EU anti trafficking Directive, article 18.1 and 18.4.

The notion of demand in relation to THB was first embedded in the UN Palermo Protocol of 2000. Text then used 20 years ago, was later embedded in the CoE Convention and THB Directive, and calls for **‘states should to adopt measures to discourage demand that fosters all forms of exploitation that leads to trafficking in human beings**. What the protocol didn’t define is what actually demand is, what should be discouraged by the measures? So this remains still largely open for individual interpretation in the protocol, as well as in the Council of Europe Convention and EU anti- trafficking Directive.

In line with the **UN Palermo Protocol** and the **Council of Europe Convention on action against human trafficking**, the THB Directive asks states (18.1) to take appropriate measures, such as **education and training**, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

It is important to note, that which measures are taken by countries to discourage and reduce the demand is not described in much detail. Also it is important to note that **there is currently no legal obligation to criminalise prostitution**.

Moreover article 18.4 states currently: To **consider** taking measures to establish as a criminal offence the use of services which are the objects of exploitation (definition Art 2) with the knowledge that person is a victim .. So the establishment of such a criminal offence is also currently not required.

However negotiations are currently ongoing for the revision of the anti-Trafficking Directive and the Commission has proposed in December 2022 to replace article 18.4 with an article 18.a, which would read that:

**1. .. MS shall take the necessary 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.**



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**2. MS shall take the necessary measures to ensure that an offence as established .. is punishable by effective, proportionate and dissuasive penalties and sanctions.**

This amendment proposal seems supported by the Council and the Rapporteurs and Shadow Rapporteurs of the EU Parliament, although the EP current proposal goes further (the EP Rapporteurs suggest to take ‘with the knowledge’ out of the provision).

The proposal to introduce a binding provision on criminalisation of the knowing use is seen as a compromise proposal based on the feedback provided by different stakeholders, during the evaluation of the EU THB Directive.

### **Evaluation by EC and revised proposal**

Even though there currently is only very limited research available on the possible impact and side effects of criminalising the ‘knowing use’. There have been two studies published by the European Commission and both state that the impact is not known, and generally that there seems very little impact.

We therefore as La Strada International decided to **conduct desk research** and a **series of interviews with 19 experts from 10 EU countries** back in 2022, as we expected this proposal, to reveal the practical effects seen by experts in the field.

The [policy paper](#) based on this research can be found on our website and online documentation centre. We first looked into the legal landscape of EU MS. There is quite some variety in what is criminalised/strong focus on knowingly use of sexual services and we learnt that two-third of EU MS introduced (partial) criminalisation of ‘knowing use’ in their legislation.

These 19 Member States have adopted either legislation criminalising the knowing use of services exacted from victims of trafficking for all forms of exploitation (BG; HR; HU; LT MT PT RO SI). In addition, EL legislation covers sexual and labour exploitation) **or legislation that criminalises directly or indirectly the knowing use of services exacted from victims of sexual exploitation.** (DE, EE, FI, FR, IE, LV, LU, NL, SE, EL, CY)

The **scope has thus mostly been limited to criminalisation of use of sexual services** when known that the persons who delivered the sexual services was trafficked.

In most EU countries **it is required that the user ‘knew’ that the person was trafficked or there should be evidence that he should have known.** In Ireland, the burden of proof was shifted to the defendant, who should prove not to know, or that he or she could not have known. In Cyprus there is a strict liability offence, meaning that there is no requirement that the user knew or should have known.

When we interviewed persons and looked into the application in process, as also the earlier studies we mentioned had done, we noted as well the:

- Limited data, as well as the limited amount of persons/cases prosecuted for the knowing use. We even found out that some data in the earlier EU reports were not correct and the figure was even lower than initially suggested.



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- For the whole of the EU region, there were 18 convictions in 2015 – 2016 and possibly 27 in 2017-2018. There is no data from afterwards. All the experts we spoke with confirmed **not to know of any cases** over the last 2-3 years.
- Also important to note is, that based on aggregated data provided by the European Commission: 4 EU MS reported all convictions
- What also became clear is that in countries where there is this offence it is very difficult to establish the required mens rea; to prove that the user knew that the person providing the services was a victim of trafficking

## Challenges reported

All stakeholders and also the earlier studies reported different challenges to use the offence in practice. Firstly there is still little (public and expert) awareness of the provision, also high level experts we spoke with, were often initially not even aware of the provision and or could not tell that there was such a provision in national law. Also as mentioned they hardly could provide data on cases prosecuted under this offence.

