

Comments by ASGI (Associazione Studi Giuridici sull'Immigrazione) and the group EcST (Espert* contro Sfruttamento e Tratta) on the revision of Directive 2011/36/EU on combating trafficking in human beings and protecting its victims

The discussion on the revision of the Directive 2011/36/EU on trafficking in human beings is underway in the EU Parliament, following a proposal by the European Commission.

The trafficking Directive is a good piece of legislation, that should be better implemented by Member States. Yet, it could be improved, especially concerning victims' rights, their access to residence permits and unconditional assistance, and remedies including compensation.

From a human rights point of view, the Commission's proposal is a lost opportunity, as it includes only minimal changes regarding victims' rights, and seems only aimed at introducing a binding provision inspired by the so called "nordic model", implying the criminalisation of buyers of sexual services.

ASGI and EcST firmly oppose such a provision, pushing the whole area of prostitution into illegality, compelling sex workers to move to more dangerous places or indoor, making them more dependent on their exploiters and less accessible by social workers. In addition, the criminalisation of buyers of sexual services implies that any consensual exchange of sex for money is illicit and therefore makes the consent of a sex worker always irrelevant. On the contrary, according to the definition of trafficking, the consent is irrelevant only when illicit means such as violence or fraud or abuse have been used. Furthermore, such a provision produces not only stigmatization of clients, but inevitably also of persons – mostly women – prostituting themselves or working in the sex industry. Organizations opposing the nordic model include Amnesty International, European Sex Workers' Rights Alliance (ESWA), Human Rights Watch, La Strada International (LSI), and Platform for International Cooperation on Undocumented Migrants (PICUM).

Concerning further proposals submitted by the Commission, the addition of forced marriage and illegal adoption among the types of exploitation, although not necessary because the list of exploitative purposes is an open list, is acceptable concerning forced marriage but raises delicate issues regarding illegal adoption, not always compatible with the definition of trafficking. The provision concerning due diligence obligations is only an anticipation of a provision included in the proposal for a specific Directive. The suggested enlargement of companies' accountability – through mandatory sanctions for legal persons including the exclusion from public benefits or the closure of their establishments - is an improvement, especially regarding labour exploitation. To be supported is also the provision making binding the establishment of National Referral Mechanisms and data collection schemes.

Following a Report issued in 2020 by the LIBE and FEM Committee, and lately an effective action carried out by human rights organizations such as La Strada International, PICUM and ESWA including several meetings with MEPs of different political groups, many amendments have been submitted to the EU Parliament Plenary, broadening the area of provisions to be revised. Amendments submitted by the Rapporteurs and several MEPs are mostly victim-centred and imply improvements to the text of the Directive.

In particular, following suggestions coming from human rights organizations, we support amendments on-:

- Providing for early identification of, assistance to and support for victims, in cooperation with the relevant support organisations; we regret that no MEPs submitted amendments aimed at ensuring unconditional victims' access to residence permits;
- Detailing and making more stringent the obligation to introduce a non-punishment provision through specific penal provisions and prosecutorial guidelines, and including an obligation to not hold victims liable under criminal or administrative law, and not detained, charged, prosecuted or otherwise punished for their involvement in unlawful activities, including criminal activities, to the extent that such involvement is a direct consequence of their situation as victims of trafficking in human beings. The non-punishment provision includes the termination of any proceedings, the

- clearance of criminal records; it should be applied by trained officials, and regardless of whether the victim is able or willing to cooperate in criminal proceedings (Co-rapporteurs' amendment);
- Access to assistance free of charge and in a language the victim can understand;
 - Multi-stakeholder approach to detection and identification (MEPs Bjork and others' amendment);
 - Safe and confidential reporting;
 - Duration of assistance after the end of criminal proceedings for an appropriate period of time necessary for victims' physical and psychological recovery on the basis of a timely and individual assessment including a risk assessment (MEP Kuhnke's amendment);
 - Effective regulation of information technology-facilitated trafficking;
 - Establishing protocols with national asylum authorities to ensure that protection, support and assistance is provided to victims of trafficking who are also in need of international protection
 - Long-term assistance, access to education and labour market (Co-rapporteurs' amendment);
 - Special protection for stateless persons and people at risk of statelessness (Co-rapporteurs' amendment);
 - Providing for the payment of compensation by Criminal Courts, without necessity to introduce a separate civil proceeding;
 - Providing for the use of the asset recovery also to compensate victims;
 - Providing for advance payment of compensation awarded by Courts;
 - Providing for the establishment of a dedicated fund for compensation of trafficking victims;
 - Providing for the introduction of non-judicial complaint mechanisms ((MEP Kuhnke's amendment);
 - More detailed description of the tasks of National Referral Mechanisms and National Coordinators; we regret that the same attention has not be paid to National Rapporteurs, as the relevant amendment from the co-rapporteurs only includes a non-binding provision;
 - More detailed description of the content of National Action Plans (NAPs) including due diligence schemes;
 - More detailed description of data collection schemes, regarding the types of data and disaggregations including gender, age, nationality and type of exploitation, with the exclusion of disaggregations on grounds of race and ethnicity.

We oppose:

- The introduction of surrogacy among the purposes of exploitation. The list of exploitative purposes is an open list, and further additions are thus useless. Moreover, surrogate motherhood is a complex and sensitive issue, that cannot be addressed only in the context of penal law. We could rather accept to add to the definition the sale of children;
- In the context of our opposition to the nordic model regarding criminalisation of users, we strongly oppose the deletion of the formulation "with the knowledge that the person is a victim of an offence concerning trafficking in human beings" (Co-rapporteurs' and other MEPs' amendments), which on the contrary were included in the Commission's proposal. In alternative, with a view to limiting damages caused by such a provision, it would be preferable to introduce the formulation "intentionally" (MEPs Sofu and others' amendment), without singling out sexual services. This would imply that – not only the intentional buying of sexual services from a trafficked person but also - the intentional use of services provided, for example, by trafficked domestics workers would be criminalized.
- The introduction of a specific exploitative purpose with respect to children, as the purpose of exploitation in forced criminality is already specified in the current text, as well as child trafficking;
- Amendments suggesting that residence and international protection should be conditional on cooperation with authorities;
- Return of victims as a matter of priority after assistance (MEP Chagnon's amendment).