



TRACKS

IDENTIFICATION OF
TRAFFICKED ASYLUM SEEKERS'
SPECIAL NEEDS

Identification and response to the needs of Trafficked Asylum Seekers

A COMPARATIVE REPORT
FOR THE REPUBLIC OF CYPRUS, FRANCE,
IRELAND, ITALY, SPAIN, THE UK
AND SWITZERLAND

Coordinated by

Co-funded by the European Commission

forumréfugiés
www.forumrefugies.org



Cosi
promouvoir et défendre les droits



Disclaimer

This project has been funded with the support from the European Commission.

This publication reflects the view only of the author, and the European Commission cannot be held responsible for any use which be made of the information contained therein.

This report does not reflect in full details the advocacy lines of each individual project partners. The recommendations formulated in the report do not reflect the views of the associate partners to this project.

Neither Forum réfugiés-Cosi nor any of the TRACKS project partners may be held responsible for the use which may be made of the information contained therein.

The content of this report may be reproduced and used for non-commercial purposes, trainings and advocacy activities, provided that the material is appropriately attributed to the project TRACKS' partnership.

Partnership

The project TRACKS – identification of TRafficked Asylum seeKers' Special Needs is a two years project implemented by Forum réfugiés-Cosi, the project coordinator, and its European partners British Red Cross (BRC), Churches Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Immigrant Council of Ireland (ICI), Italian Red Cross (ItRC) and Action for Equality, Support, Antiracism (KISA), in association with the Swiss Refugee Council (OSAR) – that is also implementing the project in Switzerland.

UNHCR Europe office, the French Office for the Protection of Refugees and Stateless persons (OFPRA), Amicale du Nid Rhône, UK Institute for Migration Research and the Human Trafficking Foundation are associated partners to this project.



TRACKS

IDENTIFICATION OF
TRAFFICKED ASYLUM SEEKERS'
SPECIAL NEEDS

Identification and response to the needs of Trafficked Asylum Seekers

**A COMPARATIVE REPORT
FOR THE REPUBLIC OF CYPRUS, FRANCE,
IRELAND, ITALY, SPAIN, THE UK
AND SWITZERLAND**

HOME/2014/AMIF/AG/ASYL/7849

Coordinated by



Implemented by



In association with



Content

Acknowledgements	6
The partnership	6
Executive summary	8
Main findings	10
Methodology	13
Glossary	14
Abbreviations	16

1. Introduction

1.1	Legislative context of the research	18
1.1.1	The overall legal framework	18
1.1.2	Relevant EU law	19
1.1.3	What Member States have transposed	20
1.2	Scope of the research	22
1.2.1	Target group presentation	22
1.2.2	Scale of the phenomenon studied	24

2. Detection of victims of trafficking and access to asylum: pre-conditions for considering their special needs

2.1	Persisting issues with regards to detection of victims of trafficking in the asylum process	32
2.1.1	Identifying applicants with special needs, including victims of trafficking	32
2.1.2	Identification of children victim of trafficking in the asylum procedure	36
2.1.3	Encouraging self-identification and self-reporting	37
2.2	Combination between National Referral Mechanism and asylum procedures	39
2.2.1	Compatible and conflicting procedures	39
2.2.2	Victim of trafficking and asylum seeker: what rights and benefits?	42

3. Special needs of victims of trafficking in the asylum procedures

3.1	Procedural guarantees for victims of trafficking as a category of applicants with special needs	45
3.1.1	Provisions from the Asylum Procedures Directive	45
3.1.2	Procedural safeguards in place in countries studied	45
3.1.3	Main weaknesses identified	49
3.1.4	Few elements of good practices	52
3.2	Understanding special needs of victims of trafficking in the asylum procedures	54
3.2.1	Need for building mutual trust	54
3.2.2	Need for information provision and legal support	56
3.2.3	Need for a specific and flexible approach as regards to time-scale	58
3.2.4	Need for a more victim-centred approach within the Dublin system	59
3.2.5	Need for specific guarantees during the personal interview	60
3.3	Access to international protection for victims of trafficking: what jurisprudences tell	63
3.3.1	European case-law	63
3.3.2	Domestic case-law	64

4. Special needs of victims of trafficking seeking asylum as regards to reception conditions

4.1	Reception conditions applied to victims of trafficking seeking asylum	69
4.1.1	Victims of trafficking seeking asylum primarily considered as asylum seekers	70
4.1.2	Victims of trafficking seeking asylum primarily considered as victims of trafficking	72
4.1.3	Reception support applied to victims of trafficking seeking asylum varies	75
4.2	Identified reception needs of victims of trafficking seeking asylum	79
4.2.1	Need for a safe space	79
4.2.2	Need for tailored mental health support	82
4.2.3	Need for being empowered	83

5. Way forward

5.1	Training of relevant stakeholders within the asylum sector	86
5.2	Referral and cooperation between relevant actors	86
5.3	Accommodation: safe and suitable	87
5.4	Access to appropriate health support	88
5.5	Empowerment of victims and trust building	89

6. Recommendations 90

Acknowledgements

This report was written by Barbara Joannon based on national research and contributions from participating partners: British Red Cross (BRC), Churches Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Immigrant Council of *Ireland* (ICI), Italian Red Cross (ItRC), Action for Equality, Support, Antiracism (KISA) and Swiss Refugee Council (OSAR). In particular, this report would not have been possible without the invaluable contributions and inputs from Kathryn Baldacchino (BRC), Nadine Camp (Forum réfugiés-Cosi), Nina Gutweniger (OSAR), Constantin Hruschka (OSAR), Edward Keegan (ICI), Genoveva Lopez (CEAR), Torsten Moritz (CCME), Raphaël Morlat (Forum réfugiés-Cosi), Silvia Piscitelli (ItRC), Doros Polykarpou (KISA) and Nusha Yonkova (ICI).

The TRACKS project's partnership would also like to thank in particular Nicoletta Charalambidou, Elena Heracliou and Andriana Kossiva (KISA), Nula Frei (University of Fribourg), the ACCEM (*Spain*), the AIRE Center (*UK*), the POPPY project (*UK*), the Human trafficking foundation (*UK*), UNHCR, in particular the EU and *UK* offices, and the French Office for the Protection of Refugees and Stateless Persons (OFPRA) as well as participants to national focus groups for their very valuable inputs and contributions.

Last but not least, this report has been written for a large part on the basis of the invaluable information shared with us by the people we have met, who have been victims of trafficking and went through the asylum process in the countries studied. The partnership warmly wants to thank them and recalls the need for giving a voice to those who would otherwise remain silenced.

The partnership

Forum réfugiés-Cosi is the project coordinator and is responsible for the project implementation in *France*. The organisation provides legal counselling, both at reception platforms accommodation centers and detention centres, as well as accommodation, health and psychosocial support to asylum seekers and provides support to refugees to integrate into French society. Forum réfugiés-Cosi has been confronted with adapting services to special needs of vulnerable asylum seekers, in particular with regard to victims of trafficking in human beings (THB).

The organisation has established strong relationships at local and national level, both with national and local authorities, OFPRA and NGOs, to accompany, refer and support victims of THB applying for asylum. Forum réfugiés-Cosi is a member of the European civil society platform against THB.

The British Red Cross Society (BRCS) is the largest provider of non-contracted asylum support in the *UK* which covers destitution, orientation and one to one psychosocial casework. They are currently providing psychosocial support to trafficked people through individual casework, group work models and at rest centres after anti-trafficking raids. They are developing ways to fill gaps in the sector and are attending regional and national Anti-Trafficking Networks, and co-chairing the European Red Cross Red Crescent Anti-Trafficking Network. The Red Cross has developed strong relationships with key stakeholders and as such this application has been fully endorsed by UNHCR and the Human Trafficking Foundation. The Red Cross is keen to advocate for change to improve the support and protection offered to trafficked asylum seekers.

Churches' Commission for Migrants in Europe (CCME) is an ecumenical organisation that serves the churches in their commitment to promote the vision of an inclusive community through advocating for an adequate policy for migrants, refugees and minority groups at European and national levels. Since 2001, CCME has been involved in transnational projects and activities to better support and protect victims of THB. CCME is co-chair of the NGO platform on asylum and migration and member of the NGO group of anti-trafficking NGOs.

The Spanish Commission for Refugees (CEAR). As an organisation specialised in international protection in *Spain*, the Spanish Commission for Refugees participates on asylum procedures aspects related to THB and collaborates hand in hand with specific accommodation facilities for THB victims in *Spain*. CEAR is member of the Spanish Network Against Human Trafficking, which gathers national and international civil society organisations advocating for the development of a comprehensive law against trafficking from a human rights perspective requesting that *Spain* fulfils its responsibility to protect the victims, including their right to asylum.

The Immigrant Council of Ireland (ICI) has been active in the area of human trafficking since 2007. This work stems from their priority mission to support migrant groups at risk. ICI support to trafficked victims primarily consists of providing comprehensive legal aid, which often includes applications for international protection alongside support in the criminal investigations and any other legal matters arising in the context of the persons' situation – status allowing access to services, temporary and long-term protections, threats to family members, compensation, non-prosecution and others. ICI is a member of the European Civil Society Platform against THB.

The Italian Red Cross (ItRC) with its experience working across the migratory path: from providing assistance at disembarkation to social inclusion activities in asylum seekers' reception centres and outside, is able to identify and respond to the varied needs of migrants, in particular victims of trafficking. ItRC has developed expertise on trafficking and on how to better protect and assist victims.

KISA – Action for Equality, Support and Antiracism is a grassroots organisation based in *Cyprus*, active in the fields of migration, asylum as well as in the fight against trafficking in human beings, racism and discrimination. The provision of information, support and mediation services through its Migrant and Refugee Centre is a fundamental and integral part of KISA mission, vision and daily actions for safeguarding, promoting and advocating for the rights of migrants, refugees and asylum seekers, including victims of trafficking. In addition, KISA has over the years initiated and participated in many actions in the areas of trafficking and asylum, such as successful strategic litigation cases and campaigns.

The Swiss Refugee Council (OSAR) is implementing the TRACKS project in *Switzerland*, allowing for wider comparison of national situations and bringing additional expertise into the partnership. OSAR is the umbrella organisation of non-governmental organisations active in the area of asylum and refugees in *Switzerland*. OSAR coordinates the work of asylum legal aid practitioners and relief organisation representatives and advocates to the public and to authorities for a just and humane asylum policy that provides for an effective protection of refugees. Ensuring the protection of vulnerable groups, including victims of THB, within the asylum procedure is one of OSARs core areas of activity.

Executive summary

The project TRACKS – identification of TRafficked Asylum seeKers' Special needs, is a two-year project co-funded by the European Commission under the HOME/2014/AMIF/AG/ASYL funding programme and implemented by Forum réfugiés-Cosi, the project coordinator, and its European partners British Red Cross (BRC), Churches Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Immigrant Council of Ireland (ICI), Italian Red Cross (ItRC) and Action for Equality, Support, Antiracism (KISA), in association with the Swiss Refugee Council (OSAR) – that is also implementing the project in *Switzerland*.

UNHCR Europe office, the French Office for the Protection of Refugees and Stateless persons (OFPRA), Amicale du Nid Rhône, UK Institute for Migration Research and the Human Trafficking Foundation are associated partners to this project.

This transnational project aims to analyse the asylum-THB nexus through the prism of special needs of trafficked asylum seekers and to strengthen capacities of national asylum authorities and civil society organisations to tackle crosscutting issues (i.e. identification, protection, housing, rehabilitation, psychosocial support as well as security). Indeed, international protection of these asylum seekers might be challenged by their very specific vulnerability. Asylum seekers identified as victims of trafficking need to benefit from specific social and legal support and reception conditions, as well as from an asylum procedure adapted to their needs, according to the Reception Conditions and Procedures Directives.

Meeting such specific needs can best ensure that trafficking victims can benefit from international protection. Project partners observe that very few victims of trafficking who apply for asylum are granted refugee status or subsidiary protection mainly because they have enormous difficulties to express their individual story: they may be under influence, are rarely aware of their rights and have been through traumatic experiences. Their stories could be often encountered with mistrust on behalf of the authorities. Moreover, in some contexts, the asylum application can be used by criminal networks and traffickers exploiting victims to make sure they could legally stay on the territory. In these cases, the victims are given invented stereotyped asylum stories which they are forced to tell to the asylum authorities and support organisations. Therefore, issues around credibility and the need to build trust are vital to allow victims of trafficking to come forward. How shall the asylum procedure be adapted and what kind of support shall be provided to victims of trafficking to ensure compliance to European and International law, and enable their protection as early as possible? Among specific issues identified are housing, social and health support, legal and procedural support as well as cross-cutting issues such as security, trust building, stability and training of stakeholders.

Overall, the project is about formalising tailored, comprehensive and complementary assistance and support to victims of trafficking by a range of actors (i.e. regarding social and legal support, health, security issues, etc.) throughout the asylum procedure.

TRACKS intends to improve the identification and address the specific needs of victims of trafficking in relation to asylum procedures and reception conditions through a practical, victim centred and comparative approach at EU and national levels. In particular, this project is about raising the awareness of stakeholders (EU and national authorities and institutions, civil society organisations, international organisations, experts and researchers) on the issue of THB within the asylum procedure to facilitate a comprehensive approach to this nexus. It also aims to improve practitioners' capacities to identify and meet victims of trafficking specific needs, through exchange of good practices and knowledge. Finally, TRACKS seeks to bring consistency and coherence throughout EU

Member States in the way asylum seekers victim of trafficking are assisted and protected.

In that perspective, **this report aims to inform all relevant stakeholders at national and EU levels**, including policy decision-makers and support agencies, responsible authorities in the asylum system, national rapporteurs or equivalent mechanisms and professionals providing legal and psycho-social support to victims of trafficking in the asylum process, **on the state of play with regard to identification and response to the special needs of applicants for international protection who are victims of trafficking in asylum procedures and reception systems**. In addition, this report aims to promote improved standards, in law, policy and practice, to ensure effective well-being and protection of victims of trafficking in the asylum system.

To achieve this, the report:

- 1. Examines pre-conditions for identification and consideration of special needs of victims of trafficking in the asylum system.**
- 2. Presents identified special needs of victims of trafficking with regard to asylum procedures and reception conditions.**
- 3. Examines whether provisions for vulnerable applicants, in particular victims of trafficking, provided for in the Recast Procedures and Reception Conditions Directives have been fully transposed and implemented in practice.**
- 4. Identifies good practices and weaknesses in *Cyprus, France, Ireland, Italy, Spain, the UK and Switzerland*.**
- 5. Provides recommendations drawn from the evidence.**

This report is up to date as of June 2017.