Secondly, when data is shared, it is clear that there is limited or no jurisprudence: also legal professionals stated to note little clarity on the application of the offence and in particular as mentioned, how to prove the mental element (knowledge) – also they mentioned the lack of a common approach on this issue. Interpretation & proof requirements differ too.

Actors in particular prosecutors and police mention the limited available resources and capacity for law enforcement to investigate and prosecute violations related with the offence of knowing use of trafficked persons services. They also stated that the offence, next to the crime of human trafficking is very difficult to investigate and proof and thus prosecute.

What was also mentioned is the uncertainty whether a conviction for THB is a actually a prerequisite to prosecute user for 'knowing use'. The experts we interviewed were generally stating that THB should be proven first before you can prove the knowing use offence.

Lastly, we were repeatedly told that the effective use of the offence depends on successful THB prosecutions and then of course we know that there are still very limited successful THB investigations and prosecutions

## Conclusion

To conclude then on the study, there were generally strong doubts about enforceability in practice, related to the countries we researched we learnt of only two national studies conducted in Finland and Germany that tried to look more into the impact. We therefore conclude that there is currently no proven impact of this criminalisation on combatting human trafficking.

Also there were strong doubts about (and no data showing the evidence) of the positive impact. As mentioned already this is due to the only very limited prosecutorial activity and few convictions across the EU. Interesting is that actually both proponents and opponents of a binding offence, share the view that this provision will (continue to) lead to only few prosecutions.



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It was generally acknowledged that the preventative and normative function of the offence should not be overestimated, criminalisation might therefore not lead to major changes. Also generally we see that the impact of criminal law is restricted.

Interesting is also that we learnt that the public and relevant stakeholders were hardly informed when there was such an offence at national level, and generally no campaigns were conducted to inform the general public – which could be criminalised - about the new legislation/offence.

Furthermore, interviewees expressed a range of concerns regarding the harmful side effects for victims and precarious (sex) workers. Examples include the increased vulnerability and stigmatisation, as well as risks of secondary victimisation and eroding trafficked persons' rights. We therefore conclude that the provision seems not to aim and does not strengthen victims' rights. If trafficking is not prosecuted, but the offence is (if possible) it remains also unclear, what rights the person that witnessed and testified against the user of his or her services has, that is still not known, neither really discussed when promoting this measure.

## Recommendations

I conclude with a few recommendations:

- Further guidance is needed on the demand approach, including possible offence which criminalises the knowingly use of services provided by trafficked persons (e.g. which services, only direct services, who can be criminalised?)
- More focus is also needed on other preventive measures (incentives, sanctions, monitoring self-regulating, auditing systems like voluntary codes, certifications and corporate social responsibility (CSR))
- Consistency should be ensured with other policies and actions & context specific situations. Also demand measures must be combined with measures tackling supply & root causes Demand-side measures shape purchasing conditions in a market context - to be combined with other anti-trafficking efforts.
- Address vulnerability of specific workers and labour sectors via awareness and rights protection; including ensuring that there are safe reporting/complaint mechanisms in place, more legal paths to work legally in sectors, regularisation etc. Public awareness should address the current social acceptance of exploitative work situations.
- Ensure multi-stakeholder cooperation, including involvement of trade unions, NGOs, workers and consumers – ensure there is a choice for consumers & responsibility of govern & private sector. Address the liability of companies for the exploitation of their employees as well as binding due diligence measures and **Promote 'Fairly produced'** services through the certification of sectors to give consumers a choice;
- And lastly, ensure adequate monitoring and evaluation and assess the impact of (legislative) measures which aim to reduce demand for trafficking; assess the impact on reducing human trafficking but also on possible collateral damage. Such assessment should also looking specifically into the impact on the most vulnerable population such as migrants and other precarious workers including sex workers.



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