

New EU Migration Pact increases risks of human trafficking

On the occasion of 18 October, the European Day against human trafficking, La Strada International - European NGO Platform against trafficking in human beings - member of PICUM¹ - calls for enhanced pathways and rights for asylum seekers and migrants, including better protection of migrant workers to prevent human trafficking.

On 23 September 2020, the European Commission adopted and published its long-awaited new Pact on Migration and Asylum. While this Pact aims to improve European cooperation on migration and asylum and provide 'certainty, clarity and decent conditions for the men, women and children arriving in the EU', La Strada International is concerned that the Pact will instead increase the risks of exploitation and human trafficking, as well as violations of exploited and trafficked persons' rights.

The Pact recognizes that migration is of all times and that 'a system should be built that manages and normalises migration for the long term and which is fully grounded in European values and international law'. However, the main focus of the Pact is put on restricting possibilities for people to access residence status, increasing detention and facilitating immediate return of those that have been denied asylum, and removing essential legal safeguards and support, in conflict with international human rights obligations. While some measures are put forward in the areas of labour migration and integration, they are outshined by the focus on return.

Restrictive Approach

The prevention and combating of human trafficking and other international crimes has often been used to 'justify' measures to prevent irregular migration, impose rigid visa policy, increase border controls and obstruct family reunification. This narrative continues in the Pact.

However, restrictive policies contradict their proclaimed purpose, as they create situations in which human rights violations are more likely to occur. State policies that increase border control and surveillance, and reduce opportunities for safe and regular migration, have created a market for irregular migration, including human trafficking and other abuses, due to increased reliance on smugglers.² Restrictive immigration laws and the criminalisation of (undocumented) migration have left a large number of migrants, and specifically migrant workers, at risk of varying degrees of exploitation and abuse by brokers, including traffickers, and employers, knowing that employees who are irregular are unlikely to be able to challenge exploitation or exercise their rights. This is not only due to the barriers to access work permits and to change employers on the same permit, but also to a lack of adequate state monitoring of employers' adherence to the labour rights of undocumented migrants. The way in which immigration enforcement is currently carried out often blocks access to necessary assistance and support, and make inaccessible and ineffective state civil and criminal justice mechanisms.

¹ See also PICUM's reaction to the new EU Pact on Migration and Asylum of 14 October 2020 <https://picum.org/wp-content/uploads/2020/10/More-detention-fewer-safeguards-How-the-new-EU-Pact-on-Migration-and-Asylum-creates-new-loopholes-to-ignore-human-rights-obligations.pdf>

² See for example, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants*, A/HRC/29/36, 8 May 2015 The U.N. Rapporteur: We Need a Long Term Strategy for Human Migration By François Crépeau - U.N. special rapporteur on the human rights of migrants, published on 10/09/2017

Border procedures

The proposal for a new pre-entry screening procedure, to identify people and decide which subsequent procedure is applicable, does not provide adequate safeguards for trafficked persons. It is supposed to include a preliminary medical examination and screening for vulnerabilities, but these are not compulsory, as they will only take place when considered “relevant” by the authorities. Therefore, this screening risks to miss identifying many vulnerabilities, including signs of trafficking. People will not have access to a lawyer, and the involvement of national rapporteurs on trafficking is also optional, to situations that the authorities deem appropriate. During the pre-entry screening procedure, people will be automatically detained for up to ten days. This raises clear risks that safeguards will not be put in place and will be inadequate. There is also no clear obligation to act upon vulnerabilities identified nor refer people into National Referral Mechanisms. The proposed asylum and return border procedures deny people access to any residence procedure outside of international protection as provided for by national legislation.

This gives the clear impression that the commitments to identifying trafficked people are window-dressing for a proposal which aims to deter people from arriving irregularly to Europe and to deny people access to fair procedures in order to facilitate the deportation of as many people as possible at any cost. The proposal to apply this procedure also for people within the territory only lends weight to this impression. The European Parliament and European Council should reject these proposals and focus on improving decision-making and implementation of standards in the existing procedures.

Detention

The Pact’s proposed asylum and return border procedures are also expected to lead to increased and extended detention periods, which can last up to six or even ten months, during which there is limited access to information and medical care. ‘Detention makes it difficult for people who have been trafficked to disclose their experiences; to access specialist, independent trafficking advice and representation; or to be correctly identified as victims and given specialist support’. Detention causes harm and can trigger past trauma. Moreover, by denying victims of trafficking a safe space where they can disclose their experiences and access independent advice detention prevents effective access to National Referral Mechanisms. Detention impacts on physical and mental health and contributes to isolation and mistrust of authorities.³ Locked up in prison-like conditions, detained victims of trafficking often lack access to independent specialist advice, support and representation’.⁴

Many of La Strada International’s members reported challenges supporting people with clear indications of human trafficking that are detained, often under bad conditions, unsuited for trafficked people and migrants in general.⁵ Instead of detaining people during immigration procedures, EU Member States should provide for alternatives to detention. Community-based alternatives, including the provision of case management⁶, are required by law, and also better suited to identify potential victims of trafficking and tailor conditions to meet their specific needs.

