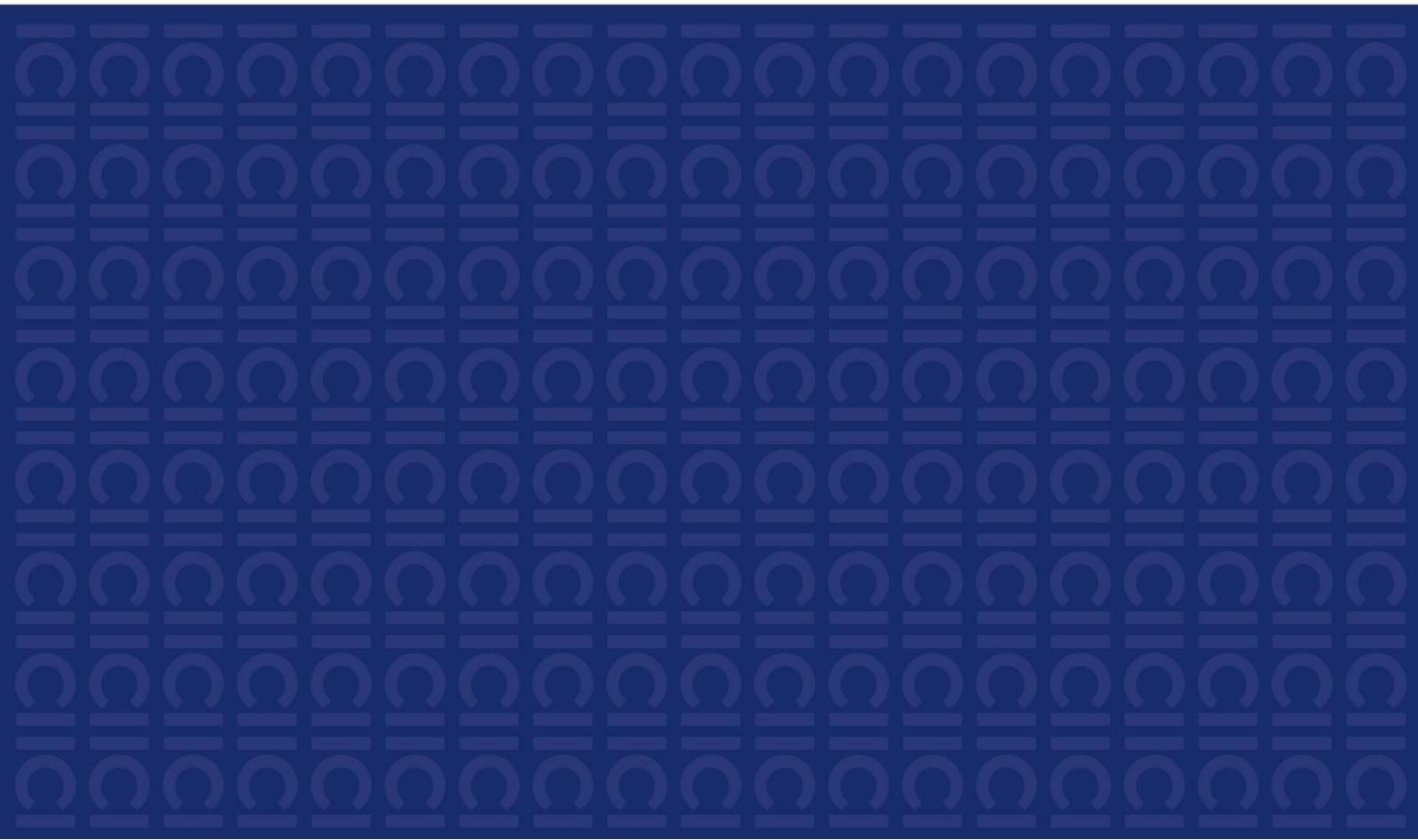


Observations on the proposed revised EU Anti-Trafficking Directive

Immigrant Council of Ireland
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Working for equality



INTRODUCTION AND BACKGROUND

The Immigrant Council of Ireland (ICI) is a non-governmental charitable organisation founded in 2001. In 2006, the ICI was also recognised as an Independent Law Centre. We employ lawyers to provide free legal services and seek to address unmet legal need and ensure access to justice for vulnerable communities, including victims of trafficking. The ICI has extensive experience in delivering legal services to victims of human trafficking and has been involved in a number of EU funded transnational projects over the past decade. These projects have focussed on topics such as the importance of early legal intervention¹ to assist with the early identification of victims of human trafficking; developing best practice in service delivery to victims of human trafficking (ASSIST² and COALESCE³); identifying unusual forms of human trafficking (HESTIA)⁴ and supporting victims of human trafficking in the asylum process (TRACKS⁵ and TRIPS⁶). The ICI is a member of the EU Civil Society Platform Against Trafficking in Human Beings.