Main findings

Legal framework

The analysis of the legal framework applicable reveals that amongst Member States bound by the recast Procedures and Reception Conditions Directives, i.e. *Cyprus, France, Italy and Spain*, transposition is uneven or has not occurred yet in the case of *Spain, Ireland*, the *UK* and *Switzerland* are not bound by these Directives. Only *Cyprus, France, Ireland, Italy* and the *UK* have transposed the Anti-Trafficking Directive of April 2011 which also applies to the asylum context. The Palermo Protocol, the Convention on action against trafficking in human beings of the Council of Europe and the Convention and Protocol relating to the Status of Refugees therefore constitute a necessary legal background and framework to work on the asylum-THB nexus.

Statistics and data collection

It is very difficult to collect harmonised and comparable data on victims of trafficking in human beings in the asylum process while it is crucial in order to better assess and monitor the scale of the phenomenon and enhance the tailored support provided to these victims. Cross-cutting data on asylum and THB only exist in *Switzerland* and are centrally produced by one national authority, the State Secretariat for Migration. Hence, statistical data on asylum seekers who are potential victims of trafficking are gathered based on the assignment of a specific code.

Although the system put in place by the State Secretariat for Migration alone does not provide an accurate measure of the phenomenon studied, it gives a real indication and demonstrates the legal and technical feasibility of such a data collection system. Nonetheless, the accuracy of the available data cannot be guaranteed yet and underreporting as well as misreporting is possible.

Detection of victims of trafficking in the asylum process

In most of the countries studied the assessment of whether the applicant is an applicant with special procedural or reception conditions' needs, foreseen by the recast Procedures and Reception Conditions Directives, is rarely, or only partially conducted, which hinders the detection of victims of trafficking in the asylum process. Amongst countries studied, *France* seems to have the most advanced legal framework for identifying applicants with special needs. However, in practice the system reveals weaknesses that prevent the systematic detection of victims of trafficking in the asylum process. Furthermore, *Ireland*, the *UK* and *Switzerland* are not bound by the above mentioned Directives.

Nevertheless, a judgement of the Swiss Federal Administrative Court of July 2016 highlighted the State's obligation to identify victims of trafficking, which arises from Article 10 of the Council of Europe Convention. Such obligation concerns every public authority that may have been in contact with victims including asylum authorities. According to the Court, the obligation to take action to detect victims of trafficking, which can be derived from Article 4 ECHR and Article 10 CoE Convention, is of particular importance within the asylum procedure, as detection is a pre-condition for decisions about the granting of asylum or the compliance with the non-refoulement principle.

In practice, none of the countries studied provide for effective mechanisms to identify asylum seekers with special needs. It therefore seriously harms the possibility for victims of trafficking to benefit from appropriate and timely support in their asylum process, both with regard to procedures and reception conditions.

Compatibility and coherence between National Referral Mechanism (and similar mechanism) and asylum procedures

In *Cyprus, Ireland, Italy, Spain* and the *UK*, detection of potential cases of trafficking by the asylum authorities has to systematically lead to the orientation of the applicant to the authorities competent for formally identifying victims of trafficking. In practice, rather good practices have been identified in the *UK* where the Home Office and the National Referral Mechanism (NRM) Unit may refer people from one procedure to the other if considered relevant. Complementary mechanisms in place provide the possibility for the identification and asylum procedures to be conducted simultaneously without harming the right of victims of trafficking to be formally identified, and possibly recognised as such, and to apply for international protection.

In addition, not only is the compatibility of procedures fundamental but also the compatibility of rights and benefits attached to each status. In all countries studied, victims of trafficking and asylum seekers benefit from different rights. Major difficulties have been reported in *Cyprus* as well as in *Ireland* where victims of trafficking seeking asylum are systematically granted rights attached to the status of asylum seekers, which are considerably less favourable than the rights of recognised victims of trafficking. Good practices have been identified in *Italy* and in the *UK* where victims of trafficking seeking asylum have access to the rights and benefits of both statuses.

Procedural safeguards for victims of trafficking as a category of applicants with special needs

Most countries studied do not, or insufficiently, provide procedural safeguards for victims of trafficking. The three procedural safeguards most commonly foreseen by national legal framework studied and applying in theory to all vulnerable applicants are 1) the possibility for the authority competent for conducting the personal interview to prioritise the examination of the claim and thus the date of the interview because of the personal circumstances of the applicant; 2) the possibility for the applicant to ask for the asylum officer conducting the interview to be of the same sex and 3) the possibility for the applicant to be accompanied by a third party (or third parties) during the personal interview. However, in practice these safeguards might not systematically apply to victims of trafficking. Examples of good practices have been provided mainly from *France* where the determination office, the French Office for the Protection of Refugees and Stateless Persons, has increasingly taken into account applicants with special needs, in particular victims of trafficking, and is working closely with civil society organisations supporting victims of trafficking who are seeking asylum.

Dublin Regulation

Amongst the countries studied, only the *UK* has proactive mechanisms to detect victims of trafficking within the Dublin procedure. In addition, in most countries studied, the individual interview foreseen by the Dublin Regulation is not conducted in an appropriate environment for detection or self-identification of victims of trafficking.

In all countries studied, identification and reporting of victims of trafficking under the Dublin Regulation essentially rely on legal and social support organisations and/or self-reporting of victims themselves without precluding the Dublin procedure to be carried out. Indeed, in practice, being identified as a victim of trafficking does not have, or only rarely has, an impact on the Dublin procedure. In *France, Ireland, Italy, Spain* and *Switzerland*, victims of trafficking are regularly processed under the Dublin Regulation. Cases of trafficked asylum seeking minors transferred to another Member State have been reported in *Ireland*. In practice, the countries studied do not generally apply the discretionary clause foreseen in Article 17 to victims of trafficking.

Identified special needs of victims of trafficking in relation to asylum procedures

- Need for building mutual trust
- Need for information provision and legal support
- Need for a specific and flexible approach as regards to time-scale
- Need for a more victim-centred approach within the Dublin system
- Need for specific guarantees during the interview, including a friendly environment; support from a lawyer and/or a psychologist; the possibility to express preferences for a same-sex interviewer and interpreter in certain cases; no multiple interviews etc.

Access to international protection for victims of trafficking

A victim of trafficking might be entitled to be granted refugee status or subsidiary protection when there is a real risk of persecution or serious harm in case of return to the country of origin. Hence, the access to a procedure for international protection shall be considered as one possible form of protection. In terms of level of protection, it remains unmatched and still offers the highest level of protection that an individual could be granted. To grant refugee status domestic courts have developed criteria for determining the meaning of 'social group', as well as other factors, in order to protect victims of human trafficking as members of such group. These are namely the geographical origin, the attempt to leave or successfully leave the traffickers, the insufficient protection of the authorities, the possibility of internal relocation and the fact that the group which the victim belong to is considered as a social group by the rest of the population. These criteria are interpreted in a cumulative way. Amongst countries studied, only jurisprudences from *France*, *Ireland* and the *UK* have been found and analysed. A crucial difference may be drawn from the comparative analysis of French and *UK* case-law regarding application of the social group criteria. According to the *UK* approach – defended by UNHCR, the judges may recognise the existence of a social group regardless of whether individuals belonging to that social group are persecuted due to their affiliation to that group or not. It leads to situations whereby an applicant is clearly recognised as a member of a particular social group without being granted international protection because of the absence of (risk of) persecutions. In *France*, once a social group being persecuted has been defined and the membership to that particular social group is confirmed by the Court, then the refugee status is systematically granted.

Reception conditions applied to victims of trafficking seeking asylum

None of the countries studied have a legal framework making it compulsory to adapt reception conditions for victims of trafficking within the asylum system despite the fact that in several countries, in particular *France*, *Cyprus*, *Italy* and *Spain*, reception conditions granted to vulnerable asylum applicants, who have special needs, must be adapted to meet the requirements of the recast Reception Conditions Directive.

In practice, in the countries studied, reception conditions offered to applicants who are victims of trafficking widely differ from one to another. In *Ireland*, in the *UK* and in *Switzerland*, reception conditions offered to victims of trafficking who seek asylum are not tailored to their situation as victims of trafficking but follow general rules applicable to all asylum seekers. In *Italy* and in *Spain*, victims of trafficking who seek asylum tend to be accommodated in housing designed for victims of trafficking and receive tailored care and support to meet their specific needs. In *France* and in *Cyprus*, reception support provided to victims of trafficking who seek international protection tends to vary. Although they are generally accommodated into the asylum reception system, specific projects exist that allow some of them to benefit from tailored support. The limited access to specific accommodations for victims of trafficking to which they are also eligible when they seek asylum is mainly due to a lack of sufficient capacities and resources. Their gender, age and type of exploitation suffered can also impact the support available as for instance existing shelters are mostly available for women, for adults or for victims of sexual exploitation.

Identification of special reception needs of victims of trafficking seeking asylum

Based on the research conducted, it is apparent that victims of trafficking have similar reception needs, irrespective of the type of procedure in which they are. However, one distinction which cannot be overlooked is the legal support available which must be tailored to the specific procedure they are in. Amongst asylum seekers on the other hand, victims of trafficking have different reception needs, which have to be highlighted.

- Need for a safe space taking into consideration security, privacy, gender, presence of a child and mother-care
- Need for tailored mental-health support
- Need for being empowered including in favouring financial sustainability, autonomy in their daily life as well as prospects for the future (education; employment)

Methodology

This report is based on information collected by eight organisations in Europe: Forum réfugiés-Cosi, the project coordinator, and its European partners: British Red Cross (BRC), Churches Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Immigrant Council of *Ireland* (ICI), Italian Red Cross (ItRC) and Action for Equality, Support, Antiracism (KISA), in association with the Swiss Refugee Council (OSAR). Information has been collected from February 2016 to June 2017.

The report reflects the legislative and policy frameworks as well as the practices in six European Member States (*Cyprus, France, Ireland, Italy, Spain* and the United Kingdom) and *Switzerland*.

Information had been gathered and compared based on a common mapping questionnaire. The information collected was structured on the basis of Member States' obligations under the Recast Procedures [1] and Reception Conditions [2]. Directives with regard to the identification and consideration of special needs of victims of trafficking in human beings, as vulnerable applicants, in relation to asylum procedures and reception conditions. Considering that *Ireland, Switzerland* and the *UK* are not bound by these Directives, broader legal obligations derived from the Palermo Protocol [3], the European Convention on Human Rights [4], and the Council of Europe Convention on Action against Trafficking in Human Beings [5] have been taken into account in the overall analysis.

The mapping questionnaire has been filled in by all partners (except CCME) and associate partner OSAR using the findings from the following activities:

- Desk research conducted by national experts in *Cyprus, France, Ireland, Italy, Spain* and the *UK*, as well as in *Switzerland*.
- Focus group meetings involving relevant stakeholders at the national level organised in *Cyprus, France, Ireland, Italy, Spain* and the *UK*, as well as in *Switzerland*.
- Bilateral meetings, key informant interviews and discussions with relevant stakeholders at national level held in *Cyprus, France, Ireland, Italy, Spain* and the *UK*, as well as in *Switzerland*.
- Semi-structured interviews with trafficked persons who have been through an asylum procedure and with caseworkers working directly with trafficked asylum seekers conducted in *Cyprus, France, Ireland, Italy, Spain, Switzerland* and the *UK*.

A dedicated methodology for conducting the interviews has been designed by the project coordinator with the support of the British Red Cross and its partners, the POPPY project and AIRE Centre and is attached as an annex to this report. The purpose of this document is primarily to ensure that the interviewers protect and maintain the principle of 'do no harm' with the participants of this study, especially those who have been trafficked and have been through the asylum system. This includes maintaining strict guidelines on confidentiality, respect and ensuring the wellbeing of the participant. The second aim of this methodology document is to provide consistency across the data collected by all the participating partners thus guaranteeing the data's relevance and usability for reporting purposes. In total, 19 interviews with trafficked persons having been through the asylum system have been conducted. Some difficulties were encountered during the research to identify the persons to interview [6].

During the research phase, each partner raised various issues of specific concern within their national contexts. Of these ranges of issues, there were three relevant issues that were common concerns for all participating organisations and have thus been studied as separate case studies. These thematic issues are: a) Nigerian asylum applicants' victim of trafficking for sexual exploitation; b) Unaccompanied minor applicants victim of trafficking and c) Victims of trafficking under the Dublin procedure.

[1]-DIRECTIVE 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Recast).

[2]-DIRECTIVE 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Recast).

[3]-Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 15 December 2000.

[4]-European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, Rome, 4.11.1950.

[5]-Council of Europe Convention on Action against Trafficking in Human Beings, Treaty n°197, Opened in May 2005 and entered into force in February 2008.

[6]-In the *UK* particular difficulties have been encountered due to the reluctance of people to be interviewed as it was perceived to have a negative impact on their status. People still feel insecure and unsafe.

Glossary [7]

Applicant in need of special procedural guarantees [8]: An applicant whose ability to benefit from the rights and comply with the obligations provided for in the Directive 2013/32/EC (Recast Asylum Procedures Directive) is limited due to individual circumstances.

Applicant with special reception needs [9]: A vulnerable person (see definition below) who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in the Directive 2013/33/EU (Recast Reception Conditions Directive).

Asylum seeker: In the EU context, a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken. It generally refers to all who apply for protection on an individual basis, irrespective of whether they lodge their application on arrival at an airport or land border, or from inside the country and irrespective of whether they entered the territory legally or illegally.

Detection of a victim of trafficking in human beings: The process of identifying a possible situation of trafficking in human beings. [It can be seen as separate from the more formal process of formally identifying a victim].

Exploitation: The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit. According to Article 3(a) of the UN Palermo Protocol exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Formal identification of a victim of trafficking in human beings: Identification of a victim of trafficking in human beings by the authorised/ competent authority in Member States (the police in most cases) based on a 'reasonable grounds' standards, as required by Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings.

Identification of a victim of trafficking in human beings: The process of confirming and characterising a situation of trafficking in human beings for further implementation of support. In some contexts this is also known as "recognising" a victim.

National Rapporteurs or Equivalent Mechanisms: They are responsible for inter alia monitoring the implementation of anti-trafficking laws, policies, and practices at the national level, and play a key role in data collection on trafficking in human beings at national and EU level.

National Referral Mechanism: Mechanism aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society.

Presumed victim of trafficking in human beings: A person for whom it exists reasonable grounds that she/he has been trafficked, but who has not been formally identified by the relevant authorities (e.g. police)

Procedures at first instance [10]: Examination procedure of an application for international protection conducted by the determining asylum authority. It starts at the lodging of the asylum claim and ends when a first instance decision is issued by the determining asylum authority.

Procedural guarantees: In the EU asylum context, special guarantees addressing the legal rights of applicants for international protection as outlined in Chapter II of Directive 2013/32/EC (Recast Asylum Procedures Directive) and Article 6 of the European Convention of Human Rights [11].

Reception conditions: The full set of measures that Member States grant to applicants for international protection according to article 2(f) of the Recast Reception Directive; i.e education for minors; employment; vocational training; and material reception conditions (housing; health support; allowance etc.)

