

## La Strada International NGO platform and GAATW response to the written consultation on the post 2016 Strategy on Trafficking in Human Beings

We, members of the La Strada International NGO Platform – *United against trafficking in human beings* and members of the Global Alliance Against Traffic in Women (GAATW) -Europe, welcome the opportunity to provide input for the written consultation on the post-2016 EU Strategy on Trafficking in Human Beings.

We are pleased with the political commitment at the EU level to address the problem of trafficking in human beings, which positively impacts the commitment of the European Member States. We share the assessment that the primary responsibility for addressing human trafficking lies with Member States.

The current EU Strategy towards the eradication of trafficking in human beings 2012-2016 contained five key priorities relating to the protection of victims, prevention, and prosecution of traffickers, enhanced coordination and cooperation and increased knowledge of emerging concerns. Although we see the need for continuation of all these priorities we identify the following three top priorities that should be addressed in the Post-2016 EU Strategy towards the Eradication of Trafficking in Human Beings:

1. Identification, protection and assistance to trafficked persons, in particular unconditional access to assistance and access to reflection periods and residence permits for trafficked persons.
2. Access to justice, in particular the provision of free legal assistance and access to compensation.
3. Prevention and addressing demand for all forms of human trafficking and accountability of the private sector

Below we provide more information on why we believe these issues are priority and which actions should be taken in order to improve or complement measures already taken.

### **I Identification, protection and assistance to trafficked persons**

The identification of trafficked persons remains a major gap at the European level. 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, as acknowledged by the European Commission, Member States hold different views of what might constitute a victim. In some countries victims are only registered as such if they agree to cooperate with the authorities in the investigation and prosecution of traffickers or if they consider themselves to be victims.<sup>1</sup>

We acknowledge some positive development, including the development of EU guidelines to better identify victims of trafficking in human beings in order to facilitate a more harmonised approach, as well as the development of specific guidelines for consular services and border guards on the identification of victims of trafficking in human beings and hope that these will improve identification of trafficked persons at the national level.

- In order to ensure adequate identification of trafficked persons, we consider that it is essential that Member States improve the cooperation among different actors, including civil

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<sup>1</sup> See Eurostrat report on trafficking in human beings, 2015 edition, 2015

society organisations, working with presumed victims of human trafficking for any form of exploitation.

- Identification should not be the responsibility of a single government agency only but should be carried out by multidisciplinary teams including organisations providing services to trafficked persons.<sup>2</sup> The identification of victims should not prioritise one form of exploitation (for example, sexual exploitation) over another.
- To improve identification Member States should also put more focus on awareness-raising and joint training initiatives, involving actors from different fields. The “Manual for experts on multidisciplinary cooperation against human trafficking for labour exploitation”<sup>3</sup> is one example of a good practice that can be explored and implemented in other areas of exploitation.
- Workers should have an opportunity to report exploitation without fear of arrest and deportation and we therefore recommend that inspection of violation of labour laws is delinked from the control of immigration or residence status of workers.
- Self-identification and reporting by trafficked persons should also be encouraged, as acknowledged by the Commission and reflected in the actions of the current Strategy, through increased awareness-raising activities targeting specific vulnerable groups and through easily accessible and understandable information on the rights of workers in different sectors, especially in destination countries.
- More attention should be given to specific vulnerable groups, including asylum seekers, migrants, in particular undocumented migrants, and those working in irregular situations as well as minority groups and minors.
- Increased efforts should be made by Member States to provide information in at least the most common languages of countries of origin and ensure wide dissemination by various stakeholders, including civil society to ensure that migrant workers know their rights and can exercise them effectively.
- The potential of co-ethnic communities should also be explored to raise awareness and reduce risks of exploitation and human trafficking, as the community might be able to assist and facilitate migrants in their search for employment.<sup>4</sup>
- Overall, there is a need to intensify and multiply systems offering long-term support to meet the specific needs of all trafficked persons, including those of more recently identified forms of trafficking and to support their re/integration into society. Sustainable funding for this long-term support has to be increased.

### 1.1 Unconditional access to assistance

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.’<sup>5</sup>

However currently Member States are required to provide unconditional access during the reflection and recovery period only and practice shows however that victims have limited access to protection, support and assistance if the criminal procedure has not started or is discontinued.<sup>6</sup> This seriously hampers the human rights based approach.

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<sup>2</sup> Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009), E-notes, 2010

<sup>3</sup> Government of The Netherlands 2016

<sup>4</sup> See TRACE findings, final report April 2016, p. 21

<sup>5</sup> Article 11 (3) of Directive 2011/36/EU.

<sup>6</sup> Key Challenges in the Combat of Human Trafficking: Evaluating the EU Strategy and EU Trafficking Directive, New Journal of European Criminal Law, Conny Rijken ea.

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.

From our experience and as the European Commission recognises 'less strict criteria for conditionality upon cooperation [...] can contribute to assisting victims' recovery and thus fostering their cooperation.'<sup>7</sup> Recognition and protection of the rights of trafficked persons act as an important incentive to report the crime to the authorities and give testimony.