³ von Werthern, M., Robjant, K., Chui, Z. *et al.* The impact of immigration detention on mental health: a systematic review. *BMC Psychiatry* **18**, 382 (2018). available [here](#).

⁴ Detention Action - Trafficked into detention: How victims of trafficking are missed in detention, November 2017 - <https://detentionaction.org.uk/wp-content/uploads/2018/08/Trafficked-into-detention-How-victims-of-trafficking-are-missed-in-detention.pdf>

⁵ Our member Hope Now is raising awareness for the detention of trafficked persons in Denmark <https://hopenow.dk/in-denmark-we-imprison-victims-of-human-trafficking/?lang=en>

⁶ https://picum.org/wp-content/uploads/2020/04/Concept-Paper-on-Case-Management_EN.pdf?fbclid=IwAR3srJlswYuFXbGiw_m9pd9feCoA0sBzAbJuRJ7S84LuKQTHIWhMPIlfsW4

Forced Returns

Many (presumed) trafficked persons are currently forced to return or deported to other EU countries or their countries of origin, when they have not been able or willing to cooperate with the authorities or not been identified as trafficked persons and therefore not provided a residence permit. This denies them access to their rights as victims of trafficking, as well as posing risks of non-refoulement and other human rights violations. It removes people from their social support networks and denies their agency and migration projects. Despite the strict limitations on mobility due to the COVID-19 pandemic, several European Union member states have started to deport presumed trafficked persons back to Italy and other European countries with the message that they should report the crime there. In general, it is noticed that asylum procedures in Europe are speeded up, leaving very little time to check for persons' vulnerabilities and their possible identification as victims of trafficking. When deciding on relocation under the proposed Asylum and Migration Management Regulation, EU MS should take into consideration the right of safe return or referral and ensure that all people can report the crime of human trafficking in any European country and receive access to a protection and support.

Individual risk assessments that analyse the impact of return and deportation on individuals' private and family lives⁷, safety and other human rights are crucial to enable access to protection, adequate services and support of the person in line with EctHR and CJEU jurisprudence, as well as reduce the risks of re-trafficking.⁸ Therefore, the EU has to ensure that a proper risk assessment is conducted prior to issuing a return decision, including a decision on relocation, to ensure compliance with non-refoulement obligations. Furthermore, trafficked asylum seekers in relocation procedures must not face discrimination in their access to support and in the scope of protection of their rights solely because they fall within the realm of applicability of the future Asylum and Migration Management Regulation.

Labour migration across skills and income levels

National and EU migration policies continue to offer very few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in key sectors. The new Pact does little to change this. While there is recognition for the need to facilitate more labour migration across skills levels and recognition of migrant labour during the COVID-19 pandemic⁹, the Pact does not offer much ambition or concrete action to increase decent labour migration pathways across sectors and skill levels, particular when compared to the focus on deportations.¹⁰ Also, there is still no real recognition of the contributions of undocumented workers. European labour market demand exists in low wage occupations most notably in the restaurant, hospitality, agriculture, construction, retail, and domestic work sectors. When structural labour demand is not met through official labour migration routes, it pushes workers into the informal economy, and irregularity. Regular migration pathways and decent work permit schemes are crucial to prevent exploitation, especially with the current demand for cheap labour and products in general. Given

⁷ <https://picum.org/wp-content/uploads/2020/09/Removed-stories.pdf>

⁸ La Strada International submission to the New EU Pact on Migration and Asylum, August 2020

⁹ In October 2020, the Council adopted conclusions which recognise that seasonal and other mobile workers across the EU are often exposed to adverse working and living conditions and the risk of exploitation and that seasonal and other mobile workers make an important contribution to the internal market, and have continued to do so during the current crisis. See [press release](#) of 12 October 2020 by the Council of Europe 'Improving the working and living conditions of seasonal and other mobile workers: Council adopts conclusions'.

¹⁰ PICUM '[More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#), October 2020

the significance of labour migration for European economies and societies, the EU should make decent work for labour migrants a real priority and follow through with political leadership, policy and funding.

Vulnerability and lack of protection

During the COVID-19 situation, the increased vulnerability to exploitation and abuse of migrants, including refugees and asylum seekers from third countries, became very visible. The COVID-19 restrictive measures also made visible how much vital work in Europe is conducted by (low paid) migrant workers, both from within the EU by EU mobile workers as well as by workers from third countries, of which many lack access to adequate information on their rights, adequate housing and support and secure residence status. The lockdowns reinforced their isolation and reduced chances of persons being identified as in need of assistance and support. Lately, much outreach and labour monitoring measures have been scaled down. As a result the identification of vulnerable, exploited and trafficked persons is further lacking behind.

In addition, not much progress has been made in Europe to reduce the risks associated with vulnerabilities and the factors that foster them, which is essential for an effective anti-trafficking prevention. Only few European countries took action to address exploitation in the vulnerable industries and only few countries took measures to offer residence or extension of work permits to workers. The absence of adequate information, assistance and clear safeguards including lack of safe reporting and effective complaints mechanisms, may prevent trafficked persons from reporting to the authorities and may subject them to further trauma and re-victimisation. The Commission should take into account the short- and long term impact of the Covid 19 pandemic and should take measures to ensure sufficient resources to reduce vulnerability of marginalized groups. States have a (positive) obligation to identify and assist potential trafficked persons and to effectively investigate the possible exploitative situation, independent of the individual willingness or ability of the person to cooperate.

