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**Amending Directive
2011/ 36 /EU on preventing
and combating trafficking in human
beings and protecting its victims
(2022 /0426(COD))**



**Border Violence
Monitoring Network**



**I HAVE
RIGHTS.**

Amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2022/0426(COD))

This briefing is based on the submissions of both IHR and BVMN to the European Commission's call for input for the [Have Your Say initiative on fighting human trafficking - review of EU rules](#).

[I Have Rights](#) (IHR) is a non-profit refugee law clinic operating on the Greek island of Samos. We provide free legal information to asylum seekers as well as engaging in advocacy and strategic litigation. Over the last 12 months we have assisted 44 persons who are survivors of human trafficking. IHR's full submission can be read [here](#).

[The Border Violence Monitoring Network](#) (BVMN) is a coalition of organisations working to document illegal pushbacks, police violence and detention along the European Union's external borders in the Western Balkans, Greece and Turkey, that strives to advocate for an end to the violence and rights abuses perpetrated against people on the move. Member organisations of the network work with people on the move that are frequently exposed to human rights violations, including human trafficking. BVMN's full submission can be read [here](#).

I. Specific vulnerability to human trafficking of people on the move

- People on the move represent a significant share of detected survivors of human trafficking. They are extremely vulnerable to trafficking during transit due to being separated from family members and friends, being in tough conditions without financial support and essential survival items and in a poor state of mental health.
- This is compounded by the vulnerability that arises after a pushback, as those imply being target of torture and other cruel, inhuman or degrading treatment or punishment, a lack of legal avenues to seek asylum, an unlawful rejection of assistance by the authorities and a higher level of uncertainty. Common consequences of pushbacks, such as being separated from family members, experiencing psychological distress and being left without a phone and other belongings further increases vulnerability to trafficking.
- We recommend that people on the move be recognised as a particular group vulnerable to trafficking, with specific consideration to survivors of pushbacks.

II. Identification

Impact of state violence, criminalisation and de facto detention practices

- BVMN states that the use of pushbacks actively eradicates any opportunity for the state to fulfil its obligation to identify persons trafficked while flagrantly denying them the right to seek international protection and the right to support and assistance provided for under Article 11 of the Directive.
- States' use of pushbacks and border violence discourages survivors of trafficking from reporting cases and co-operating with the authorities. In fact, survivors often report a fear of being pushed back and/or a general lack of trust towards authorities.

- People on the move and those who support them are constantly faced with the threat of criminalisation. This fear deters people from reporting human trafficking to authorities.
- We recommend that the use of pushbacks be explicitly prohibited in the Directive and a specified and detailed action plan for identifying and supporting trafficking survivors.

III. Deficiencies in identification in the asylum procedure

In screening procedures

- IHR has observed in the initial screening interview conducted by Frontex on Samos, questions are focused on smuggling routes and networks. No questions are asked about trafficking. This constitutes a missed opportunity for the early identification of survivors.
- We recommend that potential survivors of human trafficking are given the opportunity to disclose their experiences throughout the asylum procedure and that public officials and EU agency staff conducting preliminary screening interviews with asylum seekers must make all enquiries necessary to determine whether the asylum seeker is a survivor of trafficking.

In the medical and psychosocial evaluation

- There has been no doctor employed in the Samos Closed Controlled Access Centre (CCAC) for a year, hence vulnerability assessments fall on one volunteer that comes two afternoons per week. Reports show assessments feel “rushed” and “like a tick box exercise”. Survivors often do not meet with the one psychologist before their asylum interview. Similar conditions have been reported by other BVMN members in different locations throughout Greece and Croatia.

In the asylum interview process

- From a group of thirteen survivors identified by IHR in 2022, nine women disclosed their experiences of trafficking in their asylum interview. Four others disclosed that they were raped on their journey to Greece, a clear indicator of trafficking, but were not questioned further by the caseworker on the subject, rather they were told to move on in the interests of time.
- We recommend that all public service actors likely to come into contact with survivors of human trafficking be trained in taking a human-rights based approach, including police officers, healthcare professionals and people conducting asylum interviews. Mandatory training should be conducted in line with national and international frameworks, including identification and support of survivors.
- We also recommend that where an asylum applicant has been identified as a survivor of trafficking, the risk of being re-trafficked if returned to their country of origin is considered when evaluating their asylum claim.

