

Statement by La Strada International on revision EU Anti-Trafficking Directive

On the 19th of December 2022, the European Commission [proposed a revision](#)¹ of the EU Anti-Trafficking Directive (2011/36/EU), based on the evaluation conducted. La Strada International generally welcomes the proposed amendments to the Directive.

The Platform however opposes the proposal for a binding criminalisation of ‘knowing use’ of services of trafficked persons. Currently, there is no evidence that this will have any impact on the prevention or prosecution of human trafficking and is likely to have severe harmful effects on victims and related vulnerable groups.²

La Strada International regrets that the proposed amendments only go as far as addressing some of the shortcomings highlighted in the evaluation and progress reports; the legislative changes do not address the protection of the rights of, or the assistance and support to trafficked persons. This could have been achieved in particular by strengthening existing provisions on *Non-punishment* (art.8); *Assistance and support for victims including children* (art 11, 13 and 14); *Victim compensation* (art.17) and *Prevention*, with a special focus on labour exploitation (art. 18).

La Strada International – European NGO Platform against Trafficking in Human Beings – has closely monitored the evaluation process of the EU Anti-Trafficking Directive and provided feedback to the evaluation consultations. In the fall of 2022, a working group of experts was established by La Strada International to review the current text of the Directive, to see how the Directive could be strengthened to better protect the rights of trafficked persons and to prevent human trafficking in all its forms. In January 2023 we aim to present our proposals before the negotiations at the Council and EU parliament level commence. Today, we set out our initial reaction to the proposed changes by the European Commission:

- **Forced marriage and illegal adoption to be mentioned among the types of exploitation the definition of the Directive covers**

La Strada International believes that the inclusion of different types of exploitation in the definition of the Directive can help to provide more guidance and ensure more uniform application of anti-trafficking legislation across the EU.

Currently the interpretation and application of the definition differs considerably in EU Member States. Generally, there is quite a high threshold to prove the elements of human trafficking; meaning the act, means and purpose of exploitation, while unclarity about when the types of exploitation

¹ Proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM/2022/732

² La Strada International, Policy Paper: The Impact of Criminalising the ‘Knowing Use’ on Human Trafficking, December 2022.

become human trafficking remains. The same will go for trafficking for forced marriage and illegal adoption that may amount to trafficking. If human trafficking cannot be proven, victims of the different types of exploitation cannot claim their rights, due to a general lack at national level of separate offenses criminalising these types of exploitation, including also forced labour and labour exploitation. Related to the latter, La Strada International would welcome reference to particular exploitative working conditions, as reflected in the EU Employers Sanctions Directive.³

- **Explicit reference to human trafficking offences committed or facilitated through information and communication technologies, including internet and social media**

La Strada International acknowledges the need to address online exploitation and recruitment as well as the capacity of relevant stakeholders to combat the online dimension of the trafficking crime. We do want to stress that there is still little evidence about the exact scope of online recruitment and online exploitation, noting that NGOs and governments do generally not record this data in their registration. The little that is known in this field is generally focussed on online sexual exploitation. We would further like to highlight that measures that address online recruitment and exploitation – including the extension of powers for law enforcement bodies to collect and monitor data – should not negatively impact the rights (of certain groups of) people, and should be based on respect and protection of human rights of all.

- **Mandatory sanctions for legal persons held accountable for trafficking offences**

La Strada International welcomes the proposed mandatory sanctions to hold companies to account for trafficking offences. Similar to earlier feedback provided by us and other civil society actors on proposed EU legislation on Due diligence ([European Directive for Corporate Social Responsibility](#)) and the [Regulation on prohibiting products made with forced labour on the Union market](#), we think it is essential to engage workers, and specifically worker representative organisations, in the development and monitoring of these legislative measures. Moreover La Strada International sees a need to evaluate the impact of these measures on all potential affected workers. In addition, all proposals that sanction companies or aim to hold companies to account, need to include companies of any size and should ensure effective remedies to workers which is currently missing in the above mentioned draft proposals. Also, La Strada International believes that recovered assets and fines paid by companies should be used to compensate workers for damages including for back wages.

