

Use the revision of the EU THB Directive to strengthen victims' rights

La Strada International Statement on EU Anti Trafficking Day

La Strada International welcomes the revision of the EU Anti-Trafficking Directive as an opportunity to enhance the rights of trafficked persons in Europe. The Directive is an important instrument in the prevention of human trafficking and protection of its victims. Ahead of the start of the trilogues expected to be announced, it is critical that the negotiating institutions ensure that the Directive in no way undermines the rights of trafficked persons and affected groups, but instead strengthens their access to protection and justice.

While the proposals by the Commission and Council only address some of the shortcomings highlighted in the Directive's evaluation and progress reports, the FEMM and LIBE committees of the European Parliament proposed revisions that extend victims' rights. The final adopted position of 5 October of the committees enhances rights provisions on non-punishment (Art. 8), assistance and support (Art. 11), and compensation (Art. 17).

These include important changes for which La Strada International has been advocating for years, including: the use of frozen assets and confiscated proceeds of crime for victims' assistance, protection and compensation; criminal law provisions and procedural guidelines to ensure that victims of trafficking are not held liable for their irregular entry or stay in a Member State, or for their involvement in unlawful activities, which they were compelled to commit as a victim; compliance with the principle of non-refoulement and with the right of victims to apply for international protection or equivalent national status; and the advance payment of compensation by States and establishment of compensation funds.

Supporting and empowering people who have experienced, or are at risk of, trafficking is a vital – and in our view, the most important – reason to revise the Directive.

As such, we regret that the Commission, Council, and Parliament committees are jointly proposing a binding criminal offence for people who knowingly make use of the services of trafficked persons. This will not lead to the strengthening of victims' rights. Even more concerning is that FEMM and LIBE have proposed that Member States criminalise the use of sexual services provided by a trafficked person, even when the user was not aware of this fact, and take measures against the buying of sexual services. These measures represent a huge overreach of criminal law and seem mainly aimed at addressing prostitution and not human trafficking. There is currently no evidence that criminalising the knowing or unknowing use will have any impact on the prevention or prosecution of human trafficking or that it will strengthen the rights of victims. On the contrary, such a provision is likely to harm the rights of sex workers, including persons trafficked and exploited in the sector.

Currently, two-thirds of the EU Member States have already introduced provisions for criminalising the (knowing) use of services in national legislation and there is only very limited prosecutorial activity and few convictions across the EU. Evaluations conducted, including by the European Commission, have shown the absence of any proven positive impact of such a provision.

Law enforcement actors – who already struggle with limited capacity to investigate and prosecute human trafficking – would have to use their scarce resources to focus on users of services, instead of perpetrators of human trafficking. Victims can be worse off too, having to testify against the users of their services, while not necessarily being entitled to adequate protection and support. There have already been inconsistencies as to whether a victim is entitled to the same rights when the “user” is prosecuted, as when a trafficker is prosecuted.

In addition, there is also no evidence that the criminalisation of (buyers) of prostitution – which the EU Parliament opposed when discussing the draft Directive on combating violence against women and domestic violence and the (non-binding) Prostitution report – has any positive effect on the reduction of human trafficking. Instead, such measures are expected to significantly weaken efforts to enhance identification of trafficked persons and their referral to support services. Furthermore, it is surprising and counterproductive to differentiate, as the committees’ proposal does, between (the users of) different forms of human trafficking in a Directive that claims to adopt “an integrated, holistic, and human rights-based approach to the fight against trafficking in human beings”.

Another concerning matter in the recently adopted position of the FEMM and LIBE committees is the addition of reproductive exploitation to the definition of human trafficking under Article 2. Those that called for this inclusion refer here to the prohibition of abortion, forced abortion, forced pregnancy, surrogacy and oocytes sales. While it has been highlighted by the Rapporteurs that the aim is only to criminalise surrogacy in the context of human trafficking, we are concerned that this addition will lead to confusion instead of more clarity among Member States. Next to a lacking thorough debate on the issue, there have hardly been any cases of identified persons trafficked for surrogacy, in comparison, for example, with the documented increase of human trafficking for labour exploitation. A reference to labour exploitation in the definition would have been of much more added value, especially as we see that most European countries still lack a national legal definition or a separate offence of labour exploitation.

The Commission, Council and the Parliament should have used the opportunity of the revision of the Directive and taken measures to strengthen safe reporting mechanisms, unconditional support and the access of victims to residence rights and allowing trafficked persons to have access to residence on humanitarian or personal grounds in all EU Member States. The [opinion](#) of the European Economic and Social Committee (EESC) recommended this, while an earlier [resolution](#) of the EU Parliament in 2021 already recommended to make residence permits for trafficked persons not conditional on their participation or willingness to participate in the investigation or criminal proceedings. Such provisions would have strengthened trafficked persons’ rights in Europe, as access to support and protection still remains contingent on cooperation with authorities, successful investigations and prosecutions and the right to residence permit, contrary to a victim-centred approach.

Today on EU Anti-Trafficking Day, we call upon the negotiating institutions, in particular the Council and Commission, to safeguard the strengthened provisions related to Articles 7, 8, 11 and 17, but not to compromise with the Parliament on changes to Article 18. The use of services provided by trafficked persons should only be criminalised when the user of the services acts with the knowledge that the person providing the service is a victim of an offence. We further remind the institutions that the top priority must remain the correct and complete transposition of the EU Anti-Trafficking Directive and, most importantly, its full implementation, before and after its revision.