Self-identification [12]: The recognition by victims that they have been subject to the crime of trafficking in human beings specifically.

Self-reporting [13]: The reporting of exploitation by victims of trafficking in human beings, without the recognition that the exploitation was a form of trafficking in human beings.

Special needs of victims of trafficking: According to Article 11(7) of the Anti-Trafficking Directive, the special needs of victims can derive from a victim's pregnancy, health, a mental or psychological disorder they have, or the seriousness of the psychological, physical or sexual violence they have suffered. Member States are required to attend to the special needs of victims.

Trafficking in human beings: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Vulnerable person (as defined by the Reception directive): Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

[7] Except when otherwise stated, the below definitions have been drawn from the European Migration Network Glossary and Thesaurus 3.0, October 2014

[8] -See Article 2(d) Directive 2013/32/EU – Recast Asylum Procedures Directive

[9]-See Article 2(k) Directive 2013/33/EU – Recast Reception Conditions Directive.

[10]-This definition is derived from the definition of first instance decision and examination of an application for international protection.

[11]-These guarantees comprise the following rights of applicants for international protection: access to the procedure; right to remain in the Member State pending the examination of the application for international protection; information on their rights and obligations in a language they understand; access to interpreters; the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling; notice in reasonable time of the decision by the determining authority on their application; a personal interview and free legal assistance and representation granted on request in the appeals procedures (including the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant).

[12]-See European Migration Network Study, Identification of victims of trafficking in human beings in international protection and forced return procedures, March 2014, p. 38-39.

[13]-Ibid.


Abbreviations

AC.Sé	National Reception Programme for Victims of Trafficking (FR)
AIT	UK Asylum and Immigration Tribunal (UK)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CNDA	National Court of Asylum (FR)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GRETA	Group of Experts on Action against Trafficking in Human Beings
IOM	International Organisation for Migration
KSM	Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants
NASS	National Asylum Support Service (UK)
NGO	Non Governmental Organisation
NRM	National Referral Mechanism
OAR	Office of Asylum and Refuge (ES)
OFII	Office of Immigration and Integration (FR)
OFPPA	Office for the Protection of Refugees and Stateless Persons (FR)
ORAC	Office of the Refugee Application Commissioner (IE) - [14]
RAT	Refugee Appeal Tribunal (IE)
RIA	Reception and Integration Agency (IE)
SEM	State Secretariat for Migration (CH)
SPRAR	Protection System for Refugees and Asylum Seekers (IT)
THB	Trafficking in Human Beings
UNHCR	United Nations High Commissioner for Refugees
UT-UK	Upper Tribunal (UK)
VTHB	Victim(s) of Trafficking in Human Beings

[14]-This research was conducted prior to the operationalising of the International Protection Act 2015 on the 31st December 2016, when ORAC was replaced by the International Protection Office.

1.

INTRODUCTION



This report comes at a time where the deadline for transposing the Recast Procedures [15] and Reception Conditions [16] Directives has expired for almost two years. Yet, no evaluation report has been released at that stage by the European Commission to assess the level and quality of transposition of the two directives. Meanwhile, a new legislative package has been proposed by the European Commission to amend the Reception Conditions Directive and to revise the current Procedures Directive and turn it into a Regulation. At the time of writing, the legislative process is still ongoing. The provisions that concern applicants with special needs, including victims of trafficking, appear to have improved.

However, as this report demonstrates, the issue of implementation – whether the Directives are implemented at all and, if so, whether the quality of provisions and practices in place are sufficient to identify and meet special needs of victims of trafficking in the asylum system – remains central. The new legislative package also intends to achieve greater harmonisation of the legislative framework among Member States. Although such harmonisation is needed, the report shows that gaps between States' practices in relation to identifying and meeting the needs of asylum applicants who are victims of trafficking are huge and require more than a change of legislative tool. Operational support, guidance and training of stakeholders are essential as well as stronger and more comprehensive cooperation between relevant stakeholders at national level.

This report analyses and compares the legislative and policy framework and practices in six European Member States (*Cyprus, France, Ireland, Italy, Spain* and the United Kingdom) and *Switzerland* on the identification and consideration of special needs of victims of trafficking in the asylum system, both with regard to procedures and reception conditions.

In order to provide a framework for the project, the legislative context relevant to the research is first presented and followed by a description of the scope of the research.

[15]-DIRECTIVE 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Recast).

[16]-DIRECTIVE 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Recast).

1.1 LEGISLATIVE CONTEXT OF THE RESEARCH

1.1.1 The overall legal framework

Several relevant international and European Conventions are applicable and should be taken into consideration in the context of the TRACKS project.

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 15 December 2000, has been ratified by all States covered by the study [17]. It is therefore legally binding and, owing to the scale of its ratification, can be considered as providing for general principles of international law. The Palermo Protocol provides the legal basis for the definition of trafficking in human beings (article 3). It also describes States Parties' obligations as regards the assistance and protection of victims of trafficking (article 6) which inter alia requires that they take into account the special needs of victims of trafficking (paragraph 4). The Protocol also contains provisions relating to the prevention of trafficking in persons (article 9), including an obligation that States Parties protect victims from re-victimisation. To further support prevention of trafficking, the Protocol requires information exchange between authorities and training for law enforcement, immigration and other relevant officials (article 10). Throughout the Protocol, cooperation of State Parties "with non-governmental organisations, other relevant organisations and other elements of civil society" is particularly emphasised. Violation of the Protocol by EU States Parties may be sanctioned by the European Court of Human Rights (ECtHR). In its judgements, the ECtHR can refer to the Protocol and thus remind national courts of their obligations specifically where violation of the Protocol article(s) has also constituted a violation of the European Convention on Human Rights (ECHR) [18]. Consequently, the ECHR also represents a relevant legal tool that is binding on the States covered by the scope of the project, in particular with regard to the interpretation of Article 4 prohibiting inter alia slavery and forced labour. In its case law, the ECtHR has also recognised that human trafficking constitutes a breach of Article 4. Importantly, the Court has further acknowledged that contracting States' obligations under the ECHR extend to positive obligations towards victims of trafficking. Chapter 3 contains a more detailed analysis of the Court's interpretation of States Parties obligations under Article 4 of the ECHR.

The Council of Europe Convention on Action against THB of May 2005 has stronger protective provisions than the Palermo Protocol. Its provisions apply to all victims, including women, men and children, and recognise different types of exploitation, including sexual exploitation, forced labour or services. All members of the Council of Europe, except Russia, have ratified [19] the Convention. Its implementation by States Parties is monitored by a system which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties. GRETA is an expert committee which conducts country visits and draws up evaluation reports that are then adopted in plenary session, and subsequently transmitted to the Party concerned and the Committee of the Parties. On the basis of these reports, the Committee of the Parties, which is comprised of political representatives, formulates recommendations addressed to the governments of the Parties concerned. Key provisions as regards the TRACKS project are the right for victims of trafficking to be identified as victims (article 10), their right to assistance, which shall take into account the victims' safety and protection needs (article 12), their right to a recovery and reflection period of at least 30 days "when there are reasonable grounds to believe that the person concerned is a victim" (article 13) and their right to a residence permit which shall be "without prejudice to the right to seek and enjoy asylum" (article 14). Cooperation with civil society, including in establishing strategic partnerships, has to be encouraged by States Parties (article 35).

[17]-See United Nations Treaty Collection, Chapter XVIII 12.a, Status as at 21.11.2016.

[18] -European Convention on Human Rights, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, Rome, 4.11.1950.

[19] See Chart of signatures and ratifications of Treaty 197, Council of Europe Convention on Action against Trafficking in Human Beings, Status as of 21.11.2016.

The Convention and Protocol relating to the Status of Refugees [20], which form the basis of the right to international protection, do not foresee the existence of categories of applicants with special needs. Nevertheless, with regard to refugee law, it is well established that a victim of trafficking may have a claim to international protection status [21].

The **United Nations High Commissioner for Refugees (UNHCR)** has produced guidance for governments, legal practitioners, decision makers and the judiciary relating to the application of international protection to victims of trafficking [22]. In particular, UNHCR has noted that “inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution” [23]. In addition, UNHCR recognises that victims of trafficking might be exposed to retaliation and/or risks of re-trafficking as well as discrimination and exclusion in case of return to a country of origin, or a third country of transit, for example which can potentially give rise to an asylum claim [24]. As such, the UNHCR’s guidelines on the application of refugee status, in particular the social group criteria, to victims of trafficking and persons at risk of being trafficked, are referred to throughout this report.

In implementing the above mentioned treaties, EU Member States must also respect the provisions of the Charter for Fundamental Rights of the European Union [25] which explicitly prohibits trafficking in human beings [26].

1.1.2 Relevant EU law

Victims of trafficking have been defined as a category of asylum applicants with special needs by Article 21 and Article 2(k) of the **Recast Reception Conditions Directive** of July 2013. Article 22 of the Recast Reception Condition Directive requires that Member States first assess whether or not asylum seekers are applicants with special needs and identify the nature of such needs. These needs have to be taken into account when Member States provide the applicant with reception conditions. Unlike the specific needs of minors, unaccompanied minors and victims of torture and violence, the specific needs of victims of trafficking are not addressed in a separate article of the Recast Reception Conditions Directive. **The Recast Procedures Directive** requires that Member States put in place special procedural guarantees for applicants with special needs. In particular, the conditions for the personal interview and the length of the procedure – whether the examination of the claim is prioritised or not and whether the claim is examined under an accelerated procedure or not – are key aspects of the asylum procedure that can be adapted to the applicant’s needs. Chapter 3 and 4 of this report will provide a more detailed overview of practical implementation of these provisions in the various countries covered by the project.

The other legislative tools of the Common European Asylum System (CEAS), including the **Dublin Regulation**, foresee specific provisions for victims of trafficking, but only with regard to minors. Article 6§3(c) of that Regulation stipulates that “in assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking”. However, there are no specific provisions foreseen for adults’ victim of trafficking although the discretionary clause contained in Article 17 can in theory apply to them.

The above mentioned obligations of Member States have to be read in conjunction with their general obligations towards victims of trafficking as contained in the **Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims** [27] - hereafter referred to as the Anti-trafficking Directive of April 2011. According to Article 11, Member States are required to provide sufficient assistance and support measures to victims of trafficking, in particular

[20]-1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees.

[21]-GRETA, 5th Activity Report, covering the period from 1 October 2014 to 31 December 2015, p.40.

[22]-Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, December 2011.

[23]-UNHCR, Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, UN Doc. HCR/GIP/06/07, 2006.

[24]-Ibid.

[25]-Charter of Fundamental Rights of the European Union, 2000/C 364/01, 18.12.2000.

[26]-See Article 5§3 of the Charter.

[27]-DIRECTIVE 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision 2002/629/JHA.

particular through “the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate”. Information provision should cover, inter alia, and where relevant, information on the possibility of being granted international protection. As regards child victims of trafficking, Article 13 of the Directive stipulates that “Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child”. The Trafficking Residency Directive establishes the legal basis for third country victims of trafficking to remain in EU States, containing provisions on temporary residency in the form of recovery and reflection period and temporary residency permits for victims of trafficking.

1.1.3 What Member States have transposed

The Recast Procedures and Reception Conditions Directives from July 2013 have been transposed by *France*, *Italy* and *Cyprus*. In *France*, the Law n. 2015- 925 of 29 July 2015 on the reform of asylum law has transposed both Directives. In that law, victims of trafficking are explicitly listed as a category of applicants with special needs, the procedure for assessing asylum seekers’ special needs is described, and procedural safeguards are foreseen for these categories of vulnerable applicants. In *Italy*, the Legislative Decree 142/2015 of 15 September 2015 transposing the Asylum Directives explicitly recognises victims of trafficking as applicants with special needs, allowing them to access social protection programmes dedicated to victims of trafficking. There are also a number of procedural safeguards in place. At the time of writing, while no relevant assessment of the transposition was available, in particular with regards to asylum applicants who are victim of trafficking, there is a notable lack of programmes. In particular, there are no sufficient protection programmes for men and minors. In *Cyprus*, transposition of both Directives only occurred in October 2016 – fifteen months after the official deadline for transposition. The transposition, however, has not led to all the expected changes of the Cypriot Refugee Law. Rather, the new provisions simply “mirror the wording of the Directives, thereby lacking the necessary procedures for their implementation” [28]. Indeed, although the revised law provides that the Asylum Service and all other competent authorities responsible for the implementation of the Refugee Law have the obligation to take into account the special situation and circumstances of vulnerable persons, such as, persons who have been victims of torture, rape, or other serious forms of psychological, physical or sexual violence, categories which may apply to victims of trafficking, there are no implementing provisions for this general principle. As such, although the principle remains an obligation in law and in theory, there are no corresponding implementing measures in practice. Without the necessary details, such provisions could adversely affect asylum seekers. According to the experience of NGOs, there has not, as of yet, been any decision acknowledging the vulnerability of an asylum seeker falling into this category.

At the time of writing, the Asylum Directives have not been transposed by *Spain*. *Spain* still applies the Procedures Directive [29]-Council Directive 2005/85/CE of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. of December 2005 and the Reception Conditions Directive [30] of January 2003. Nevertheless, Law 12/2009 from 30 October 2009 defines victims of trafficking, as asylum applicants in a situation of vulnerability. The Law thus allows for their specific circumstances to be taken into account [31]. However, the specific type of treatment available as a result of such consideration is to be defined in a specific regulation, which has not been approved to date.

Both Recast Directives are not applicable in *Ireland* and in the *UK*. As in *Spain*, the *UK* applies the 2005 Procedures Directive and the 2003 Reception Conditions Directive. In the case of *Ireland*, while the 2005 Procedures Directive is applicable, the 2003 Reception Conditions Directive has not been applied. *Ireland*, however, has been criticised by the Court of Justice of the European Union (CJEU) in 2011 [32] as regards its transposition of this Directive, which has been found to be lacking in many respects. Recently, *Ireland* has adopted the International Protection Act 2015 in

[28]-Asylum Information Database (AIDA), *Cyprus*: transposition of Asylum Directives fifteen months after deadline, 7 November 2016.

[29]-Council Directive 2005/85/CE of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. of December 2005 and the Reception Conditions Directive30-Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

[30]-Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

[31]-European Migration Network, Identification of victims of trafficking in Human Beings in International Protection and forced return procedures. Study *Spain*, 2013.

[32]-CJEU, In Case C 431/10, Action for failure to fulfill obligations under Article 258 TFEU, brought on 1 September 2010, Judgment of the Court on 7 April 2011.

December 2015. Nevertheless, the Act only recognises the special needs of children seeking asylum, extending limited procedural safeguards, including that the asylum interview is carried out “by a person who has the necessary knowledge of, and competence to take into account, the special needs of persons who have not attained the age of 18 years” and that the final report on the application is similarly prepared by someone with “the necessary knowledge of the special needs of persons who have not attained the age of 18 years” [33].

