Preventing and combating trafficking in human beings, and protecting victims

2010/0065(COD) - 02/12/2016 - Follow-up document

The Commission presented a report to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU.

As a reminder, a major step in the EU action to address this phenomenon was the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims which replaced the previous EU legal instrument on trafficking in human beings, Council Framework Decision 2002/629/JHA.

The report provides a description of existing national legislation that criminalises the use of services of victims of trafficking and an assessment of the impact of any such legal measures. It should be read in conjunction with the "Report assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23(1), COM(2016) 722 (refer to the corresponding summary in the procedure file).

The ultimate aim of this Report is to contribute to meeting the objectives of the Directive 2011/36/EU on **reducing demand and prevent trafficking in human beings**, in order to ensure that criminal groups are not benefiting from the diverse legal treatment of users of victims of trafficking.

Main conclusions of the report: as stipulated in Article 18(4) of the Directive 2011/36/EU, in order to make the preventing and combating of trafficking in human beings more effective, Member States shall consider taking measures to **establish as a criminal offence the use of services which are the objects of exploitation of victims of trafficking**.

But the analysis made in this report demonstrates a **rather diverse legal landscape which fails to effectively contribute to discouraging demand of such services**.

The issue of criminalisation: the report noted that Member States follow rather diverse approaches and practices. In all Member States where there are national measures establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, the personal scope of those provisions is limited only to those who directly use services or labour provided by the victims. However, restricting criminal liability only to the situation where the user has direct and actual knowledge that the person is a victim of human trafficking creates a very high threshold for achieving prosecutions. In this respect, consideration of the level of knowledge that should be required for this offence should be a matter for close examination.

In the complete **absence or inadequate criminalisation** of the use of such services in the context of trafficking in human beings, the activity of traffickers which by definition includes exploitation of their victims, may not only be less discouraged, but adversely may be even **fostered including through a culture of impunity**.

The report stated that the challenge of discouraging demand implies to **focus more on those who actually use the services** of different forms of trafficking with the knowledge that the person is victim of an offence.

Currently, **several Member States' legal systems do not, or only partially, outlaw those who make use of such services with relevant knowledge**, impacting on legal uncertainty with regards, for example, the criminal liability linked to the relation of the user with the victim, the legal treatment of those who profit from or enable and facilitate such exploitation, the distinction between a user and an exploiter, the liability of intermediaries, as well as the broader supply chains.

According to the Commission, Member States should **step up their efforts to ensure a more unified and dissuasive action against this element of the cross-border crime of trafficking in human beings**. It stated that it will further examine potential options and consider in the future, if necessary, **appropriate legislative proposals**, as per Article 23 (2) of the Directive 2011/36/EU.