As an Independent Law Centre we provide legal representation, advice and information to victims of human trafficking (hereinafter "VOTs). More broadly, we conduct research and engage in collaborative actions regarding the needs of survivors of trafficking in areas such as accommodation, gender specific support services, integration supports such as education and employment, training on the holistic support of survivors of human trafficking and other associated areas.

In December 2022, the European Commission adopted a proposal for a revised directive amending the 2011 EU Anti-Trafficking Directive. The proposed new rules provide for *inter alia*:

- Extending the definition of trafficking in human beings by adding forced marriage and illegal adoption to the catalogue of the forms of exploitation covered by the Directive;
- Making it a criminal offence to knowingly use services of trafficking victims
- Replacing the current optional regime of sanctions for legal persons held liable for trafficking offences with mandatory sanctions, such as exclusion from entitlement to public benefits, aids or subsidies and temporary or permanent closure of establishments which have been used for committing offences.

While the ICI broadly welcomes the proposals, we submit that it is essential that the revised directive is fully implemented in a coordinated manner at national level in all EU Member States. Implementation of the 2011 Directive thus far varies significantly across Member States, and despite significant progress, in our view it has not been adequately transposed to date in Ireland.⁷

¹ <https://www.immigrantcouncil.ie/campaign/ending-human-trafficking/early-legal-intervention>

² <https://www.immigrantcouncil.ie/campaign/ending-human-trafficking/assist>

³ <https://www.immigrantcouncil.ie/campaign/ending-human-trafficking/coalesce>

⁴ https://www.immigrantcouncil.ie/sites/default/files/2021-03/EU-Report-HESTIA-Project_2.pdf

⁵ [TRACKS Immigrant Council National Country Report Ireland OCT17.pdf](#)

⁶ <https://www.immigrantcouncil.ie/campaign/ending-human-trafficking/trips>

⁷ For a comprehensive evaluation, we refer to *Trafficking in Human Beings in Ireland Evaluation of the Implementation of the EU Anti-Trafficking Directive* [IHREC, June 2022] available at: [Trafficking-in-Human-Beings-in-Ireland-Digital-FINAL-Oct2022.pdf \(ihrec.ie\)](#). We also refer to the ICI Submission to the Joint Justice Oireachtas Committee on the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022, which proposes to revise the existing victim identification procedure and place the National Referral Mechanism on

This has led to inconsistent enforcement and different levels of protection for victims across the EU. We wish to emphasise the need to fully implement the entire Directive in practice, and not only on paper in national laws and policies, which may not always be implemented in practice. Adequate financing and training of personnel is essential in this regard.

The revised directive should also consider the possibility to reconcile in law the internal and external dimensions of the EU action to fight trafficking in human beings, the latter being supported primarily through policy and financing initiatives rather than by setting adequate standards of accountability for European economic actors. The importance of policy coherence must be emphasised, in light of the important changes that have affected and are to affect the EU and domestic legal orders in the asylum and migration fields: the revision of the Directive should be linked to a thorough assessment of existing EU norms and standards in the fields of legal migration, borders, visas, asylum and irregular migration.

Further, there is a need to give sufficient weight and attribute concrete meaning to the gender-specific aspects of implementation. Women are the vast majority of people subjected to sexual exploitation, and are also a large portion of people exploited at work, which is not always well known, or adequately addressed. Women are vulnerable to exploitation due to the power imbalance inherent in patriarchal structures and values. Addressing the gender dimension requires more comprehensive indicators to detect exploitation in any economic sectors. Assistance and support measures should always be inspired by an empowerment approach, valuing women's agency and respecting women's rights.