Cyprus, France, Ireland, Italy and the UK have transposed the Anti-Trafficking Directive of April 2011. The UK has initially opted out of the Directive but it later applied to opt-in and its request was accepted by the European Commission. The date of entry into force of the Directive for the UK was on 18 October 2011 [34]. Spain has not transposed it yet, with the last amendment to the applicable law dating back to 2009.

In general, Switzerland is only required to apply or transpose EU legislation in accordance with its association agreements to Schengen and Dublin. In the area of asylum, this mainly concerns the Dublin System (Dublin and Eurodac Regulations) and the Returns Directive. However, the other parts of the EU asylum legislation typically serve as an orientation for the interpretation of the existing legal framework in Switzerland especially where it is based on the interpretation of the 1951 Refugee Convention and the ECHR. Switzerland is not bound by the Anti-Trafficking Directive. However, it has ratified the Palermo Protocol and the Council of Europe Convention which provide for the basis of the EU legislation.

Uneven transposition of the Asylum Directives by Member States means that the analysis provided for in this report is complex, as it is based on a very heterogeneous legal framework. Consequently, even though national legal framework will be systematically referred to throughout the report, the emphasis is on actual practices in the studied countries. Considering the above, it is all the more relevant and useful to refer to the overall legal framework, in particular the Palermo Protocol and the Convention on action against trafficking in human beings of the Council of Europe.

[33]-International Protection Act 2015, Section 36.

[34]-Commission Decision of 14 October 2011 on the request by the United Kingdom to accept Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

1.2 SCOPE OF THE RESEARCH

1.2.1 Target group presentation

Profiles' characteristics

In the absence of exhaustive research on the profile of applicants for international protection who are victim of trafficking, the scope for research has been kept wide-open. Indeed, because they share common needs, all trafficked asylum seekers are taken into consideration, regardless of whether they were identified as a victim of trafficking before or during their claim for asylum, as well as those who have not received any formal recognition of being trafficked, and fall in the scope of the research. The special needs of the applicants are not only based on their status as trafficking victims, but also relate to their gender, age, nationality and type of exploitation. Such characteristics necessarily affect their needs and how these needs are addressed. Whilst recognising the importance of these characteristics, the partnership has decided not to favour certain profiles over others.

Throughout the research, however, specific situations relating to particular categories of victims will be highlighted as being of particular or significant importance, either because of their scale, as in the case of Nigerian women victim of trafficking for sexual exploitation seeking international protection, or because of the peculiar challenges they raise in terms of procedures – for example victims of trafficking under the Dublin Regulation – and protection issues, such as minor asylum seekers' victim of trafficking. In the report, case studies have been produced on these three issues.

From the making of the asylum claim to the first instance decision

The TRACKS project focuses on victims of trafficking in the asylum process, in particular from the moment they make an asylum claim. The research focus is thus from the moment that victims express their wish to apply for international protection, until a first instance decision is taken by the determining authority. As such, the research does not extend to the appeal stage or subsequent applications. Indeed, an issue previously identified is precisely the fact that the identification of victims of trafficking, and therefore the consideration of their specific needs, arrive too late in the asylum process, in most cases at the appeal stage or when introducing a subsequent application. Consequently, the project aims to focus on the first instance procedure in order to identify good practices and weaknesses on identification and consideration of special needs of victims of trafficking as regards the asylum procedures and reception conditions, as early as possible in the asylum process.

Ground for seeking international protection

Trafficking as a ground for seeking asylum is not among the criterion which determines the scope of the research. Regardless of the grounds upon which their asylum claim is made, all victims of trafficking may have specific needs, distinguishing them from other categories of asylum seekers. In other words, this research includes people whose trafficking experience is the main basis of their claim for asylum, and it also includes people who may have other grounds for asylum and their trafficking experience may or may not be central to that.

In practice, applicants for international protection who are victims of trafficking may claim asylum on a number of different grounds. As a matter of fact, they might be at risk of persecution in case of return to their country of origin precisely because they are or have been victim of trafficking regardless of where the trafficking took place. In that case, the social group criteria might be applied. However, some countries do not apply this criterion to victims of trafficking at all or only to a specific group of victims of trafficking - based on their country or region of origin or on the form of exploitation experienced for instance. A detailed analysis of the understanding of the social group criteria when it pertains to victims of trafficking by domestic courts in *France*, *Ireland* and the *UK* is provided in Chapter 3. Where trafficking victims are at risk of facing inhuman or degrading treatment upon return, some countries grant them subsidiary protection. At the same time, however, victims can apply for asylum on any other ground laid down in the Geneva Convention and Protocols when relevant, independently to their trafficking situation. There are also circumstances in some of the participating

countries where the asylum story told to the support organisations and to the asylum authorities is a stereotyped history given to the victims by the traffickers. Traffickers use the asylum claim to exploit their victims and ensure that they are authorised to remain in the Member States throughout the duration of the procedure. It does not mean there is no real ground for international protection but rather that the given one is not relevant to their particular situation. Consequently, the research focuses on all victims of trafficking in the asylum process, irrespective of their grounds for claiming international protection.

What is behind identification?

The research similarly adopts a wide scope to the categories of trafficking victims considered. The project therefore focuses on all individuals who have applied for asylum and who are one of the following: identified as victims of trafficking by the MS's authorised authority; identified by a NGO or other independent expert as victims of trafficking and potentially referred to the relevant authorities; detected as a possible victim of trafficking by a member of the general public and potentially referred to the authorities or self-identified and requesting identification. Taking into account the different procedures for the identification of victims of trafficking in the studied Member States, and the difficulties and shortcomings inherent in those systems, for the purposes of this project, it was considered inappropriate to exclude any of these categories from the scope of the research.

The primary objective and added value of this project are to assess the potential limits and constraints in identifying the special needs of victims in the asylum process, as well as good practices that favour the identification of victims' special needs. In the first place, in order to identify and consider the specific needs of victims of trafficking in the asylum process, they have to be identified or to self-identify as such. The Asylum Directives foresee an obligation for Member States to identify victims of trafficking in the asylum process. However, in the countries studied, there is no clear definition of what it means for a victim of trafficking to be identified in the context of the asylum process, particularly for the purpose of identifying and responding to their specific needs, and whether it differs from the general definition [35]. Giving the importance of such assistance, support and protection need to be granted as soon as there are reasonable grounds [36] to believe that a person is a victim – and not only when they have been formally identified as such. None of the countries studied require victims of trafficking to be formally identified by the police and/or to have to fill in a complaint and/or to cooperate to the prosecution of traffickers to see their asylum claim processed on the ground of trafficking. Therefore, the project cannot limit itself to formally identified victims of trafficking instead using the above mentioned definition.

As a result, the scope for identification remains quite large [37]. It necessarily encompasses formal identification from competent authorities but it also takes into account non-formal identification of victims by, inter alia, asylum professionals, asylum authorities, social workers, and health professionals, as well as self-identification and self-reporting. As a general rule throughout the report, the term “victim of trafficking” encompasses all the above mentioned situations, except if specified differently. Issues relating to the detection and identification of victims in the studied countries are analysed in detail throughout Chapter 2.

[35]-See Glossary, p. 14-15.

[36]-Not to be confused with the UK's use of this term as the first tier of the two tier National Referral Mechanism. The 'reasonable grounds' referred to in this report means when there is reason to think that someone has been trafficked, before entering in to any formal recognition programme.

[37] - Ibid.

1.2.2 Scale of the phenomenon studied

It is generally recognised that there are a number of difficulties facing researchers when attempting to discern the actual scale of human trafficking. According to UNODC the issue is “hotly debated as there is no methodologically sound available estimate” [38]. In the context of the TRACKS project, it is even more complicated to determine the actual scale of the problem, as there is a need to cross reference different sets of data from the countries studied, namely those of registered asylum seekers and victims of trafficking. Such data, however, is often not available, consistent, or disaggregated enough to determine the number of victims of trafficking amongst asylum seekers.

HUMAN TRAFFICKING IN THE CONTEXT OF MIGRANT AND REFUGEE FLOWS



According to UNODC, “Although the links between migration and trafficking in persons are not clear-cut, it appears that the vulnerability to being trafficked is greater among refugees and migrants in large movements, as recognized by Member States in the New York declaration for refugees and migrants of September 2016” [39].

1.290.695

asylum seekers registered in 2016

according to Eurostat data [40].

How many of these asylum seekers are victims of trafficking?

In order to address an issue it is important to first assess its scale. This is particularly important in the context of asylum seeking victims of trafficking, as the number of asylum applicants has greatly increased over the last couple of years (+ 95% between 2014 and 2016 [41]. At the same time, many reports [42-43-44] have pointed out the increased risk of trafficking upon migrants, asylum seekers and refugees, in particular children [45]. If the trafficking situation is not always the reason why they migrate (e.g they escaped the trafficking situation or migration is imposed upon them by the traffickers for the purpose of their exploitation outside their country of origin), “migrants frequently face barriers in accessing assistance, making them an easy prey for traffickers and exploiters in the countries where they seek asylum or in transit countries” [46], [47].

Based on the results of the International Organisation for Migration’s (IOM) Human Trafficking and Other Exploitative Practices Prevalence Indication Survey conducted in the Central Mediterranean and the Eastern Mediterranean Routes from June 2016 until end of September 2016 [48], it would appear that there is a pronounced risk of trafficking for those using the above routes.

[38]-UNODC, Researching hidden population: approaches to and methodologies for generating data on trafficking in persons, Forum on Crime and Society, Volume 8, June 2015.

[39]-UNODC, 2016 Global report on Trafficking in Human Beings, Chapter II - Human trafficking, migration and Conflict, December 2016, p.19.

[40]-Eurostat, Applicants and first-time applicants, Annual aggregated data (rounded), consulted on 13 March 2017.

[41]-Calculation based on Eurostat data for 2014 and 2016, consulted on 13 March 2017.)

[42]-GRETA, 5th Activity Report, covering the period from 1 October 2014 to 31 December 2015, XII. Identification and Protection of Victims of Trafficking among Asylum Seekers, Refugees and Migrants, p.33-41.; [43]-US Department of States, Trafficking in Persons Report, June 2016, p.21-22.; [44] -ICMPD, Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons, A Study of Syria, Turkey, Lebanon, Jordan and Iraq, December 2015.

[45]-UNODC, Ibid.

[46]-GRETA, Ibid, p33

[47]-British Red Cross, Humanity at a Crossroads: Migrants’ journeys on the Central Mediterranean Route, Report, 2016

[48]-IOM, Analysis: Flow Monitoring Surveys – The Human Trafficking and Other Exploitative Practices Prevalence Indication Survey, Report Period June 2016–September 2016, 20 October 2016.

According to the IOM “the survey includes six questions that are proxy indicators for potential human trafficking or exploitative practices that the migrants and refugees interviewed might have experienced”. The results show that amongst 2 783 migrants and refugees interviewed in Sicily who travelled to Europe through the Central Mediterranean route, 71% answered “yes” to at least one of the trafficking or exploitative practices indicators and 52% to at least two of these indicators.

Migrants and refugees from Western African Countries, including Nigeria, have higher rates of positive responses than those from Northern Africa, the Horn of Africa and Western and South Asia. Trafficking or exploitative practices indicators are less prevalent amongst migrants and refugees arriving in Europe from the Eastern Mediterranean route: 14% of the 1 545 migrants and refugees interviewed answered “yes” to at least one trafficking or exploitative practices indicators and 5% to at least two. A significant share of these individuals will enter the asylum system at a later stage.

NIGERIAN WOMEN AND GIRLS VICTIM OF TRAFFICKING FOR SEXUAL EXPLOITATION AND SEEKING ASYLUM



more than **80%**
will be trafficked
into prostitution
in *Italy* and across
Europe

Although the scale of THB is difficult to assess, alarming statistics have been recently published by the IOM which also confirm general trends observed in several countries studied, mainly *Italy* and *France*. The apparent growth of victims of trafficking amongst those seeking asylum is evident in the situation of Nigerian women and girls in *Italy* and across Europe. Most Nigerian women and girls who are victim of trafficking for sexual exploitation arrive in Europe through the Central Mediterranean route. They disembark in *Italy* after having crossed the Mediterranean from Libya before being distributed across *Italy* and Europe. Most of them are ordered by their traffickers to apply for asylum to remain legally on the Member State territory while their asylum claim is being processed.

“Recent figures released by the IOM predict that of more than 3 600 Nigerian women arriving by boat in Italy in the first six months of 2016 (double the number registered for 2015), more than 80% will be trafficked into prostitution in Italy and across Europe”^[49]. By the end of September 2016, 7 768 Nigerian women had arrived in *Italy* ^[50]. Based on the above estimate of the IOM, 6 214 of these Nigerian women arriving from Libya may be victim of trafficking.

In 2016, Nigeria represented the fifth main country of origin of first time asylum applicants in the EU with 46 145 claims, including 15 205 claims introduced by registered adult women. These figures denote an increase of 53.7% and 78.4%, respectively when compared to 2015 and 144.2% and 175.5% when compared to 2014. The insecurity and violence in the northern part of the country due to Boko Haram activities is not a satisfactory explanation for these movements considering that most Nigerians from the concerned regions are displaced internally or have found refuge in neighbouring countries namely Cameroon, Chad and Niger ^[51].

It is difficult to merge these different data sets for the purpose of analysis and it must be emphasised that not all Nigerian women are victim of trafficking. Nevertheless, when considered in the context of the experiences reported by many practitioners working in the field in most of the countries studied, there is an apparent connection between the simultaneous increases in the numbers of Nigerian women arriving by boat in *Italy*, Nigerian women presumed to be trafficked in Europe and Nigerian female asylum applicants.

[49]-Madina Jarbussynova, OSCE Security Community, Special Section: Migration and Human Trafficking, Issue 3, 2016, p.29.

[50]-IOM, 2016 Flows to Europe Overview Dataset, Displacement Tracking Matrix, 2016

[51]-UNHCR, Nigeria 2017 Regional Refugee Response Plan, October 2016.

Data collection systems: identified gaps and opportunities

In the context of the TRACKS project, the number of asylum seekers who are victims of trafficking, as well as the number of beneficiaries of international protection having been victim of trafficking would be relevant data to analyse over a period of several years. This data could be compared with the overall number of victims of trafficking and the overall number of asylum seekers. However, the information collected from studied countries confirms that such data is not available yet in most EU+ countries. In order to assess whether there were any common basis for comparing data on trafficking between studied countries, systems used for the accounting of victims have been analysed. For instance, the relevance of national referral mechanisms for data collection on trafficking is being questioned below.