Lack of residence and work permits

The laws or policies determining which trafficked persons are granted residence permits vary substantially between different EU countries. Huge differences are noted between the numbers of identified victims and issued residence permits. Victims may be issued a renewable residence permit if their personal situation requires so, or if they need to stay in the country in order to co-operate with the authorities in the investigation of the trafficking offence. In general there are only few possibilities to obtain (permanent) residence on personal grounds in the different European countries.¹¹ The EU should promote full use of the possibilities under EU and national law to provide a permit based on human rights and other humanitarian considerations, to enable people to participate in any civil and criminal legal procedures and access justice, and to provide pathways to long-term residence and settled status on various grounds.

¹¹ La Strada International [submission](#) for the European Commission's Third Report on the Progress made in the fight against trafficking in human beings, May 2020

New EU Strategy on Eradication of Human Trafficking

It is widely recognised that in order to effectively combat and prevent trafficking, a rights-based and holistic approach that includes EU policies on development cooperation, human rights, children's rights, (migrant) workers' rights, equality, social affairs and social inclusion, anti-discrimination, as well as on migration and asylum, should be implemented according to international human rights standards. EU policies with potential impact on the rights and safety of trafficked persons, such as external and security policies and policies on return and irregular migration in general should have therefore been developed with due regard to good practices for the protection of the rights of trafficked persons. Also the European Commission itself has recognised that 'more coherence is needed both at EU and national level, to ensure that related policies incorporate anti-trafficking policy, while fundamental rights in anti-trafficking policy and legislation should be mainstreamed; ensuring consistency and complementarity with the priorities and programming identified in migration, security and human rights areas and the 2030 Sustainable Development Goals Agenda'.

On the contrary, the new Pact on Migration and Asylum fails to protect migrants' rights and even risks to increase vulnerability to human trafficking. The European Commission plans to adopt a new EU Strategy to Eradicate trafficking in human beings in 2021. It is hoped that more coherence and more focus on rights protection and prevention can be expected from this strategy.

La Strada International calls upon the European Parliament, European Council and Member States to:

- Revise the proposals and mainstream specific protective measures for migrants and trafficked persons into the Pact and all EU policies.
- Monitor all immigration legislation and policy for its impact on the rights of (irregular) migrant workers and trafficked persons.
- Increase opportunities for regular, gainful and non-exploitative labour migration for workers of all skill levels.
- Strengthen regulatory and supervisory mechanisms to protect the rights of migrant workers regardless of status.
- Provide for alternatives to detention including community-based alternatives and provision of case management.
- Take more efforts to identify potential victims of trafficking and exploitation and ensure that all can report the crime in any European country and receive access to protection and support.
- Conduct proper risk assessments prior to issuing a return decision, including a decision on relocation, to ensure compliance with non-refoulement obligations.
- Make decent work for labour migrants a real priority and follow through with political leadership, policy and funding.
- Ensure access to adequate information, assistance, safe reporting and effective complaints mechanisms and enable people to access justice.
- Provide pathways to long-term residence and settled status on various grounds, including regularisation programmes as a key component of migration and anti-trafficking policies.

Signatories:

1. Adpare, Romania
2. Animus Association Foundation, Bulgaria
3. Anti-Slavery International (ASI), United Kingdom
4. ASTRA Anti-Trafficking Action, Serbia
5. Ban Ying, Germany
6. Comité Contre l'esclavage Moderne, (CCEM), France
7. CoMensha, Netherlands
8. Proyecto Esperanza, Spain
9. FairWork, Netherlands
10. FIZ Advocacy and Support for Migrant Women and Victims of Trafficking, Switzerland
11. Focus on Labour Exploitation (FLEX), United Kingdom
12. Gender Perspectives, Belarus
13. Social Changes, Belarus
14. Hope Now, Denmark
15. Human Resource Development Foundation (HRDF), Turkey
16. KOK, German NGO Network against Human Trafficking, Germany
17. La Strada Moldova
18. La Strada Ukraine
19. LEFÖ IBF Austria
20. La Strada Czech Republic
21. La Strada Foundation against Trafficking in Persons and Slavery, Poland
22. Migrant Right Centre Ireland (MRCI)
23. Novy Put, Bosnia Herzegovina
24. On the Road, Italy
25. Open Gate – La Strada North Macedonia
26. PAG-ASA, Belgium
27. Pro Tukipiste, Finland
28. SICAR Cat, Spain
29. Victim Support Finland

This statement is also endorsed by the Platform for International Cooperation on Undocumented Migrants (PICUM) of which La Strada International is a member.



La Strada International is a European NGO Platform against human trafficking that works from a human rights perspective. The Platform's primary goal is empowering trafficked persons and vulnerable groups, improving their position through promoting their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse. La Strada International is member of GAATW, PICUM, ICRSE and HRDN.