Additionally, the ICI is concerned about the insufficient focus on victim protection. While the Directive does contain provisions for the protection of victims of trafficking, the ICI would submit that it does not go far enough in providing adequate protection and support for victims. This can leave victims vulnerable to re-trafficking and exploitation.

Moreover, the Directive primarily focuses on addressing the consequences of trafficking rather than prevention. This can limit the effectiveness of the Directive in combatting human trafficking. There must be a concerted effort on the part of all Member States to address the root causes of trafficking and is critical to preventing its occurrence. The root causes of trafficking must be addressed on a coordinated basis across the Union. In this regard, it is essential that the Union promote policies and programmes that aim to alleviate poverty, improve access to education, healthcare, and social services, and promote gender equality and human rights both within Member States and extraterritorially. The Union must also support the development of sustainable and inclusive economic growth, job creation, and entrepreneurship opportunities, particularly in vulnerable communities as well as address the structural inequalities and discrimination that contribute to vulnerability and marginalisation, such as caste and ethnicity-based discrimination, gender-based violence and a lack of access to justice.

This submission addresses the proposals made by the Commission for a revised Anti-Trafficking Directive, as well as broader areas of concern for reform and specific recommendations in that regard.

Areas of Concern and Recommendations

I. Forms of Exploitation

Currently, Article 2(3) sets out a non-exhaustive list of forms of exploitation, to include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. The Commission proposes to include forced marriage and illegal adoption explicitly within the non-exhaustive list of forms of exploitation in Article 2(3).

The ICI welcomes this expansion, however, would submit that the directive should define 'exploitation' in a sufficiently broad manner to allow for new or emerging forms of human trafficking including coercion and commercial exploitation in the context of, for example, surrogacy and forced pregnancy. It is a strength of the Directive that it recognises subtle forms of control, such as abuse of power or abuse of a position of vulnerability, which can widen the scope of victims able to benefit from the assistance and protection provisions. There have been reported difficulties, however, in ensuring that all victims can access such assistance, owing to Member States adopting a restrictive understanding of trafficking, and investigating trafficking offences under different criminal legislation.⁸

The Commission and Parliament should adopt a comprehensive approach and deal with the wider issue of serious exploitation, which is not only a criminal, but also a structural and social issue. While the Employer Sanctions Directive provides for distinct protective measures for exploited workers,⁹ this provision complements measures primarily aimed at sanctioning employers rather than compensating workers. The ICI would submit that an innovative approach to exploitation should lead to EU legislation focused on workers' rights, at least in cases of exploitation amounting to a crime, not necessarily trafficking but also less serious crimes, on the same legal basis as the Victims' Rights Directive 2012/29/EU, namely Art. 82(2)(c) Treaty on the Functioning of the European Union (TFEU). Such a new piece of EU legislation should focus on referral of exploited workers to victims services, based on the interests and needs of the person on an individual basis, housing, alternative employment, access to temporary or permanent residence status where needed, and back payment of salaries and compensation through quick and effective procedures. More broadly, such legislation should require private companies and public sector buyers to diligently assess the vulnerability to trafficking of workers in their supply chains, and recognise private companies as liable for trafficking in their supply chains, requiring them to remedy trafficking in human beings in their operations and supply chains. In this regard, it is essential that Commission proposals provide labour inspectorates with the mandate to identify trafficking in human beings in workplaces to address cases of labour exploitation.

II. The Online Dimension

Currently, reference is not made within the Directive to the online dimension of human trafficking. The Commission proposes that the new Article 2A will explicitly mention that the acts and means

⁸ Eurojust, Strategic project on "Eurojust's action against trafficking in human beings" Final report and action plan (2012).

⁹ Employer Sanctions Directive 2009/52/EC.

referred to in Article 2(1), as well as exploitation as defined in Article 2(3), shall include acts committed by means of information and communication technologies.