Unlike *Switzerland*, *France* and *Spain*, the other countries studied, namely, *Cyprus*, *Ireland*, *Italy* and the *UK* have set up a National Referral Mechanism (NRM). A NRM is a framework for identifying victims of human trafficking and ensuring they receive appropriate care. Compared to other countries studied, detailed data on the victims of trafficking seeking support and formal identification exist in *Cyprus*, *Ireland* and in the *UK*, disaggregated by gender, age, nationality and type of exploitation at least. These figures released by NRMs, however, should not be seen as a complete overview of the scale of the phenomenon. In the case of the *UK*, UNHCR has previously called on the *UK* Government to improve data information available for this group as the level of disaggregation is not sufficient. It is likely that only a small proportion of victims ever encounter authorities, and among those that actually do, they are not all being recognised and referred and are thus not captured in the NRM's statistics. For instance, as reported in a 2014 review of the British NRM, "a senior official at a major port has said that under half of the people that his staff suspects to be victims of trafficking will consent to referral to the NRM" [52]. The review also noted the lack of a consistent approach to recording these instances and therefore the inability to assess the true scale of the issue. On the other hand, the existence of detailed data in those countries is not necessarily correlated to the existence of an NRM as it is the case in *Cyprus*. Indeed, the data collection system run by the Police's Office for Combating Trafficking in Human Beings pre-existed to the setting up of the NRM.

In addition, the adoption of a NRM in *Italy* has not been coupled with a consistent data collection system. The only official statistics available are the number of victims of trafficking benefitting from social protection projects. As there is no other available data pertaining to victims of trafficking, these statistics do not reflect at all the scale of the phenomenon of trafficking in *Italy*. In addition, victims of trafficking who are assisted outside of the social protection programmes due to a lack of reception places are also not counted in those statistics. Consequently, the number of registered victims tends to be smaller than the actual number.

There is very limited official public data on victims of trafficking in *France* and *Switzerland* where there is no NRM. In *France*, the number of third country nationals having been granted a residence permit under article L.316-1 [53] appears to be the most relevant official public statistics on the number of victims of trafficking in the country [54]. The French National Consultative Commission on Human rights (CNCDH), however, has assessed that these figures lack reliability and comparability [55]. In *Switzerland*, two sets of official statistics were publicly available at the time of writing [56]. One shows the number of trafficking offences registered by the police and victims in those cases, disaggregated by age and gender, while the other presents cases of reparation, compensation and counselling according to the Victims of Crime Act [57]. In *Spain*, although there are disaggregated statistics available, they tend to differ between the police, Health ministry and the Public prosecutor, revealing a lack of coordination.

Moreover, none of the above systems gather information pertaining to the asylum procedure (i.e whether orientation to the NRM was done by asylum authorities or whether the victim of trafficking is referred to or wishes to apply for asylum etc.). Although, in the *UK* for instance, it is possible to know how many referrals are made to the NRM by the Home Office, where it can be presumed that a large portion will have also been through the asylum process since the Home Office is responsible for that process. Also, NRM applications from European Economic Area and British Nationals are dealt with by a separate unit from the applications of third country nationals, therefore it can be estimated from the number of the third country nationals processed by the separate office, that some may have also applied for asylum.

[52]-UK Home Officer, Review of the National Referral Mechanism for Victims of Human Trafficking, November 2014, p.20.

[53]-Article L316-1 to be enforced as from 1 November 2016, modified by the Law N° 2016-274 of 7 March 2016 – art.20.

[54]-European Migration Network (EMN) French national contact point, Identification of victims of trafficking in human beings in international protection and forced return procedures- report on the situation in *France*, European Commission Home Affairs General Directorate, 2014.

[55]-French National Consultative Commission on Human Rights (CNCDH), La lutte contre la traite et l'exploitation des êtres humains – année 2015, La documentation française, 2015.

[56]-Statistics produced by the Federal Statistical Office.

[57]-Victims of Crime Act of 23 March 2007, SR 312.5.

In relation to victims of trafficking in the asylum process it has been difficult to collect harmonised and comparable data from the countries studied. Statistics collected for the purpose of the European Migration Network study on identification of victims of trafficking in international protection and forced return procedures [58] similarly reveal that it is not possible to collect comparable and harmonised data. The US Department of State Trafficking In Persons (TIP) Report [59], released every year, also shows that no common data can be found for these countries studied within the TRACKS project and also covered by the TIP report (all except *Spain*). The GRETA specifically points at “significant gaps in the data available on how often asylum is granted where the persecution feared is linked to human trafficking” [60].

Indeed, in all the countries studied, except *Switzerland*, cross-cutting data on asylum and THB is not centrally produced by one national authority. In addition, in the majority of countries studied which have a NRM, no statistics are kept in relation to victims of trafficking applying for asylum or being referred to the asylum procedure. Furthermore, national authorities responsible for determining asylum claims neither have systems recording the specific circumstances of asylum seekers on an individual basis nor updated data on the ground for which international protection is granted. On the other hand, the case of *Switzerland* clearly demonstrates opposite practices which are worth being explained.

[58]-European Migration Network Study, Identification of victims of trafficking in human beings in international protection and forced return procedures, March 2014, p.36-38.

[59]-Ibid.

[60]-GRETA, Ibid. p.40.

DATA COLLECTION ON THB WITHIN THE ASYLUM SYSTEM IN SWITZERLAND



Although there is no national authority or process applying across the country for the formal identification of victims of human trafficking in *Switzerland* [61] and therefore no reliable statistical data of formally identified victims at national level, there is however data on potential victims of trafficking seeking asylum. While these figures are not publicly available, the State Secretariat for Migration (SEM) has provided data for the purposes of the project. Since 2014, the SEM is gathering internal statistical data on asylum seekers who are potential victims of trafficking by assigning a specific code to the respective cases in the Central Migration Information System (CEMIS). The codes are directly assigned by interviewing officials if they detect a victim of trafficking either during the first or the second asylum interview, or at a later stage of the asylum procedure. However, even though codes may be altered or removed at any stage of the procedure, there is no systematic verification of the adequacy of the setting of such codes. Given that it largely depends on the interviewing officials' knowledge and understanding of trafficking in human beings, there might therefore be both underreporting and misreporting. The accuracy of the figures given below is as such not fully assured but can provide some idea of the scale of the phenomenon this project deals with. Given that this data is collected for statistical purposes in the first place, it alone does not signify that follow-up measures are implemented in these cases.

The data also provide information about the outcome of the respective cases. As specified by the SEM, it is important to note that whilst the statistics show cases of potential victims of trafficking, decisions to grant protection are not necessarily based on grounds of the person being a victim of trafficking. Asylum or humanitarian protection may have been granted because of other grounds or a combination of grounds. The below numbers refer to the period from 1 January 2014 to 31 January 2017 and were produced on 15 March 2017.

As a matter of comparison, the total number of decisions issued by the SEM during the same period is 88 757. Amongst them, 145 cases concerned potential victims of trafficking which represent 0.16%. This gives only a broad idea of the scale of the phenomenon as it is perceived in *Switzerland* as the figures may not be fully accurate due to reasons explained above.

[61]-See GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 2015, paragraph 118.

Data collection on THB within the asylum system in Switzerland

NATIONALITY	ASYLUM	PROVISIONAL ADMISSION	REJECTION DUBLIN	INADMISSIBILITY	WITHDRAWALS	WRITE OFF CASES	TOTAL DECISIONS	PENDING	TOTAL
Afghanistan	1	3	1	0	0	0	5	3	8
Angola	0	0	0	3	0	0	3	2	5
Ethiopia	2	5	2	4	0	0	13	5	18
Benin	0	1	0	0	0	0	1	1	2
Bosnia & Herzegovina	0	0	2	0	0	0	2	0	2
Burkina Faso	0	0	0	1	0	0	1	0	1
China	1	0	1	0	0	0	2	1	3
Ivory Coast	0	1	0	0	0	1	2	0	2
Eritrea	11	7	0	10	0	0	28	5	33
Gambia	0	1	0	1	0	0	2	0	2
Ghana	0	0	0	1	0	1	2	0	2
Guinea	1	0	2	0	0	0	3	1	4
India	1	0	1	0	0	0	2	0	2
Iran	0	1	0	0	0	0	1	0	1
Cameroon	0	3	1	3	0	0	7	1	8
Kenya	0	1	2	1	0	0	4	0	4
DRC	0	1	1	3	0	0	6	4	10
Kosovo	0	1	0	0	0	0	1	0	1
Liberia	0	0	1	0	0	0	1	1	2
Morocco	0	0	1	1	0	0	2	0	2
Mauritania	0	0	0	1	0	0	1	0	1
Nepal	0	1	0	0	0	0	1	0	1
Nigeria	0	5	8	17	8	2	40	17	57
Russia	0	0	0	1	0	0	1	0	1
Somalia	0	0	1	0	0	0	1	0	1
Sri Lanka	2	1	0	0	0	0	3	0	3
Sudan	0	1	0	0	0	0	1	0	1
South Sudan	0	0	0	1	0	0	1	0	1
Syria	1	0	0	0	0	0	1	1	2
Togo	0	0	0	1	0	0	1	3	4
Uganda	1	0	0	0	1	0	2	1	3
CAR	0	0	0	0	0	0	0	1	1
Stateless	0	1	0	0	0	0	1	0	1
Unknown nationality	0	2	1	0	0	0	3	0	3
Total	21	36	25	49	9	4	145	47	192

As a matter of comparison, the total number of decisions issued by the SEM during the same period is 88 757. Amongst them, 145 cases concerned potential victims of trafficking which represent 0.16%. This gives only a broad idea of the scale of the phenomenon as it is perceived in Switzerland as the figures may not be fully accurate due to reasons explained above.

In the other countries studied, available data is incomplete and limited and when they are provided by the authorities, the established mechanisms to collect such data are not known. In addition, policies and practices in place might deter victims of trafficking from applying for asylum (see following Chapters). Therefore, the below data is presented only for the purpose of explaining what is available with regard to data on victims of trafficking who are seeking asylum.

In no instance should this data be considered as describing the real scale of the phenomenon. It should rather be perceived as the tip of the iceberg.

Indeed, many more victims of trafficking are never detected or are detected by support organisations but not by the relevant institutions and therefore do not appear in any of the given data.

In *Ireland*, data provided by the annual US TIP Reports on victims of trafficking in the asylum procedure as well as data shared by the Irish Office of the Refugee Applications Commissioner (ORAC) are available. Indeed, ORAC did provide information on how many times they notified the Anti Human Trafficking Unit of the Department of Justice and the Irish police, namely the Garda National Protection Services Bureau for potential victims of trafficking. At the time of writing, however, data for 2016 were not available.

	2010	2011	2012	2013	2014	2015
Victims of trafficking in the asylum process according to the US TIP Reports	39 [62]	N/A	2	8	6	7
Number of asylum seekers notified by ORAC	15	12	9	10	8	7
Number of victims of trafficking detected [63], [64]	78	57	48	44	46	78

Much like ORAC, the Asylum Service in *Cyprus* has provided statistics for the purpose of the research. Between 2013 and 2017, 12 victims of trafficking have been granted international protection because of their trafficking experience. According to such data, all victims of trafficking who have been granted international protection are women who have been trafficked for sexual exploitation. Countries of origin are Cameroon (six cases), Nigeria (two cases), Eritrea, Syria, Togo and Zimbabwe. The Asylum Service has also indicated that two victims of trafficking were in the asylum process early 2017. The collection of this particular data only started in early 2017. At the time of writing, KISA's request for the following data is still pending: date of submission of asylum application, date of granting international protection, date of recognition as a victim of trafficking and type of international protection status granted (subsidiary protection / recognised refugee).

In the *UK*, there is limited publicly available data on victims of trafficking in the asylum procedure. However, a written parliamentary question has revealed that "between 1 January 2010 and 30 September 2015, 1,200 applications for asylum were submitted by individuals recognised as victims of human trafficking by the National Referral Mechanism. Of those, 782 individuals (65.2%) were successfully granted some form of leave to enter/remain in the *UK* as a result of their asylum application" [65]. This amounts to roughly 156 asylum applicants per year being granted asylum whilst also being recognised as victims of trafficking. Most civil society actors consulted for this research commented that they had supported hundreds of individuals who had been confirmed as trafficked (positive conclusive grounds decision) yet still had their asylum claims refused, which therefore has an impact upon the services that victims are able to receive.

[62]-The 2011 US TIP Report providing figures on 2010 refers to 50% of detected victims of trafficking being involved in the asylum process. .

[63]-These figures are from the National Anti-Human Trafficking Unit (AHTU) that is collecting data on the number of victims of trafficking. ;

[64]-It should be noted that the majority of the victims of trafficking in recent years in *Ireland* have been EU citizens who are ineligible to apply for asylum and in addition many of them refrain from seeking asylum in order to gain the right to avail of the formal identification and the ensuing services

[65]- UK Parliament, Asylum - Human Trafficking: Written question - 10912, 22 October 2015.

In *Spain*, data is kept by civil society organisations, primarily by the Spanish Commission for Refugees (CEAR) which indicated that in 2015, 16 female victims of trafficking for sexual exploitation were supported by the organisation and accompanied in the asylum process. The organisation has supported five new cases in 2016. According to CEAR's internal reports, in 2013 and 2014, four victims of trafficking were granted refugee status in *Spain* and in 2016, according to UNHCR *Spain*, up to 19 victims and 8 children of theirs benefited from international protection.

In *France*, there is no official public data on asylum seekers who are victim of trafficking. Several civil society organisations do keep records of the number of victims of trafficking they support involved in the asylum procedure. In that regard, 13 organisations have answered a questionnaire shared by the Inter-ministerial mission for the protection of women against violence and the fight against THB (MIPROF) and the National delinquency and criminal justice response observatory (ONDRP) which aim was to assess the number of victims of trafficking supported by French civil society organisations (CSOs) in 2015. The results have been compiled in a report presented in June 2017 [66]. It reveals that 1 825 victims of trafficking in human beings have been supported by 13 French CSOs in 2015, amongst whom 219 (12%) have been supported in the asylum process. However, the data is not consolidated or collected by participating organisations in a same way.

Therefore, the data only illustrate local situations and, in some cases, only a partial overview of a local situation. In the case of larger cities, where several organisations provide supports to victims of trafficking, these organisations are not necessarily the only organisations to provide such legal support to victims in the asylum procedures. There might therefore be overlaps.

While the scope of the research is quite clearly defined with regard to the target group, it remains difficult to precisely assess the scale of the phenomenon studied. The number of people concerned being both victims of trafficking and applicants for international protection is not a centrally produced and publicly available data in the countries studied, except in Switzerland. Generally speaking, the accuracy of available data is not satisfactory. Based on the experience of project partners as well as on the information collected from relevant practitioners at national level, the number of asylum seekers who are victims of trafficking is assumed to be much higher than what the data described above reveal. This lack of accurate and consistent data is not only a consequence of the lack of appropriate data collection systems but also a consequence of trafficking situations being underreported by both the victims, who rarely recognise themselves as such, and the relevant stakeholders.

The following Chapter 2 therefore highlights the existing mechanisms within the asylum system to detect asylum seekers who are victims of trafficking. It also looks into the effectiveness of access to the asylum process for victims of trafficking.