- **Formal National Referral Mechanisms to improve early identification and referral for assistance and support for victims, which will create the basis for a European Referral Mechanism by the appointment of national focal points**

La Strada International supports the aim to improve procedures for early identification and support for victims in EU Member States, including by establishing and strengthening National Referral Mechanisms (NRMs) and the creation of a European Referral Mechanism. We would like to stress that this will only work when sufficient capacity and resources are allocated to NRMs, including priority funds for victim support, which are currently lacking. Moreover, the formalising of NRMs should by no means be used to further limit the outreach and support to victims.

³ See DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals - Article 2.i 'particularly exploitative working conditions' means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity.

In EU Member States where there is still no National Referral Mechanism, we stress the importance of including civil society actors in their establishment. Also for the creation of a European Referral Mechanism (ERM), we call upon the Commission to engage civil society actors including anti-trafficking NGOs and trade unions from the outset. Too often we see that such mechanisms are proposed and developed by international organisations that have no direct responsibility related to referral and support of victims at the national or international level. The ERM should primarily focus on the adequate and safe referral of victims on the basis of a human rights-based approach, including needs and risk assessments. It should not be (mis)used as a vehicle for victim return. For the proposed national focal points for victims, we would like to see common criteria developed including a leading role for civil society actors and other support organisations in their coordination.

- **Stepping up demand reduction by making it a criminal offence for people who knowingly use services provided by victims of trafficking**

La Strada International strongly regrets – and is surprised – that the EC is proposing a binding criminal offence for people who knowingly make use of the services of trafficked persons. There is no evidence that this will have any positive impact on combatting human trafficking. Moreover, this criminalisation can lead to (further) stigmatization and discrimination and place individuals at risk of harm. A general and mandatory provision creates a positive obligation on all citizens to examine working conditions under which goods were produced or services offered and could criminalise and stigmatize a large part of society. The scope of this provision seems to reach all actors in all contexts that could potentially become liable for ‘knowing use’ of services provided by victims of trafficking. This seem to be unworkable and dangerous.

On 7th of December, La Strada International published a [policy paper](#) which revealed that while two-thirds of the EU Member States have already introduced this provision in national legislation, there is only very limited prosecutorial activity and few convictions across the EU. Member States either limited the legal scope of this provision to users of sexual services of trafficked persons or (almost) exclusively applied their broader criminalisation to these individuals in practice – revealing that this criminalisation is and could be (mis)used to covertly target prostitution. Reasons for the limited implementation include the practical difficulty to prove the mental element of ‘knowledge’ for users of other services.

La Strada International believes the revision of the EU Trafficking Directive should not lead to a binding provision criminalising the knowing use of services of trafficked persons, as this not only seems to have very limited impact on combatting human trafficking, but inevitably implies the conflation of human trafficking and prostitution, and is very likely to have severe harmful effects on victims and related vulnerable groups. We would instead advocate for binding measures to improve access to information, on setting up effective complaints mechanisms and on ensuring safe reporting for victims of severe forms of exploitation, which are lacking in most EU Member States.

- **EU-wide annual data collection on trafficking in human beings**

La Strada International supports an EU wide annual data collection on trafficking in human beings. In order to ensure that national data is fully reliable and comparable, Member States should take the necessary measures to establish national rapporteurs or fully independent equivalent mechanisms

and allocate adequate resources. Their tasks should include conducting assessments of trends in trafficking in human beings, measuring results of anti-trafficking actions, including gathering statistics in close cooperation with relevant civil society organisations active in this field and reporting. We further believe that EU Member States should take the necessary measures to carry out an assessment on the human rights impact of anti-trafficking measures on a regular basis.

Conclusion

To conclude, while La Strada International supports to a large extent the current proposals by the Commission, we regret to see that the revision has not been used to further strengthen victims' rights. The EC evaluation concludes that issues related to assistance, support and protection of victims "mainly stem from gaps in the implementation of the Directive in Member States".⁴ Hence the revision does not propose legislative or other measures to address these significant gaps in implementation. We believe this could have been achieved in particular by strengthening existing provisions on *Non-punishment* (art.8); *Assistance and support for victims including children* (art 11, 13 and 14); *Victim compensation* (art.17) and *Prevention*, with a special focus on labour exploitation (art. 18).

We hope that the negotiations will offer room to remedy this omission and to strengthen victims' rights in line with the evaluation findings. Lastly, La Strada International wishes to highlight that for the EU Commission and all Member States the principle priority should remain the correct and complete transposition of the EU Anti-Trafficking Directive and, most importantly, its full implementation, before and after its revision.

⁴ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, December 2022, page 63