The ICI welcomes this proposal, however, would stress that the revised Directive should be harmonised with the Digital Services Act.¹⁰ We recognise the extreme and increasing prevalence of online platforms being used for the grooming and advertising of victims of trafficking, with a specific attention to girls and young women as targets, and would call for the end to third party immunity for enabling such crimes and proactive identification of such practices. This should particularly cover search engines and advertising sites which can be used to promote the 'sale' of victims of trafficking, and clear consequences for those who enable the advertising of sexual exploitation, including shutting down such websites. The Directive should be amended to effectively target online platforms that are increasingly used to promote prostitution and pornography, enabling sexual exploitation and violence against victims of sex-trafficking, who are for the most part migrant women and girls. To further fight against such modern manifestations of violence against women and girls, the Directive should ensure the criminalisation of third parties such as the aforementioned platforms and websites profiting off online exploitation. In this regard, the Directive should also prescribe obligations on online platforms to conduct due diligence (age and consent verification, etc.) to prevent uploading of exploitative materials and to take down material that advertises or is the product of exploitation. The Directive should also include provisions allowing the use of technology tools to support anti-trafficking investigation, in particular hashing technology and big data analysis.

III. Mandatory Regime of Sanctions

Currently, Article 6 provides that Member States shall take the necessary measures to ensure that a legal person held liable for trafficking offences is subject to effective, proportionate and dissuasive sanctions and that sanctions may include five optional measures that Member States can adopt. The Commission proposes to amend Article 6 by establishing that, instead of a list of optional sanctions, the effective, proportionate and dissuasive sanction, shall, if appropriate include the exclusion from entitlement to public benefits, aid or subsidies and the temporary or permanent closure of establishments which have been used for committing the offence. This is the regime that applies when legal persons are held accountable for a standard trafficking offence. Paragraph (2) is added for cases in which legal persons are held liable for an offence aggravated by circumstances set out in Article 4(2) of the Directive. The Commission, with this approach, seeks to make the regimes of sanctions against legal persons mandatory.

While broadly welcomed, the ICI would welcome clarification as to how a regime of mandatory sanctions would interact with the prohibition on double punishment, *ne bis in idem*. In essence, the double jeopardy principle prohibits a duplication of penalties which are criminal in nature in respect of the same acts and against the same person. While it does not preclude a combination of criminal penalties and other types of penalties which are not criminal in nature, that ICI would welcome clarification that the mandatory regime of sanctions against legal persons is in compliance with the double jeopardy principle.

¹⁰ REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065&from=EN>

More broadly, to further support the objective of strengthening the criminal justice response within the Union, the ICI would propose that the revised Directive should include a mention of specialised units within Member States' police forces and prosecution.

IV. Freezing and Confiscation

Currently, Article 7 of the Directive makes provision for Member States to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3. The Commission proposes to make explicit reference to the EU rules on tracing, freezing, management and confiscation, particularly regarding the proposed directives on asset recovery and confiscation.

The ICI welcomes this approach and would recommend that the revised Anti-Trafficking Directive should be harmonised with the EU's Anti-money Laundering Directive¹¹ (establishing trafficking in human beings as a predicate offense), and promote partnership with financial services industry to conduct effective investigation and prosecution of trafficking cases.

The ICI recognises that asset forfeiture/confiscation can be an important tool in disrupting trafficking networks and preventing traffickers from profiting from their crimes. The ICI proposes that the funds generated from asset forfeiture could be used to support victim assistance programs, compensation funds, and other anti-trafficking initiatives across EU Member States.

V. Non-Punishment

Article 8 - the non-punishment provision - is mostly not implemented/nor complied with on a national basis. In the ICI's organisational experience in Ireland, our office has encountered victims of trafficking who have been subjected to criminal prosecution, conviction and penal sanctions for their involvement in unlawful activities in the State which they were forced/compelled to engage in as VOTs. In this respect, the ICI would propose that the revised Directive prescribe a clear obligation for MS to effectively implement the non-punishment principle in relation to trafficked persons to avoid prosecution of or penalties on victims who have committed criminal activities as a direct consequences of being trafficked. This should include an obligation to expunge convictions entered against individuals who may only be formally identified as a victim of trafficking after prosecution/conviction, etc. It is evident that some Member States continue to prosecute and punish victims for acts they were compelled to perform as a result of their being trafficked. The Directive as currently drafted does not preclude Member States from doing so.

VI. Aim and Duration of Assistance and Support to Victims

According to Article 11(1), assistance and support are provided to victims before, during and "for an appropriate period of time" after criminal proceedings. This formulation could imply that assistance and support are provided to victims only in relation to criminal proceedings, and solely for the purpose of enabling the criminal proceedings. In the alternative, the ICI would underscore that long-term measures are needed, and therefore the duration of assistance and support should not be

¹¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

limited by the law or linked to the duration of criminal proceedings and should enable victims to engage appropriately in terms of access to civil remedies, including compensation cases. Explicit recognition and endorsement of this would be welcomed within the revised Directive in this regard.