In addition, better identifying the special needs of presumed victims of trafficking who are seeking asylum is likely to improve their ability to self-identify and report their situations as victims of trafficking. This might thus impact on the assessment of the scale of the phenomenon. In that regard, Chapters 3 and 4 analyse the special needs of victims of trafficking with regard to the asylum procedures and reception conditions. These two Chapters assess the extent to which these needs are properly identified and taken into consideration or not.

[66]-MIPROF & ONDRP, Victims of trafficking supported by French associations in 2015 (Les victimes de traite des êtres humains suivies par les associations en France en 2015), Grand Angle No43, June 2017

2.

DETECTION OF VICTIMS OF TRAFFICKING AND ACCESS TO ASYLUM: **PRE-CONDITIONS** FOR CONSIDERING THEIR SPECIAL NEEDS

Meeting the special needs of asylum seekers victims of THB is difficult if they have not been formally identified or even detected as victims of trafficking to whom specific procedural safeguards and reception conditions shall apply.

An assessment of whether the asylum applicant is an applicant with special needs as regards reception conditions and/or procedural guarantees is foreseen by the Asylum Procedures and Reception Conditions Directives. However, much remains to be done in the countries studied to ensure appropriate implementation of these provisions.

In parallel to the asylum process, National Referral Mechanisms (NRM) have been set up in many Member States as a framework for identifying victims of trafficking. Although NRMs and asylum procedures can be combined, as has occurred in several Member States, issues are reported with regard to the nexus between asylum and NRM (or similar) procedures.

2.1 PERSISTING ISSUES WITH REGARD TO DETECTION OF VICTIMS OF TRAFFICKING IN THE ASYLUM PROCESS

2.1.1 Identifying applicants with special needs, including victims of trafficking

The Recast Reception Conditions Directive and the Recast Procedures Directive foresee that Member States shall assess within a reasonable period of time after an application for international protection has been made whether the applicant is an “applicant with special reception conditions’ needs” [67] and/or an “applicant in need of special procedural guarantees” [68]. These assessments do not need to take the form of an administrative procedure and may be integrated into existing national procedures and/or conducted together.

Special reception conditions needs shall be addressed even if they appear at a later stage. In the context of victims of trafficking, this assessment is not a formal identification procedure and, in the above Directives at least, the formal identification is not a mandatory requirement to assess the claim of a victim of trafficking. In almost all the countries studied, however, such assessment is rarely, or only partially conducted, which could also hinder the detection of victims of trafficking in the asylum process. Furthermore, *Ireland*, *Switzerland* and the *UK* are not bound by the above mentioned Directives which further limit their commitment to detecting victims of trafficking in the asylum process.

In *Cyprus*, the Refugee Law requires [69] that the Asylum Service and all other competent authorities responsible for implementing the law take into account the special situation and circumstances of vulnerable persons, including, inter alia, persons who have been victims of torture, rape, or other serious forms of psychological, physical or sexual violence, categories in which victims of trafficking may be included. There is, however, no specific provision for implementing this general principle. NGOs’ experience has revealed that there has been no decision acknowledging the vulnerability of an asylum seeker falling in this category and therefore there is no available information on the standards and procedures that the authorities follow in such cases.

In practice, as there is no specific mechanism foreseen in the law to assess the special needs of asylum seekers, the majority of these cases are detected during the interview that asylum seekers have at the Asylum Service, which is for the purposes of examine asylum applications. This interview may only take place after several months and up to one or two years on average after the claim has been introduced [70] which prevents victims from early access to support services.

IDENTIFYING VICTIMS OF TRAFFICKING IN RESCUE OPERATIONS THE CASE OF CYPRUS



The detection and identification of victims of trafficking in the asylum process is even more unlikely for third country nationals rescued at sea. A first registration process for asylum is conducted without any screening process to identify vulnerable persons, in particular victims of trafficking [71].

Therefore, vulnerable persons, such as victims of trafficking, are likely to remain unidentified in the asylum process. This is unless there are some clear physical indications of their vulnerability, or if certain signs which suggest trafficking are evident during the interview at the Asylum Service. Even in such circumstances, however, it is not guaranteed that victims of trafficking will be identified.

In practice, many presumed victims do not bear physical signs of trafficking. At the same time, in the case of rescue operations, any physical signs might be quickly dismissed as “expected” because of the hardships of the journey. Therefore, it is likely that victims of trafficking will not be identified as such, and, consequently, their vulnerabilities will not be assessed and they will not have access to their rights as victims of trafficking.

According to UNHCR [72] in *Cyprus*, the above issues are compounded by a lack of proper training and guidance for frontline staff who often have limited, if any, knowledge in recognising indicators of trafficking. Furthermore, according to UNHCR, the problem of identification is exacerbated by the confusion amongst frontline and/or other staff over who can be considered as a victim.

Similar conclusions to those on *Cyprus* can be drawn from the research conducted in *Ireland, Italy, Spain* and *Switzerland* where national laws do not set out any obligation with regard to the identification of vulnerable asylum seekers. In practice, asylum seekers might disclose their vulnerability at different stages of the asylum process depending on national practices in place.

In *Ireland*, any third country nationals entering the State who declare that they intend to seek asylum are required to report to the Office of the Refugee Applications Commissioner (ORAC) for the further processing of their application. Depending on whether they present themselves at the borders or directly at ORAC office in Dublin, the preliminary interview will be either conducted by an immigration officer or a designated official of ORAC. There are no specific procedural safeguards or provisions at that stage or at a later stage of the asylum procedure to identify and refer potential victims of trafficking. Likewise, there is no assessment of specific needs with regard to reception conditions conducted. When an application for asylum is made, the individual automatically loses his/her rights to be formally identified as a suspected victim of human trafficking, which further deprives the individual of the right to receive a residence stamp, private accommodation and access to training or work. This position puts victims of trafficking in the asylum process at a considerable disadvantage in comparison to formally identified victims of THB and might discourage them from applying for international protection. This may also partly explain the low number of reported victims of trafficking seeking asylum (see Chapter 1 p.17).

In *Italy* [73], the law does not provide for a procedure to identify asylum seekers with special needs, which includes victims of trafficking. Nevertheless, on 12 December 2016, the National Asylum Commission launched two very important tools [74]. The first is the Code of Conduct for the personnel of the National Asylum Commission and the Regional Commissions that aims to regulate the professional and ethical responsibilities of the members of the Commissions, the interpreters and the support personnel.

The second is the Guidelines for the identification of victims of trafficking amongst applicants for international protection. The Guidelines have been issued according to the Article 10 of the Legislative Decree n. 24/2014, in order to facilitate the identification of victims of trafficking and the implementation of a referral mechanism that coordinates the work of both the regional Commissions and the support organisation expert on trafficking. With the aim of improving this coordination, the Commissions apply specific Standard Operational Procedures during the international protection procedure.

In *Spain*, the Asylum Law does not provide a specific mechanism for the early identification of asylum seekers with special needs, including victims of trafficking. According to Article 46 of the Asylum Law, their specific situation is to be taken into account and “specific provisions” shall be taken as necessary. In practice, detection of victims of trafficking is possible when the applicant submits his or her asylum claim before the competent authorities – which are the Office of Asylum and Refuge (OAR), any Foreigners’ Office, Detention Centre for Foreigners (CIE) or police stations – and during the formal introduction of the application, which consists of an interview and the completion of a form. Although the asylum or police officers leading the first interview have received training on conducting early risk assessments and recognising forms of vulnerability and that UNHCR provides extensive support throughout the asylum process [75], support organisations witness there is a lack of detection and identification of victims of trafficking in the asylum procedure. This shortcoming is even greater at the border (airport and coast) where people arriving and looking to apply for asylum are systematically put in detention, even if the person says he or she is a victim of trafficking [76].

[67]-See Article 22(1) Recast Reception Conditions Directive.

[68]-See Article 24(1) Recast Procedures Directive.

[69]-Peri Prosfigon Nomos (Refugee Law), Article 18 (6).

[70]-AIDA Country Report: *Cyprus*, November 2015, p.37.

[71]-Position of the independent authority of human rights concerning the reception conditions, hospitality and social integration of refugees arriving in *Cyprus*, A/Δ 13/2015, 20 October 2015

[72]-AIDA Country Report, Ibid

[73]-AIDA Country Report: *Italy*, December 2015, p.49

[74]-Ministry of Interior, press release, 12 December 2016, <http://bit.ly/2osSimP>

[75]-AIDA Country Report: *Spain*, April 2016, p.30.

[76]-Information provided by participants to the Focus group meeting in *Spain*.

In *Switzerland*, there is no mechanism in place to systematically identify specific rights or needs of so-called vulnerable persons other than unaccompanied minors. Accordingly, even though victims of trafficking can be detected during the asylum process, no systematic screening is conducted in practice. In a recent judgement, the Federal Administrative Court [77] has however highlighted the State's obligation to identify victims of trafficking, which arises from Article 10 of the Council of Europe Convention. The Court quotes the CoE Explanatory Report 2005 to show that the obligation to identify victims of trafficking concerns all public authorities that may have contact with victims including asylum authorities. Relying on Article 10 of the CoE Convention and the Explanatory Report, as well as on Article 4 of the ECHR, the Court found that the obligation to take action to detect victims of trafficking [78] is of particular importance within the asylum process. According to the Court, detection is a precondition for decisions regarding the granting of asylum and compliance with the non-refoulement principle. In reaching this conclusion, the Court recognised difficulties inherent in the identification of victims, stressing that false declarations in earlier stages of the asylum process do not necessarily diminish the credibility of a victim's declarations [79]. The Court further noted the recommendations of GRETA urging *Switzerland* to ensure identification of victims of trafficking within the asylum procedure.

In practice, none of these countries provide for effective mechanisms capable of identifying asylum seekers with special needs.

In the *UK*, there are provisions whereby asylum screening interviews in theory could be detecting vulnerabilities including trafficking, and there are specific provisions for the needs of trafficked people with mental health problems being exempt from detention. However in practice this is not always possible and many trafficked people are not being appropriately identified during screening, and therefore remain in detention. Some specific guidance [80] has nonetheless been published to support frontline officers. To register their claim, asylum seekers have to travel by their own means and with their own resources to the Asylum Intake Unit (AIU) located in Croydon in South East of England [81] when they have not made their claim at the port of entry. Civil society organisations mostly consider the screening interview occurring at the AIU inappropriate to identify vulnerabilities [82]. The standard questionnaire [83] used asks only basic questions about health. Therefore, although there are mechanisms in place, in practice, they could be better operated.

Amongst countries studied for this project, *France* seems to have the most advanced framework for identifying applicants with special needs, although in practice the system is not fully satisfactory with regard to victims of trafficking and, as in the case of the *UK*, mechanisms in place could function more effectively.

[76]-Swiss Federal Administrative Court, D-6806/2013, 18 July 2016.

[78]-On the basis of the ECtHR case *Rantsev v Russia and Cyprus*. See more in Section 3.3 on analysis of relevant jurisprudences.

[79]-ECtHR - *LO. v France* (no. 4455/14).

[80]-Home Office, Victims of modern slavery – frontline staff guidance, March 2016.

[81]-In practice, there are some potential exceptions to this requirement, mainly on the ground of disability, serious illness or otherwise when the person is physically unable to travel to the screening unit.

IDENTIFICATION OF APPLICANTS WITH SPECIAL NEEDS IN FRANCE



The reform of the Asylum Law [84] in France in 2015 has introduced specific provisions regarding the identification of vulnerable asylum seekers. The law designates the French Office on Immigration and Integration (OFII) as responsible for assessing whether an asylum applicant has special reception conditions' needs. In order to do so, OFII has to conduct a vulnerability assessment within a "reasonable timeframe" with all asylum seekers. In practice, OFII conducts such assessment on the same day that an asylum seeker has registered its asylum claim in the Prefecture. The vulnerability assessment takes the form of a questionnaire-based interview.

The law clearly states that the assessment aims at identifying applicants with special needs, among which victims of trafficking are explicitly listed [85]. Nonetheless, only objective vulnerabilities such as pregnancy, disability and dependency are assessed by OFII. Only if the asylum seeker takes the initiative to express his or her situation of trafficking for instance can OFII take it into account. However, in practice it is very unlikely that asylum seekers will reveal their potential victimhood if they are not asked anything related to it. This is even more unlikely as very few of them might already have received any kind of support at that stage of the asylum process. Consequently, the vulnerability assessment has very limited impact on the early identification of vulnerable persons such as victims of trafficking. During the interview with OFII, the asylum seeker is informed that he or she can benefit from a free medical examination. Although this medical examination represents an opportunity to identify a situation of trafficking, in practice it is rarely used for such purpose.

According to the law, any information collected by OFII on the vulnerability of an applicant has to be sent to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which is the determination authority.

Only OFPRA is competent to assess special needs linked to the merit of the claim and to adopt specific procedural safeguards pertaining to specific needs or vulnerability of an applicant. To this end, the strengthening of OFPRA capacities through the setting up of working groups on vulnerabilities, including one on trafficking, the training of case-workers as well as the willingness to cooperate with all relevant actors to increase identification of victims are positive developments, improving the detection of victims of trafficking in the asylum process. However, when detection by OFPRA happens, it arrives quite late in the asylum process compared to the stage at which OFII meets the applicants.

Therefore, despite the introduction of a system explicitly meant to identify vulnerable categories of asylum seekers, including victims of trafficking, there are neither sufficient means nor mechanism so far to correctly articulate the identification process.

As a result, without a coordinated and common approach, the identification of victims of trafficking may occur at any stage of the asylum process or never take place. This reduces possibilities for victims of trafficking to benefit from appropriate and timely support in their asylum process, both with regard to procedures and reception conditions. With respect to the Member States that are bound to transpose the Recast Reception Conditions and Procedures Directives and that also have reported full transposition to the European Commission, there is a clear lack of practical implementation of the relevant provisions. This also clearly contravenes States' obligations under the Convention on Action against Trafficking in Human Beings, as reiterated by the GRETA in 2016 [86] which has found that there are significant gaps in the detection and identification of victims of trafficking among asylum seekers in Europe. In relation to this, the GRETA also indicates that "the practice continues to reveal shortcomings in ensuring that protection obligations are met" [87].

[82] -AIDA Country Report: United Kingdom, February 2017, p.42

[83]-See Asylum Screening Interview questions, <http://bit.ly/2oy5tlO>

[84]-Code of Entry and Residence of Foreigners and of the Right to Asylum, as modified by Law n. 2015-925 of 29 July 2015 on the reform of asylum law.

[85]-Article L.744-6 Céseda, as amended by the Law of 29 July 2015.

[86]-GRETA, 5th Activity Report, XII. Identification of victims of trafficking among asylum seekers, refugees and migrants, February 2016, p.34.

[87]-Ibid, p.40.

DUBLIN III REGULATION



Identification of victims of trafficking is even more complicated when it comes to asylum seekers placed under Dublin regulation [88].

