



Statement on the occasion of the EU Anti-trafficking day

Brussels, October 18, 2023

Today, on the occasion of the EU Anti-trafficking day, we, the undersigned organisations, call on the Council, the European Parliament and the Commission for a human rights perspective to be prioritised in the triilogue negotiations on amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

The European Commission has proposed establishing as a criminal offence the use of services which are objects of exploitation **with the knowledge** that the person is a victim of trafficking as referred to in Article 2. The Council further proposed that in addition to knowledge, an element of **intentional use** of services provided by the victim should be included in this proposed criminal qualification. However, the FEMM and LIBE Committees approved last week a [report](#), which is considered as the final position of the European Parliament and in which they distinguish between the “purpose” of the exploitation and **do not require neither the knowledge element nor intention** in the use of services **of people** who are the objects of **exploitation of the prostitution of others or other forms of sexual** exploitation, as referred to in Article 2.

The European Parliament position also proposes a provision that Member States should consider criminalising clients of sex workers.

We are extremely concerned by the proposal by the European Parliament:

- The proposed Article 18a represents a huge overreach of criminal law that would detract resources away from tackling the true perpetrators of trafficking in persons (i.e. traffickers), in order to prosecute unknowing individuals.
- The risk of criminalisation of even the unknowing use of the services of a victim of sexual exploitation will deter clients from reporting suspected cases of trafficking and consequently it will weaken anti-trafficking efforts significantly.
- It risks eroding victims’ rights. In countries where these provisions are already in place, there have been inconsistencies as to whether a victim is entitled to the same rights when the “user” is prosecuted, as when a trafficker is prosecuted.
- There is a real risk that authorities will consider justice to have been served through the mere prosecution of a user of services, without taking any steps to prosecute the true perpetrators in these cases, thereby depriving the victim of the assistance and protection that they are entitled to under EU law relating to the rights of victims.
- Criminalisation of any aspects of sex work, including criminalising users of sexual services, does not prevent or reduce trafficking in human beings. On the contrary, decades of experience of leading civil society and human rights organisations shows that the conflation of sex work and human trafficking is detrimental both to efforts to reduce human trafficking and to the human rights and safety of sex workers and victims of sexual exploitation.

EXPLANATION:

The Report approved by the FEMM and LIBE Committees concerning Article 18 a) and related Recital 9 aim to set **different conditions for criminalisation based on the “type” of human trafficking, which is worrying. We strongly oppose the differentiating between forms of human trafficking in a directive that aims to adopt ‘an integrated, holistic, and human rights-based approach to the fight against trafficking in human beings’.**

While we wholeheartedly support the need to better protect trafficked persons, the removal of the requirement to know that the person is a victim of trafficking for it to be a criminal offence can, on the contrary, **worsen the situation of victims of trafficking**. Buyers are often the ones who help victims of trafficking escape a situation of exploitation. This provision would discourage them from doing so because they would be in a position of both suspect and witness. This effect was also confirmed by the [German Impact assessment study](#)¹. It would stigmatise all sex workers, increase racial discrimination, expose migrant sex workers to arrest, detention and deportation, and contribute to conflating sex work with trafficking. Such measures are also in breach with criminal law principles and not in line with the human rights based approach the Directive aims to follow.

Secondly, the European Parliament report calls on the **Member States to consider taking measures regarding those who solicit, accept or obtain a sexual act from a person in a situation of prostitution in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit (Article 18a)1a)**. This part, which is proposed under 18a) concerning criminal sanctions, clearly aims to criminalise all clients of sex work; and concerns situations, where there might be no exploitation or trafficking. We wish to state in the strongest possible terms that **there is no evidence that criminalising users of sexual services in this manner will combat trafficking in persons**. This position has been widely endorsed for decades by UN human rights experts, international human rights organisations and leading anti-trafficking actors². Such measures will contribute to further stigmatisation of sex workers, may lead to misguided interventions and conflation of all sex work with human trafficking. In addition, countries which criminalise the purchase of sex do not regard a person who sells sexual services as a victim in the legal sense.

When a trafficker is prosecuted, the victim is entitled to a victim status with specific rights under EU law. When a “user” is prosecuted, the victim can be treated as merely a witness, with none of the resulting rights. The proposed report also challenges the principle that punishment should be reserved for cases where the perpetrator can be blamed. Further, the fact that acts which are not in themselves exploitative and are victimless are criminalised calls into question the principle of proportionality in the application of criminal law. The protection of the individual's right to sexual self-determination is a key principle for the criminal law regulation of sexuality today.

Last month the majority of Members of European Parliament abstained or rejected a separate own-initiative report on **prostitution (2022/2139(INI))** in the Plenary vote on 14 September. While this report was passed, its provision calling for client criminalisation (an EU-wide ‘Nordic model’) was removed. We consider the Amendments of Article 18 a) in the EP position on the revision of the anti-trafficking directive as yet another attempt to promote the ‘Nordic model’ and to criminalise and stigmatise sex workers.

Exploitation in the sex industry should, instead, be addressed together with people concerned, including sex workers themselves, who best know how to address the diversity of exploitative working practices that occur in the sex industry.

We, the undersigned organisations, call on the Council, the European Parliament and the Commission to prioritise measures that empower and uphold the rights of all victims and potential victims of trafficking, in particular through unconditional access to services, effective implementation of labour rights and access to remedy, and the provision of secure residence status. We call on the Council, the European Parliament and the Commission to support provisions which strengthen these measures.

Signed by:

European Sex Workers’ Rights Alliance (ESWA)

La Strada International

Platform for International Cooperation on Undocumented Migrants (PICUM)

Global Alliance against Traffic in Women (GAATW)

Correlation-European Harm Reduction Network (C-EHRN)

Equinox Initiative for Racial Justice

Amnesty International

¹ KFN, ‘Evaluation of the criminal provisions to combat human trafficking (§§ 232 to 233a StGB)’ [title translated] (Federal Ministry of Justice, Germany 2021), p. 105

² For the most recent guidance, see the report of the UN Working Group on Discrimination against Women and Girls: <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>