VII. Access to Supports

Article 11(2) of the Anti-Trafficking Directive requires that States provide victims with early access to available supports – as soon as competent authorities have reasonable grounds to believe they have encountered a victim. Read in conjunction with Recital 18 – which similarly requires early assistance to victims – this represents a strength of the Directive. In spite of such explicit wording, however, this is an area of concern *vis-à-vis* implementation. The European Commission¹² points out that only half of Member States clearly require that assessment and support should be provided as soon as ‘reasonable grounds’ are established. This needs to be improved in order to best ensure a gender-sensitive implementation of the Directive, which is particularly important for female victims of these serious forms of exploitation, which are documented and understood to inflict serious trauma.¹³

Additionally, those providing services to trafficked women and girls e.g., provision of info, referral, medical, counselling, legal aid, etc. should possess the necessary gender expertise. It has been recognised that specialist non-governmental services with such expertise are best suited for service provision to the victims in focus and should be funded for this purpose.¹⁴ Given the high level of mistrust amongst VOTs, the involvement of victim survivors in the provision of services has been suggested as an additional means of delivering gender-specific services to trafficking victims.¹⁵ Overall, the Directive does not outline any specific characteristics of support services that would ensure that they meet the gender specific needs of victims, which is a notable weakness. It is of note that Recital 18 requires that “Member States should provide for resources to support victim assistance, support and protection”. Complemented with the recent European Commission study’s conclusions regarding assistance,¹⁶ this Recital could represent an opportunity for reform.

The link between the Anti-Trafficking Directive and Directive 2004/81/EC (on the residence permit issued to third-country nationals who are victims of trafficking) implies an unjustifiable difference of treatment between victims who are nationals or EU citizens, and third country nationals. For them, assistance is *de facto* not unconditional, as the granting of a residence permit is subjected to the requirements under Article 8 of Directive 81/2004/EC, including “a clear intention to cooperate” with the relevant authorities. We submit, therefore, that Article 11(3) of the Anti-Trafficking Directive should be amended to provide for unconditional assistance and granting of residence permits – where necessary - to all victims.

¹² European Commission (EC), Study on the Gender Dimension of Trafficking in Human Beings (2016).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

VIII. Formal Establishment of NRMs

Currently, Article 11(4) requires Member States to take the necessary measures to establish the appropriate mechanisms aimed at early identification of, assistance to, and support for victims in cooperation with relevant support organisations. The Commission proposes that Member States formalise the establishment of their National Referral Mechanisms through laws, regulations, or administrative provisions and to appoint national focal points for the referral of victims.

While the Commission has indicated that this proposal will be complemented by the development of guidelines to minimum requirements for National Referral Mechanisms to harmonise structure and practice, the ICI would consider that this proposal is not sufficiently far-reaching. To ensure a coordinated response to trafficking in the Union and to ensure effective cross-border cooperation, harmonising guidelines should form part of Union law and should invoke the principles set out clearly in the OSCE/ODIHR 12 principles for effective NRM structures and, in particular, access to recovery and reflection, the best interests of children, non-conditional on cooperation with criminal investigation/prosecution; non-punishment and non-detention; social inclusion and criminal justice/redress.

Member States should also be provided with a clear obligation and responsibility to protect all victims of trafficking identified within the State's territory regardless of country of origin, and to provide long-term assistance (including access to labour market) on a non-discriminatory basis. Authorities within Member States must also ensure that temporary residence permits are granted for identified foreign victims of trafficking. Member states must ensure that authorities providing assistance respond appropriately to victims' gender- and age-specific needs in a trauma-informed way and takes into account the type of harm and exploitation to which they were subjected. States should also be mandated to regularly develop, adopt, implement, review and update National Action Plans (NAPs) to combat trafficking in human beings.

The ICI would also propose that the Directive establish an obligation on Member States to institutionalise trainings to relevant Anti-Trafficking stakeholders through respective national training academies/institutions, both for criminal justice actors and service providers and strengthen victim-centred and gender-sensitive training of law enforcement and judicial professionals.