Not all countries studied are conducting a vulnerability assessment based on indicators of trafficking in that context. Indeed, only the *UK* has “proactive mechanisms to detect victims of trafficking within the Dublin procedure”[89]. Yet, in most of the countries studied, the individual interview foreseen by the Dublin Regulation is not conducted in an appropriate environment for detection or self-identification of victims of trafficking.

A lack of time and confidentiality and a failure to provide interpretation services are the greatest issues reported. At the same time, when the interview is based on a questionnaire, as it is the case in *Ireland*, and even when it is not, there are limited opportunities for victims to disclose information which would indicate that they may be a victim of trafficking. Likely owing to the above, few victims of trafficking are identified in the Dublin procedure. *Italy*, for example, has reported that victims of trafficking are rarely detected in the procedure [90]. In all countries studied, identification and reporting of victims of trafficking under the Dublin Regulation essentially rely on legal and social support organisations and/or on self-reporting of victims themselves without precluding the Dublin procedure and effective transfer to be carried out (see Chapter 3).

In addition, under the provisions of the Dublin Regulation there is an obligation for Member States to ‘take due account’ of the risk of the child being a victim of trafficking when assessing the best interests of the child (art 6.3). However, UNHCR advised the TRACKS project leadership that their own review of Member States implementation of the Regulation found that, in general, best interests assessments were lacking, that they are not comprehensive in nature and do not take into account, as a minimum, the key factors outlined in the Regulation. They also found that the best interests were not at the centre of decision making.

2.1.2 Identification of children victim of trafficking in the asylum procedure

A particularly vulnerable group of trafficking victims are children. Children are often not in the same position to navigate complicated asylum procedure, while the pain and trauma caused by the trafficking experience can create further difficulties. In recent years, there is a pronounced risk of trafficking of children in Europe as many of the unaccompanied minors travelling to Europe are extremely vulnerable to trafficking. It is therefore highly recommended that child victims of trafficking can be correctly and rapidly identified through asylum procedures [91]. For that purpose, some Member States are taking steps to equip professionals with the appropriate tools.

At the time of writing, the *UK* Home Office was in the process of drafting statutory guidance under Section 49 of the Modern Slavery Act 2015 “that will set out the identification process of a child trafficking victim to ensure all competent bodies, including local authorities, understand what they should do to safeguard children”. In *France*, the competent inter-ministerial body [92] for implementing the National Action Plan against trafficking has produced in November 2016

[88]-Recast Regulation UE No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 26 June 2013.

[89]-EMN Study, Ibid, p.23.

[90]-Ibid

[91]-GRETA, 6th General Report on GRETA's Activities, Trafficking in Children, March 2017, pp.35-36

[92]-This body is the Inter-ministerial Mission for the Protection of Women Victim of Violence and the Fight against Trafficking in Human Beings, MIPROF set up in January 2013.

[93]-Home Office, Evaluation of Independent Child Trafficking Advocates trial: final report, Research Report 86, December 2015.

a self-training handbook dedicated to child-care professionals and judges to improving identification and orientation of children victim of trafficking, including with references to the asylum process. However, weaknesses and failures in detecting potential situations of trafficking amongst unaccompanied children seeking asylum also relate to the appointment of a tutor/guardian and how it works in practice as well as to the level and form of reception conditions. Good practice has been identified in the *UK* where England and Wales had piloted programmes requiring guardians for all trafficked children, which they are now conducting first stage roll out. Scotland and Northern *Ireland* also have provisions for this in their own laws [93].

Another key issue which has been identified in the studied countries, in particular in *France*, *Italy* and *Spain*, is in relation to their actual status as a child. There is an increasing trend of minors suspected of being victims of trafficking who are pretending to be over the age of 18 and are thus registered in the asylum procedure as adults. In *France*, for example, this has been recognised as a major issue amongst Nigerian girls. In Paris, civil society organisations have alerted the authorities to the scale of this phenomenon. From February to October 2015 two Paris-based organisations attempted to estimate the number of underage Nigerian girls who are victims of trafficking. With an estimate number of at least 90 girls, including a significant number under 13 years old, they warned the division for minors of the District Attorney and, in collaboration with the police and other relevant authorities, including OFPRA, they have set up procedures and mechanisms to identify and protect these children, starting with authorising police officers from the Protection Unit for Minors to take girls who manifestly look under 18 for further controls despite the fact that their papers state they are adults. In *Ireland*, difficulties have been reported concerning the establishment of asylum seekers' age, leading to child victims of trafficking being accommodated in centres for adult asylum seekers, placing them at risk.

2.1.3 Encouraging self-identification and self-reporting

In place of proper identification mechanisms in the asylum process, there is an apparent expectation that victims will loudly and clearly assert their victimhood. Encouraging self-identification and self-reporting is important as it increases chances that victims of trafficking will find help and support. Certainly, "if victims of trafficking are able to identify themselves as such, they will be able to seek help more quickly and avoid being further abused or coerced"[94].

Victims, however, rarely do so in the early stage of the asylum procedure, due to a combination of factors. These include a lack of awareness that their situation is a violation of rights; intense pressures from the traffickers and other members of the community; traumatic experiences resulting in posttraumatic stress disorders affecting their ability to recall the events and tell their story; threats against them and their families; a lack of trust in the authorities; a lack of appropriate setting for screening interviews and registration; a lack of training and awareness of frontline and registration officers; a lack of a victim-centred approach and a lack of information on available protection.

Nevertheless, steps can be taken by professionals intervening in the early stage of the procedure to facilitate self-identification and self-reporting of abuses, independently of the existence of a proper mechanism to identify applicants with special needs in the asylum process. Also, the onus should be shifted from solely self-identification to training of frontline workers who should be equipped to spot signs and indications of trafficking in the people they are interviewing. Finally, building trust between the victim and the actors she/he will meet during the process is a key factor for self-identification. Several good practices to build trust and encourage self-reporting and self-identification can be put in place: interviewing applicants in private areas with the support of a qualified and trained interpreter, starting the interview by introducing the persons in the room, explaining the aim of the interview, reminding the applicant that it is confidential, that the persons there want no harm to come to the applicant and are here to facilitate the asylum process.

Although the above mentioned guidance is not specific to the identification of victims of trafficking in the asylum process, without them, victims may remain dependent on their traffickers, owing largely to a lack of understanding of the asylum process.

It has also been reported as good practice to ask applicants if they find/have found themselves in a situation whereby they have/have had to do things they do/did not want or are/were forced to do. For example, H. is a survivor of trafficking having been through an asylum procedure in *France* without disclosing until the appeal stage that she had escaped from a situation of domestic servitude. She said that "If they would have asked me, I would have told them, but nobody ever asked me".

[94]-Madina Jarbussynova, OSCE Security Community, Special Section: Migration and Human Trafficking, Issue 3, 2016.

Finally, while it might appear obvious, not ignoring signs of vulnerability or the existence of indicators of trafficking and be ready to offer some sort of referral, information or orientation and to inform the relevant stakeholders are also part of identified good practices amongst asylum practitioners met in the context of this study.

There are a number of opportunities for detecting victims of trafficking during asylum procedures, including at the early beginning of the process. It is important that professionals, namely those without the competence or capacity to provide further support, recognise indicators of trafficking, which should then be taken into consideration in processing the claim, and refer the persons to relevant stakeholders.

The study reveals that no country has sufficient mechanisms in place so far to identify victims of trafficking as applicants with special needs. Challenges which arise in identifying such needs are compounded in cases concerning child victims of trafficking and applicants under the Dublin procedure.

Also, it was commented that disclosing trafficking while already in the asylum process could cause credibility issues with regard to the asylum claim, therefore reinforcing why early identification is crucial. Where national policy and procedures allow, identification of victims of trafficking in the asylum process can lead to formal identification under the NRM. Similarly, a victim of trafficking seeking formal identification or having been identified through the NRM might be willing - and has the right [95] to apply for international protection, even though this may lead to reduction of entitlements in some Member States such as the right to work for example. Ensuring consistency between asylum procedures and any NRM is fundamental to provide appropriate identification and protection of victims. In some countries studied, however, the relationship between the two processes is extremely complicated, emphasising the need to examine it in greater detail, for the purpose of this report.

[95]-See Article 14 of the Council of Europe Convention on Action against THB, referred to in the Introduction section 1.1.-

2.2 COMBINATION BETWEEN NRM AND ASYLUM PROCEDURES

2.2.1 Compatible and conflicting procedures

The recognised right to be identified as a victim of trafficking, as per Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings, is without prejudice to the right to apply for international protection, according to Article 14 of the Convention. Consequently, recognition as a victim of trafficking should not prevent access to international protection and, if relevant, (i.e. in case the person has genuine fears of persecutions in case of return) recognition as a beneficiary of international protection. Thus it is important to look at the extent to which NRMs (or equivalent procedures) and asylum procedures are coherent and compatible. All countries involved in the research except *France*, *Spain* [96] and *Switzerland* have set up a NRM for victims of trafficking.

In *France* there is a possibility to be recognised as a victim of trafficking through a procedure defined by the Penal Code. Only the police and the national police force are competent to formally identify a victim of trafficking. In situations where victims of trafficking file a complaint against their traffickers, they can benefit from a one-year residence permit renewable upon decision from the Prefecture until the end of the criminal proceedings [97]. This is applicable to all victims of trafficking, whatever the form of exploitation. In addition, following a change of legislation in April 2016, a specific mechanism has been put in place for victims of trafficking for sexual exploitation. If they prove that they are engaging with a specialised support organisation, that they are no longer under the influence of their traffickers and are involved in a care and integration programme, they can receive a provisional residence permit which gives them the right to work. It is valid for a minimum duration of six months and is renewable until the care and integration programme is completed [98]. The police and the national police force have to inform victims of their rights and legal pathways available, including the possibility to apply for asylum. Civil society organisations providing legal and psycho-social support to identified presumed victims of trafficking also bring information on such rights and legal pathways. In practice, victims of trafficking rarely engage in both procedures simultaneously but rather one after the other. This is particularly so when victims have been unsuccessful in a claim or depending on whether they are ready to cooperate with the police or not. As a matter of fact, many support organisations have warned about repetitive practices of some Prefectures which prevent victims of trafficking from navigating both procedures. For instance, cases have been reported where asylum seekers victim of trafficking would have their asylum claim withdrawn when being delivered a residence permit after they had filled in a complaint. Other situations have been described where asylum applicants victim of trafficking were not being granted their residence permit with the right to work although they had filled in a complaint. As in the several cases described below, they tend to also be conflicting rights and procedures in *France*.

In *Switzerland*, there is no formal identification process applicable to all parts of the country. So called roundtables act as referral mechanisms at cantonal level. Such cooperation mechanisms responsible for organising anti-trafficking activities, including identification, have been set up in the majority of the cantons [99], but good practices developed in that context are generally not applied within the asylum field. Actors from the asylum field are not represented in the cantonal roundtables which means that there is no institutional overlap between the two systems.

In *Cyprus*, *Ireland*, *Italy*, *Spain* and the *UK*, identification of potential cases of trafficking by the asylum authorities systematically leads to the applicant being referred to the competent authorities responsible for the formal identification of victims of trafficking [100]. Various practices have been reported in the countries studied regarding the functioning of the NRM and asylum procedures.

[96]-In *Spain*, the Protocol for victims of trafficking is a referral mechanism in the sense that it provides guidance to the police with regard to identification and orientation of victims of trafficking but it does not state any obligation to protect. It cannot hence be considered as a National Referral Mechanism.

[97]-Article L.316-1 *Ceseda* as amended by Law N°2016-274 of 7 March 2016.

[98]-Article L.316-1-1 *Ceseda* as amended by Law N°2016-244 of 13 April 2016.

[99]-See GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 2015, paragraph 118.

[100]-EMN Study, *Ibid*, p.21.

In *Cyprus*, the identification procedure under the NRM and the asylum procedure can be conducted in parallel and competent institutions and actors tend to cooperate and refer the presumed or identified victims of trafficking to one another. Indeed, victims of trafficking are sometimes referred to the Asylum Service by the Office of Combating Trafficking in Human Beings of the Police, either after or during the identification process. The Police is not only responsible for formally identifying victims of trafficking but also for receiving asylum applications. Conversely, if the Asylum Service officer who conducts the asylum interview assumes that the applicant might be a victim of trafficking, they may refer the case to the Police for formal identification. There is no reference in the Refugee Law of an obligation to inform asylum seekers of their rights under the anti-trafficking legislation [101] in situations where the applicant is presumed to be victim of trafficking. The anti-trafficking legislation, however, clearly imposes an obligation on the Social Welfare Services, as the contact point in the NRM, to provide the initial information to presumed victims of trafficking of their right to apply for international protection under the Refugee Law.

Another case where both the identification and asylum procedures can be conducted in parallel is the case of the *UK*. The Home Office asylum teams may refer people to the NRM Unit if that is relevant. In case both procedures run at the same time, the Home Office should not make a negative decision on an asylum claim until the trafficking case has been concluded. This practice is of particular interest and demonstrates the possibility for the identification and asylum procedures to be conducted simultaneously without harming the right of victims of trafficking to be formally identified, and eventually recognised as such, and to apply for international protection. It should be noted however that by entering the NRM, in practice this means that people's asylum claims are put on hold until an NRM decision is made. In some instances where an NRM decision takes some time, people's asylum claims may be given unnecessary delay. It is also found that in practice, there is no sufficient coordination between the two procedures when conducting the interviews: there are many cases where victims are expected to tell their story, no matter how traumatic, multiple times, which inevitably results in inconsistencies, partly down to different interview methods and interpreters.

On the other hand there are also instances of single interviews taking place for both NRM and asylum application [102], despite the two being distinct procedures and decisions, which raises concerns that the two decisions are being conflated. Not only are they distinct procedures but different standards of proof and different burden of proof apply. The impact on victims has been reported to be very negative as it has led to confusion as to which interview they were attending and for what purpose, sometimes resulting in them telling traumatic stories unnecessarily or in other cases, not disclosing enough information.

In *Italy*, within the National Action Plan against trafficking and severe exploitation [103] a section is dedicated to the protection of and assistance to victims of trafficking who are seeking international protection. The Plan underlines the need for early identification of victims of trafficking who apply for asylum. Identification can happen at different stages of the process. It can happen for instance immediately after arrival; during the registration of the claim for international protection; in the reception centres; during the personal interview with the National Asylum Commission, as well as after the interview. The National Action Plan includes a document that describes the procedure that must be conducted for the early identification of victims of trafficking, including amongst those seeking international protection. It also recommends that guidelines are formulated for better coordinating the implementation of social protection programmes and asylum procedures.