Deficiencies of the Greek National Referral Mechanism (NRM)

- Numbers of referrals to the Greek NRM by state authorities are shockingly low. To IHR’s knowledge, none of the 44 survivors they supported have been formally recognised as a survivor of human trafficking, nor were they ever contacted for a further assessment of their needs, offered any further information, support or services. In the year 2020, only 167 Trafficking Reporting Forms were submitted to the Greek NRM; with only 45 of those submitted by state agencies.
- IHR expresses support of the European Commission’s proposal that Member States formalise the establishment of their NRM and appoint National Focal Points (NFP) for the referral of

survivors. IHR recommends going further by implementing a positive obligation to identify, support, protect and assist survivors of trafficking at every stage of the asylum procedure.

- IHR supports the explicit inclusion of forced marriage and illegal adoption in the definition of human trafficking. At present, the Greek authorities do not refer survivors of forced marriage to the NRM as the NRM does not recognise forced marriage as a form of trafficking.

IV. Detention

- Detention can be considered a form of ill-treatment or torture when is done disproportionality, arbitrarily or unnecessarily. People on the move are frequently arrested, detained and forcibly removed from a state's territory, often in conditions which conceal their whereabouts and place them outside the protection of the law. Numerous testimonies of disproportionate, arbitrary or unnecessary detention which reach the threshold of ill-treatment or torture have been collected by BVMN in Member States such as Greece and Croatia.

- Art. 11(5) of the Directive does not establish the right to protection of physical safety, such as the protection from torture and inhuman and degrading treatment.

- IHR has [demonstrated that the Samos CCAC is a place of arbitrary de facto detention](#) of people seeking safety, in violation of Greek and International law. In fact, the blanket detention of newly arrived asylum seekers to the CCAC is the basis of an infringement decision against Greece, released this January by the European Commission. The prison-like structure is not suitable for people on the move, specifically survivors of human trafficking. The intense security apparatus of the CCAC that mimics the architecture of a prison can further exacerbate the mental sufferings of a survivor. Similar conditions were reported by the other BVMN members in other de facto detention centres in Greece and Croatia.

- Furthermore, the practice of detaining people in conditions which deny them access to fundamental rights including basic medical and psychological care puts trafficking survivors at risk of re-traumatisation, which in turn increases the risk of trafficking.

- We recommend the inclusion of a provision on physical safety in Art. 11 of the Directive, in alignment with international human rights standards, to protect people on the move, including trafficking survivors, against torture and ill treatment and the ensurement of access to essential medical amenities to survivors of human trafficking.

V. Access to Support

The current pushback and detention practices eradicate trafficking survivors' ability to access the support granted to them in Art. 11 of the Directive. The lack of access to assistance and support includes:

Medical support

- BVMN is highly concerned by the indiscriminate ill-treatment people on the move face during pushbacks and detention. The nature of those often severely affect the mental and physical health conditions of people, impeding the access to medical care.

- We recommend the establishment of additional guarantees and safeguards to assure the access of survivors of trafficking to necessary medical treatment including psychological assistance.

Access to legal information and remedies

- People on the move, including survivors of human trafficking, are routinely denied information in a language they can understand, and refused access to interpreters and

translators during their arbitrary detention, pre-deportation and prior to pushbacks. For example, BVMN recently reported about the lack of interpreters or translated documents in the cases of [mass returns of potential asylum seekers](#) from Croatia to Bosnia and Herzegovina.

- The conditions in which transit groups are detained and mass-returned or illegally pushed back create multiple barriers to potential survivors of trafficking in accessing the right to remedy, in particular, access to jurisdiction and legal remedies as, by design, pushbacks attempt to remove people on the move from a territory and hence leave survivors outside of the jurisdiction.
- We recommend the establishment of additional guarantees and safeguards, including access to an interpreter, access to information and documents, as well as access to legal counsel or advice in a language spoken in order to reduce the risk of trafficking and increase the possibilities for detection of survivors of human trafficking.
- BVMN asserts that efforts to provide effective remedies must include efforts to remove legal and procedural barriers by ensuring that trafficked people receive everything they need to access remedies. This includes the establishment of additional guarantees in place for survivors who have been removed from member states' territories, including the implementation of a truly independent monitoring mechanism.

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