IX. Integrated Support for Victims of GBV

The Istanbul Convention (Article 18(3)), recommends integration of services for all victims of gender-based violence where support measures 'allow, where appropriate, for a range of protection and support services to be located on the same premises.' Adopting an integrated and holistic approach has also been recognised as best practice in the specific context of victims of trafficking for sexual exploitation and/or forced marriage.¹⁷ The failure of the Directive to mention integration of services is a missed opportunity, although there is reference to a range of services potentially required by victims. There is a concern that Member States will consider that providing victims with disparate (rather than integrated) supports will suffice to meet the needs of VOTs for sexual exploitation and/or forced marriage.

¹⁷ European Union Agency for Fundamental Rights (FRA), Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices (2014); Ibid (n 3).

X. Material Assistance

Female victims of trafficking are often financially disempowered, with no means of survival.¹⁸ Consequently, the provision of some kind of financial support to aid their recovery and integration is vital. To further assist in this regard, it is important that any material assistance provided seeks to empower victims by encouraging independent living. Article 11(5) of the Anti-Trafficking Directive mandates support measures including “material assistance” to victims, which is a strength. There is, however, no additional guidance in the Directive on the meaning of this term. This is a weakness of the Directive. The ICI would propose that clarification be introduced within the provisions of the revised Directive, which would assist in the harmonisation and consistency of supports provided across Member States.

XI. Special Needs

The special needs of certain categories of trafficking victims are recognised in Article 11(7), which lists factors such as pregnancy, health, disability, mental or psychological disorder or serious psychological, physical or sexual violence. This provision is of particular importance in the case of women and girls trafficked for the purpose of sexual exploitation and/or forced marriage, who are at increased risk of suffering from ill-health, including psychological disorders, as a result of the gendered harm and violence they have suffered. Although the provision is overall a strength, there is little guidance on any practical measures which Member States must take in implementation. Coordinated guidance in this regard would be welcomed.

XII. Protection of VOTs in criminal investigation and proceedings

The Anti-Trafficking Directive contains one important aspect of a gender-sensitive interview. Article 12(4) of the Directive requires national authorities to avoid the unnecessary repetition of interviews with victims. It is questionable, however, to what extent this applies to the identification interview. The wording of the Directive restricts this protection to interviews during the criminal justice process (investigation, prosecution, or trial). Given its necessary connection to the investigation, however, it could be argued that the identification interview is subsumed by Article 12(4). There is an opportunity for Member States to take such an interpretation, which would provide added protection to victims. The Directive fails to make provision for a gender choice of interviewer. This presents a risk that victims will be inhibited from making full disclosures. The omission does not prevent a practice being implemented that would offer victims this choice; however the failure to include any provision for this is unhelpful as regards this important protection. It is commonly reported that female victims prefer to make disclosures in an all-female environment.¹⁹ As such, a gender choice of interviewer should be offered as a matter of course to all victims, irrespective of their gender, and during all interviews, so that sensitive disclosures are facilitated in the first instance. Moreover, this choice should be offered to groups that may contain trafficking victims, more generally, for example to all irregular migrants encountered by State authorities and all asylum seekers.

XIII. Needs Assessment

¹⁸ Ibid (n 3) at 34.

¹⁹ Refugee Women’s Legal Group (UK) 1996: para. 5.20.

Recital 18 recommends that provision of support and assistance to victims should follow an individual needs assessment taking into account their experience, cultural context and individual characteristics. Women trafficked for the purpose of sexual exploitation and/or forced marriage, suffer particular (and severe) types of harm and trauma, as such the importance of individual assessment in these cases cannot be overstated. Assessment of the individual needs of women trafficked for forced marriage could be challenging and understanding of the cultural context is essential as this crime may be linked to a traditional practice. While Recital 18 creates an opportunity for implementation, it is not followed by a binding obligation and this represents a threat during implementation. Child victims, on the other hand, must undergo an individual assessment *via-a-vis* the type of support and assistance they require, which is a strength that benefits girl victims (Article 14(1)). The only type of assessment required by the Directive that is applicable to all victims is in relation to their protection needs during criminal proceedings. Again, the emphasis on criminal proceedings is unhelpful, given that, in reality, only a small fraction of victims' cases will be brought to trial and successfully prosecuted.