### **1.2. Access to residence permits**

The Directive 2004/81/EC on residence permits for third-country nationals, who are victims of trafficking in human beings, provides victims with a reflection period with the aim of allowing them to start recovering from their experience and to make an informed decision on whether to cooperate with the authorities against suspected traffickers. However, Member States apply the reflection period differently in relation to its start and duration. About half of the Member States provide the reflection period only upon the formal identification of a person as trafficked,<sup>8</sup> although this contradicts the idea of a reflection period.

Practice shows that the reflection period is often not offered or granted, or only granted to those willing to cooperate with the authorities. Victims are often required to give statements, before being able to recover and make an informed decision. The maximum duration of the reflection period varies significantly among Member States.

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<sup>9</sup>. The Commission's report shows the huge difference in between the numbers of identified victims and issued residence permits. We would also like to highlight the specific situation of asylum seekers who are potential victims. Practice shows that the Dublin convention sometimes can and does overrule the protection of trafficked people and therefore their human rights. This results in limited time being allocated to investigate the case, since the Dublin convention is priority.

We therefore recommend:

- To ensure the provision of comprehensive trainings for relevant authorities, responsible for issuing residence permits.
- To take into consideration the international phenomena of human trafficking and avoid revictimisation of trafficked persons when applying the Dublin Convention, taking in consideration the right of safe return or referral.

## **II Access to justice**

Access to justice is about having the means and legal protection to exercise one's right to seek remedy before a court of law or tribunal for wrongdoing suffered. All EU countries have ratified several binding international legal instruments but often fall short in meeting their obligation to

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<sup>7</sup>COM(2014) 635 p., 10-11.

<sup>8</sup> COM(2014)635, 17 October 2014, 5.

<sup>9</sup> Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009), E-notes, 2010

guarantee access to justice. As a result legal remedy provisions remain underused and regrettably trafficked persons rarely receive the justice they deserve.<sup>10</sup>

## **2.1 Ensuring free legal assistance**

The right to legal aid is defined in the Victims' Directive<sup>11</sup> (Art. 13) and is 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.

- We recommend that the new strategy includes actions promoting the provision of free legal assistance and representation of trafficked persons.

## **2.2 Access to compensation**

Compensation has a restorative and preventive function and is a crucial tool in combating human trafficking. 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. A range of barriers obstruct the consistent translation of the right to compensation into practice. Consequently, many trafficked persons are left without justice.<sup>12</sup>

Research on the issue<sup>13</sup>, unveiled a number of often interconnecting barriers that prevent trafficked persons from accessing compensation. These can be categorised as structural, practical and personal, including the non- or misidentification of trafficked persons; indifference or negative attitudes towards trafficked persons and the subject of compensation; the irregular status of the victims; and the priority given by governments to enforcement of immigration laws. Negative societal attitudes, or indeed a lack of social awareness about the crime of human trafficking are often reflected in inadequate policy, legislation, and in the lack of funding afforded to victim support services or training.

The most common practical obstacles identified were the lack of training of relevant stakeholders, such as support workers, police, solicitors and judges, and significant gaps in the availability and quality of victim support services which are so vital for the rehabilitation of trafficked persons and their ability to claim and receive compensation. Other practical obstacles are related to financial investigation, lack of compensation orders made, missing criteria for determining compensation amounts, and low monetary amounts of compensation awards. These obstacles are linked to the poor awareness of legislation, policies, the importance of compensation, and the needs of trafficked persons. In some countries this lack is exacerbated by insufficient availability of free legal aid. Personal obstacles related to the trafficked person include the lack of awareness of their right to compensation, the desire to forget their experiences and move on, fear of their traffickers, a reluctance to become involved with formal institutions, and the inability to cope with lengthy procedures.<sup>14</sup>

We therefore recommend:

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<sup>10</sup> Compact toolkit, 2012 - See further: *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODIHR, Warsaw 2008, pages 126-128

<sup>11</sup> Directive 2012/29/EU.

<sup>12</sup> Compact toolkit, La Strada International, 2012

<sup>13</sup> European Action for Compensation for Trafficked Persons, [www.compactproject.org](http://www.compactproject.org)

<sup>14</sup> Compact toolkit, La Strada International, 2012

- Conduct a review of existing legislation and policies and practices in EU Member States on the possibilities and hurdles in claiming compensation
- Promote training and awareness among all relevant stakeholders, including prosecutors, judges and social workers about the possibilities for claiming and granting compensation
- The establishment of a compensation fund in those countries that currently do not have one
- A uniform approach to determining compensation amounts
- Increased funding for victim support services
- Encouraging 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

### III Addressing demand that fosters all forms of human trafficking

According to article 18 of the Directive (18.1), Member States ‘shall take appropriate measures to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings’. The same article (18.4) requires Member States to consider taking measures to establish as a criminal offence the use of services which are objects of exploitation (human trafficking) with the knowledge that the person is a victim. We are expecting to see the Commission’s report on the implementation this year.