XIV. Equal Treatment

Victims of trafficking come from a multitude of backgrounds and are trafficked for a variety of purposes. In order to ensure that all victims can access services, it is important that access is based, *inter alia*, on the principle of equal treatment, a cornerstone principle of EU law. Women who are trafficked for sexual exploitation and/or forced marriage should be able to access social supports and services on an equal footing to other victims. This can remove the risk of "*illegal discrimination in accessing health, welfare and criminal justice services*". The ICI identifies that there are no specific provisions in the Directive concerning equal treatment. Recital 33 states that the directive "observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union" which includes equality and equal treatment of men and women. Consequently, there is an implicit reference to the provision of services to victims being based on the principle of equal treatment, however, explicit endorsement would be welcomed within the revised Directive. Member States must be mandated to guarantee equal access to State services for all VOTs.

XV. Special Measures

Recital 20 of the Directive encourages the use of video recordings of interviews. This, however, is recommended in the Preambles and thus does not constitute a binding obligation. In the case of children, however, Article 15 (4) obligates Member States to take necessary measures to ensure that interviews may be tape-recorded and, further, that such tapes may be used as evidence in court, where appropriate. This is a strength as regards girl VOTs. MS are, of course, free to expand this particular protection to all female VOTs; the failure of either Directive to mandate it for adults represents a weakness for victims of GBV, who may be in particular need of this kind of provision, given the very high attrition rates during the criminal justice process for crimes of these kinds, including trafficking for forced marriage / sexual exploitation. Victims tend to be traumatised and may cease cooperation with the criminal justice process as a result of experiencing secondary victimisation. Having the option to tender a taped interview in lieu of live evidence may facilitate more prosecutions in crimes of GBV.

XVI. Compensation

Article 17, is among the least implemented of the Directive. In practice such a provision which enables VOTs to access funds for victims of violent crimes, is not appropriate as trafficking is not always carried out by means of violence. Such compensation pathways are, therefore, ineffective. The ICI would underscore that compensation is one of a victims' essential rights, as it is instrumental to trafficked persons' social inclusion and recovery. The ICI would propose that innovative measures are needed, aimed at ensuring that victims receive compensation, such as, *inter alia*, the payment in the first instance by the State of compensation awarded by Courts, the establishment of specific national funds for victims of trafficking and exploitation, and speedy procedures – also involving trade unions – for all exploited persons to claim back payments, reimbursement and compensation. We would refer to the above submissions concerning asset forfeiture and confiscation. Funds generated from same could be used to support victim assistance programs, compensation funds, and other Anti-Trafficking initiatives across EU Member States.

XVII. Establishment of New Offences

Currently, Article 18(4) of the Directive requires Member States to consider taking measures to establish as a criminal offence the use of services which are objects of exploitation, with the knowledge that the person is a victim of a trafficking. This was an optional provision for Member States to impose. The Commission proposes to make it mandatory for Member States to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is a VOT. Paragraph 2 of the new Article 18(a) will require Member States to take the necessary measures to ensure that offences relating to the knowing use of exploited services are punishable by effective, proportionate and dissuasive penalties and sanctions.

While this approach is broadly welcome, the removal of the need for the 'buyer' (or user of services) to know that an individual is a victim of trafficking would make it more probable that a case can be successfully prosecuted and would help to increase social understanding of the levels of unseen exploitation and violence in the wider system of sexual exploitation. We understand that prostitution is one of the primary reasons why women and girls are trafficked,²⁰ and targeting the demand is one of the most efficient ways to tackle this extreme form of violence against women and girls. Furthermore, the requirement by which the buyer of a sexual act should know that they are 'buying' a victim of trafficking to be successfully prosecuted makes the above minimum standard almost impossible to achieve in practice.

XVIII. Yearly Data Collection Requirement and Reporting on Indicators

Currently, Article 19 provides that National Rapporteurs and Equivalent Mechanisms carry out tasks including the gathering of statistics and reporting in the context of the bi-annual reporting carried out by the European Commission on the progress made in the fight against trafficking in human beings. The Commission proposes to introduce a requirement for Member States to collect and report data on trafficking in human beings to the Commission every year, through a new Article 19a, which specifies the indicators for such data collection. Its first paragraph sets forth the

²⁰ European Commission, "Trafficking victims in Europe, a rise by 10% and the share of EU nationals among the victims increased to 59%" (9th February 2023) Available at: https://home-affairs.ec.europa.eu/news/trafficking-victims-europe-rise-10-and-share-eu-nationals-among-victims-increased-59-2023-02-09_en

obligation for Member States to collect data to monitor the effectiveness of their systems to combat trafficking offences. Paragraph (2) specifies the minimum set of indicators that should be part of it (number of registered victims; number of persons suspected, prosecuted and convicted for offences referred to in Article 2 and in the proposed Article 18(a)) and the level of disaggregation.

The ICI welcomes this approach and, to support this new provision, would recommend that the revised Directive mandate Member States to establish a National Anti-Trafficking Co-ordinator (NAC) and a multi-agency Task Force as a part of their Anti-Trafficking framework. The Directive should ensure that national Anti-Trafficking Task Forces are mandated, under the guidance of the National Anti-Trafficking Coordinator, to co-ordinate activities among State agencies and NGOs, and that they include social protection units, medical institutions, victim support services, law enforcement personnel, labour inspectorates, immigration and border service officials, civil society organisations, and representatives of the business community, so as to promote a comprehensive approach to combating all forms of trafficking in human beings. More broadly, the revised Directive should include provision to strengthen National Rapporteurs' (or equivalent mechanisms) independence to ensure effective monitoring and evaluation of Anti-Trafficking policy and actions at all levels.

XIX. Child trafficking

The ICI is concerned that the Commission proposal contains no amendments regarding the position of child victims of trafficking. Trafficking is both a driver and a consequence of children going missing. The most vulnerable children at high-risk of trafficking include child victims of family violence, abuse and neglect and poverty, children on the move and children left alone, amongst others. Challenges to address trafficking and child disappearances include:

- Lack of reliable and recent data on missing children
- Failures in the child care systems leading to risk of children going missing and trafficking
- Lack of clear procedures between and within Member States
- Lack of cross border cooperation, in particular in cases of children in migration going missing
- Information sharing
- (Non) appointment of guardians for unaccompanied minors
- Lack of legal provisions and multi-agency cooperation in finding a durable solution for the child,
- Improved training for frontline professionals
- Designing child rights compliant privacy laws

In order to enhance awareness on this issue and offer more protection to the victims of child trafficking, we would propose the Directive make provision for a coordinated child specific identification procedure and National Referral Mechanism (NRM). We would also submit that the definition of trafficking should be broadened so as to cover institution-related trafficking. The capacity of agencies that come into contact with child VOTs must be strengthened to ensure that children are not returned to institutions or services where they were exploited or which facilitated their exploitation. Collaboration and information-sharing between child protection actors, law enforcement and the courts for children deprived of parental care must be improved on a coordinated basis throughout the Union.

XX. Extraterritorial Jurisdiction

The Directive imposes territorial jurisdiction for the prosecution of offences unless there is a legal nexus, however, it is silent when it comes to the (extraterritorial) identification and protection of victims. Considering that the issue is highly politicised, it is likely to be a deliberate omission. Extraterritorial jurisdiction would allow Member States to prosecute individuals involved in trafficking who are operating outside of their borders. This is important because trafficking often takes place across national borders, and traffickers may seek to evade prosecution by moving between countries. Extraterritorial jurisdiction allows Member States to hold traffickers accountable for their actions, regardless of where they occurred. To ensure that extraterritorial jurisdiction is applied fairly and consistently, Member States should collaborate to establish clear rules and procedures for cross-border investigations and prosecutions.

XXI. Reporting Requirement

The proposed Article 23(3) introduces a requirement for the Commission to submit a report to the European Parliament and Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with the new rules on the knowing use of exploited services.

The ICI welcomes this approach. We would underscore that monitoring and evaluation are important tools for tracking the implementation and impact of Anti-Trafficking measures across Member States. This can include regular reporting requirements, data collection, and impact assessments. Monitoring and evaluation can help to identify areas where Anti-Trafficking efforts are falling short and guide the development of more effective policies and programmes. By sharing information and best practices, Member States can work together to strengthen their Anti-Trafficking efforts and ensure that they are making progress in the fight against trafficking in human beings.

Immigrant Council of Ireland

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