In particular, we have noticed with concern, that currently several EU Member States have used this requirement to make or consider making it a criminal offence to purchase sexual services in general, as a measure to prevent human trafficking. Human trafficking should not be conflated with prostitution. Evidence gathered shows that the criminalisation of consensual sex work has a significant negative impact on a range of sex workers’ human rights, including the rights to security of person, health, non-discrimination, just and favourable work conditions, adequate housing and remedy for abuses. Additionally, criminalising sex work fails to address underlying socio-economic reasons behind sex work and creates another barrier to sex workers realising their rights.<sup>15</sup>

Human trafficking continues to occur both in countries where sex work is legal and in countries where aspects of commercial sex are criminalised. We are convinced that focusing the debate on the abolishment or criminalisation of sex work will not lead to the protection of the human rights of the women concerned. Rather Member States should take action to ensure that the rights of all persons are protected and that decent work is promoted in all sectors, and put more focus on monitoring the situation in both regular and irregular sectors.

- We believe that alternative ways of reducing demand should be considered to ensure that all forms of human trafficking can be avoided in both regular and irregular sectors.
- Member States should examine the factors that facilitate human trafficking and address these factors in a multifaceted way.

The EU-funded project DemandAT has recently explored several modes of regulation of and steering demand for undesirable behaviour and how these can be applied to demand in human trafficking<sup>16</sup>.

#### 3.1 Accountability of the private sector

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<sup>15</sup> Sex workers at risk, a research summary on human rights abuses against sex workers, Amnesty International, 2016

<sup>16</sup> <http://demandat.eu/publications/christina-boswell-sarah-kyambi-steering-demand-and-quest-better-regulation>

Human trafficking occurs across a wide variety of sectors in Europe, such as agriculture, construction, hospitality and care work. These sectors are largely dependent on migrant workers. The role of the private sector can range from being directly responsible for labour exploitation through coercive recruitment and employment practices to being an important partner in prevention.

So far, there are only few cases where legal representatives of the private sector have been prosecuted for trafficking in human beings for forced labour in Europe. 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 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.<sup>17</sup>

We recommend the inclusion of actions to hold corporations more accountable for complicity for trafficking in human beings in the Post-2016 Strategy and would like to see actions undertaken to ensure that all relevant national and international legislation, available to promote labour standards and to protect (migrant) workers, is enforced.

- Decent working conditions should be promoted by Member States and it should be ensured that informal and unregulated work is brought within the protection of labour laws and that labour rights are applied to all workers irrespective of their migration and residence status.
- Member States must have the resources and power to legislate and prosecute businesses for complicity in labour exploitation and human trafficking, as well as improving workers' and migrants' rights and effectively enforcing existing labour standards.
- Control mechanisms should be set up to monitor businesses compliance with labour standards and human rights; enacting sanctions for businesses that do not respect human rights and the law. Governments should be transparent about procurement policies and critically assess their own supply chains and services to ensure these are free of forced and exploitative labour. States should take additional care in monitoring and preventing human rights abuses by business enterprises owned, controlled, or subcontracted by the state. Furthermore awareness should be raised and information provided about the origins of products and services and to enable customers to make informed decisions about their purchases; to promote products and services made without labour exploitation and human trafficking.
- As reflected in the current EU strategy there needs to be a greater focus on the monitoring of contractors and subcontractors and job recruitment agencies, in particular in high risk sectors for trafficking in human beings.

Other actions that the Commission can undertake with regard to improving prevention can include:

- Support projects that promote NGO-business cooperation in addressing human trafficking;
- Consider legislative proposals that compel businesses to make their supply chains transparent and disclose what actions they are taking to avoid exploitation in their operations, based on the experience of the California Supply Chain Transparency Act and the British Modern Slavery Act.

We hope that our recommendations will be reflected in the post 2016 EU Strategy on Trafficking in Human Beings,

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<sup>17</sup> Engaging the Private Sector to End Human Trafficking, A Resource Guide for NGOs, La Strada International & SOMO, 2015

Members of La Strada International NGO platform and GAATW Europe, including:

Animus Association Foundation, Bulgaria

Association Novi Put, Bosnia and Herzegovina

ASTRA - Anti-Trafficking Action, Serbia

Ban Ying, Germany

Colectivo Hetaira, Spain

Comensha, The Netherlands

FIZ, Switzerland

Genera, Asociación en Defensa de los Derechos de las Mujeres, Spain

Gender Perspectives, Belarus

Hope Now, Denmark

Human Resource Development Foundation (HRDF), Turkey

International Women Rights Protection and Promotion Center, La Strada, Moldova

KOK - German NGO network against trafficking in human beings, Germany

The International La Strada Association/ La Strada International, The Netherlands

La Strada Czech Republic

La Strada Foundation against Trafficking in Persons and Slavery, Poland

La Strada Ukraine, Ukraine

LEFÖ- Information, Education and Support for Migrant Women, Austria

Migrant Rights Centre Ireland (MRCI), Ireland

Open Gate, Macedonia

PAG-ASA, Belgium

Platform for International Cooperation on Undocumented Migrants (PICUM), Belgium

Pro-tukipiste ry, Finland

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