The procedure for the early identification of victims can be implemented by various stakeholders, particularly staff members of migration services, social services, reception centres, the Asylum Commission, the ministry of Interior, detention centres, prisons, labour inspectorates, international organisations, Embassies and Consulates, the police and the judiciary. Staff members from the above institutions and organisations receive information on trafficking and are informed of the possibility that they will encounter victims of trafficking. They further receive information on the possible responses of these persons, the need to respond to potential victim's needs, and the information which they should provide to those persons (e.g. the number of the dedicated anti-trafficking hotline). These staff members are also invited to report cases they encounter to their supervisor. Additional information is provided to staff members from the police and the Migration Office of Ministry of Interior. Such information includes examples of interview questions that should be used during pre-identification and identification procedures. Lists of indicators of different forms of exploitation are also provided.

[101]-Law N° 60(I) of 2014 on the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims, April 2014

[102]-UK Home Officer, Review of the National Referral Mechanism for Victims of Human Trafficking, November 2014, p.44.

[103]-National Action Plan against trafficking and severe forms of exploitation 2016-2018, 26 February 2016, p.36.

When, during the interview with the Commission, an asylum seeker is identified as a potential victim of THB, these are a number of actions which should be undertaken. According to the guidelines issued by UNHCR in collaboration with the Italian ministry of Interior, these are:

- The potential victim of their rights and offered the opportunity to talk with a support organisation with specialised on anti-trafficking issues
- Consent should be acquired from the victim for their referral to the public service in charge of identification and protection, following which they should be referred to threat authority
- Suspension of the asylum procedure
- They should be given access, where they wish, to social protection programmes
- They should receive a report from the service in charge of identification
- A decision should be taken on their status as a trafficking victim

According to Article 10 of the Legislative Decree 24/2014, victims of trafficking benefiting from social protection programmes [104] must receive information on how to apply for international protection on one hand, and on the other hand, asylum seekers must receive information on how to access social protection programmes when there is a suspicion that the person may be victim of trafficking.

In *Spain*, the identification procedure under the Framework Protocol for the Protection of Victims of Trafficking [105] and the asylum procedure can occur simultaneously and as complementary processes. As a matter of fact, when an asylum seeker self-identifies as or is presumed to be a victim of trafficking, the Asylum and Refuge Office has to inform the authorities competent for the identification. The Framework Protocol for the Protection of Victims of Trafficking is activated in order to formally identify the victim. For that purpose, a separate interview is conducted where the person can be accompanied by a specialised organisation. Once the Protocol is activated at that stage, meaning once an asylum claim has already been introduced, the application for international protection is continued and processed until a decision is adopted. In most cases the outcome of the asylum claim is negative and the person is rather granted with a Temporary Visa, although this is where the victim cooperates with the police. As the Protocol does not require that victims of trafficking are given information on their right to apply for international protection – contrary to Article 11.6 of the Anti-trafficking Directive, in situations where the Protocol is activated first, the victim rarely has the opportunity to introduce an asylum claim. On the other hand, the actual circumstances of the recent case of *G.J. v. Spain* [106] have raised “intriguing questions about the interrelationship between the refugee status determination procedure and the procedure for identification of victims of human trafficking. As it is clear from the decision, the authorities responsible for the refugee status determination procedure did not refer G.J. to the authorities responsible for identification of victims of human trafficking” [107]. Nevertheless, there have also been situations at Barcelona airport for instance where both procedures were activated in parallel in the case of third country nationals from the Central African Republic.

On the contrary, in *Ireland*, it is difficult for victims of trafficking to be formally identified as such while applying for international protection. These difficulties have acted as a block to victims seeking international protection. Indeed, in *Ireland*, asylum-seeking victims of trafficking cannot be formally identified as victims of trafficking and are therefore denied recovery assistance granted to formally identified victims. Like EU victims, asylum-seeking victims of trafficking are excluded from the current identification system under the NRM [108]. In its first evaluation report on *Ireland* in 2013, GRETA recommended the amendment of the relevant regulations to allow asylum seekers as well as European Economic Area (EEA) nationals and Irish nationals to be formally identified as victims of trafficking [109]. Similarly, the Immigrant Council of *Ireland* has called on the Irish government on numerous occasions to identify all victims without prejudice to their immigration status or nationality through a process of early legal intervention. For example, one interviewee felt compelled to withdraw from the asylum process and pursue her rights as a victim of serious crime in *Ireland*.

[104]-For more details on social protection programmes, please refer to Chapter 4, p.78

[105]- Framework Protocol for the Protection of Victims of Human Trafficking, adopted by agreement of the ministry of Justice, ministry of Internal Affairs, ministry of Employment and Social Security and ministry of Health, Social Services and Equity, the Prosecutor General's Office and the Higher Judicial Council, 28 October 2011.

[106]-ECtHR, *G.J. v. Spain*, Application no. 59172/12, 21 June 2016.

[107]-European Database of Asylum Law (EDAL), Protection of Victims of Human Trafficking and the ECtHR's inadmissibility decision in *G.J. v. Spain*, Article by Vladislava Stoyanova, 7 September 2016

[108]-Asylum Seeking Victims of Trafficking: Legal and Practical Challenges (Immigrant Council of *Ireland*, 2011) – Research sponsored by UN.GIFT.

[109]-Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by *Ireland* (2013).



“I had to decide if I go for trafficking or asylum, I had to talk to the guards.
It was not easy to choose. I wanted to keep everything [all the options].
Because if I don’t get the answer, what should I do!
I did not know anything.”

R. – interviewed in Dublin

Not only is the compatibility of procedures fundamental, but also the compatibility of rights and benefits attached to each status.

2.2.2 Victim of trafficking and asylum seeker: what rights and benefits?

Being a victim of trafficking, identified as such under the relevant procedure, and seeking asylum raise the issue of rights and benefits. Is the person entitled to rights and benefits as a victim of trafficking or as an asylum seeker? In all countries studied they tend to vary greatly, in particular with respect to the legality of the stay, the right to work and the level of psychological and mental health support received.

Difficulties have been reported in *Cyprus* and *Ireland* in particular.

In *Cyprus*, a major gap attributed to national policies and practices is the concurrence of both statuses. A person may possess the status of an identified victim of trafficking and the status of an asylum seeker at the same time. In practice, there is no provision to regulate the interrelation between anti-trafficking legislation and the Refugee Law; they are distinct regulations with two separate legal frameworks entailing very different legal statuses to which distinct rights are attached. It is therefore complex to understand which rights a person in such a situation is entitled to. It must be noted that in *Cyprus* asylum seekers have considerably less rights than victims of human trafficking. Consequently, victims of trafficking seeking asylum face great difficulties in claiming their rights as victims of trafficking. Positively, this has been recognised as a problem by the Ministry of Interior [110]. Nevertheless, at the time of writing, the situation has not changed.

In *Ireland*, there is no such ambiguity with regard to the rights and benefits that apply to victims of trafficking seeking asylum. These victims in the asylum process are given the same level of rights as other asylum seekers. It must be noted that these rights are less favourable than those conferred to formally identified victims of trafficking. National legal and social service providers consider this policy discriminatory and one that puts asylum seeking victims at a disadvantage. Indeed, identified victims of trafficking who apply for international protection cannot avail of the various assistance and entitlements established for victims of this crime, such as private safe accommodation, training and employment and relevant residence permits, a recovery and reflection permit of 60 days, which would favour their rehabilitation as well as facilitate the process of their asylum claim, in particular as regards their ability to reveal the actual circumstances surrounding their trafficking and exploitation. There have been cases where victims have withdrawn their asylum application because of this situation, which indicates that the State policy maybe in breach of Article 40(4) of the Council of Europe Convention on Action against THB.

On the contrary, *Italy* and *Spain* favour the entitlement of rights and benefits to the persons based on their status of victims of trafficking. However, the two approaches are quite different as in the case of *Italy* there is a real combination of both procedures while in *Spain* the Framework Protocol for the Protection of Victims of Trafficking prevails over the asylum procedure in practice, although both procedures are compatible and should be applied simultaneously. Consequently, in *Italy*, asylum seekers recognised as being victim of trafficking can benefit from social protection programmes [111] in particular with regard to accommodation (shelter) and psycho-social support.

[110]- Declaration from the Ministry of Interior during a meeting with the partner organisation KISA, 21 July 2016.

In the UK, the system provides an example of good practice, particularly when compared to those in the other countries studied. It mixes access to both rights and benefits: the trafficked asylum seeker receives the full rights and entitlements of an asylum seeker, with the additional component of the NRM entitlements for as long as their NRM process lasts - NRM process is always shorter than the asylum process. In addition, they can in theory access better and more secure housing in a safe house, get access to education support, psychosocial support, and an anti-trafficking caseworker.

In practice, most trafficked asylum seekers remain solely in accommodations for asylum seekers and are not provided with specialist accommodation. They instead are meant to receive outreach support services from the NRM support workers, but due to the dispersal of asylum centres, many service providers who contributed to this research noted that they were unable to visit the trafficked asylum seekers on a regular basis. This all abruptly ends as soon as the NRM decision is made (48 hours if it is a negative decision and 14 days after a positive decision) and then they are only left with the asylum entitlements until their asylum claim is processed. There is currently no systematic longer term support plans or extension of support in place for victims exiting the NRM and longer term support is only granted on a case-by-case basis. Hence, although the UK has developed a fairly positive system on paper with regard to trafficked asylum seekers, it is still highly flawed in practice and does not meet the victims' special needs.

Identification of victims of trafficking as vulnerable asylum seekers having special needs remains an issue in the majority of countries studied. For presumed victims referred to the NRM or similar procedures for formal identification they might be precluded or discouraged from applying for asylum or continuing the asylum process due to the complexity or lack of practical compatibility of procedures or because they would not be entitled to rights and benefits as victims of trafficking while being also asylum seekers.

Nevertheless, for the victims who are detected it is important to make sure that the appropriate procedural safeguards and reception conditions are offered throughout the asylum process. It might encourage formal and self-identification at a later stage and increase chances for the applicants to liberate themselves from the influence of the traffickers and disclose their true story. For this reason, the identification of victims of trafficking seeking asylum has to improve together with the identification and consideration of their special needs throughout the asylum process.

The following sections deal with special needs of victims of trafficking in the asylum procedures (Chapter 3) and with regard to reception conditions (Chapter 4). A closing Chapter 5 highlights way forward initiatives and actions being undertaken at both national and local level

[111]- For more details on social protection programmes, please refer to Chapter 4, p.70.

3.

SPECIAL NEEDS OF VICTIMS OF TRAFFICKING IN THE ASYLUM PROCEDURES

3.1 PROCEDURAL GUARANTEES FOR VICTIMS OF TRAFFICKING AS A CATEGORY OF APPLICANTS WITH SPECIAL NEEDS

3.1.1 Provisions from the Asylum Procedures Directive

Once an asylum seeker has been identified or detected as a victim of trafficking, special procedural guarantees shall apply. Indeed, the Recast Asylum Procedures Directive [112] provide for special procedural guarantees for certain applicants identified as having special needs [112]. They foresee in particular the following provisions:

- Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support, including sufficient time (Recital 29 and Article 24).

- Where adequate support cannot be provided to an applicant in need of special procedural guarantees as a result of accelerated or border procedures, such an applicant should be exempted from those procedures. This should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances (Recital 30 and Article 24).

- Member States may prioritise an examination of an application for international protection in particular when the applicant is vulnerable or is in need of special procedural guarantees (Article 31.7(b)).

- The personal interview on the substance of the application may be omitted where the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to circumstances beyond his or her control. In such situation, reasonable efforts shall be made to allow the applicant to submit further information (Article 14.2.(b)).

- Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall in particular ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's vulnerability. Furthermore, and wherever possible, the interview with the applicant should be conducted by a person and with an interpreter of the same sex, if the applicant so requests (Recital 32 and Article 15.3).

- Member States may provide for rules concerning the presence of third parties at a personal interview (Article 15.4).

3.1.2 Procedural safeguards in place in countries studied

The following table aims to provide with an overview of procedural safeguards guaranteed by national legislation for asylum seekers with special needs, including victims of trafficking. It also indicates whether these safeguards are implemented in practice when it concerns victims of trafficking.

[112] - As a reminder, *Ireland, Switzerland and the UK* are not bound by this Directive, in particular recitals 29, 30, 31, 32 and 33 as well as Articles 2(d), 14.2.(b); 15.3 and .4; 25 and 31.7(b).

[112]-Based on the implementation of Article 24 of the APD.

▼	▼	▼	▼	▼	▼	▼	▼
WHAT ARE WE LOOKING AT?	CYPRUS	FRANCE	IRELAND	ITALY	SPAIN	SWITZERLAND	UNITED- KINGDOM

Possibility to exempt the applicant from accelerated procedures

National legal framework	Yes, if the accelerated procedure will not ensure a proper and full examination of the application [113]	YES	YES	NO [114]	YES	Yes, if in the new procedure the claim cannot be processed [115]	YES - for detention [116]
Implementation in practice	Yes, usually whenever the Asylum service wants	YES	YES	NO	NO	Yes, usually if further investigations are necessary as in the case of persons with special procedural safeguards	YES - for detention [117]

Possibility to exempt the applicant from border procedures

National legal framework	NO	YES	No information on available	Not applicable	NO	NO [118]	NO
Implementation in practice	No, highly unlikely	Yes but in very few cases	No information on available	Not applicable	NO	Yes, if special needs are found the decision will typically not be done within the maximum period of 20 days foreseen for the airport procedure	NO

Prioritising examination of vulnerable applicants including VoT

National legal framework	YES	YES	NO	YES	YES	Possible but legally only regulated for unaccompanied minors	NO
Implementation in practice	It is implemented to some extent and compared to other applications which examination takes very long time	YES	Possible in practice upon presentation of a medical note	YES	Not for VTHB	No, apart from the prioritisation of UMA claims currently only negative decisions are prioritised	NO

[113]-National legal framework in place and referred to in this table also includes soft laws.

[114]-Accelerated procedures in *Italy* only apply in detention. Nevertheless, no procedural safeguards for victims of trafficking applying for asylum in detention are foreseen

[115]-There is apart from the "test procedure" for the new asylum procedure no formally accelerated procedure in *Switzerland*.

[116]-UNHCR provided further information that on the understanding that accelerated procedures include the possibility that people will be placed in detention while their accelerated procedure takes place (in the *UK* this means the Detention Fast Track (DFT) -

[117]-See also, Home Office Guidance on Adults at risk in immigration detention, December 2016

[118]-The only border procedure in *Switzerland* is the airport procedure and it does not foresee special safeguards for persons with special needs.

▼
WHAT ARE WE
LOOKING AT?

▼
CYPRUS

▼
FRANCE

▼
IRELAND

▼
ITALY

▼
SPAIN

▼
SWITZERLAND

▼
UNITED-
KINGDOM

Exemption from the interview because the applicant is unfit or unable to be interviewed

National legal framework	Yes, for medical reasons or if a positive decision is about to be taken NO	Yes, for medical reasons or if a positive decision is about to be taken	No information available	YES	NO	No, only possible to postpone it	YES
Implementation in practice		No information	No information available	Yes, the interview is suspended and time is given	NO	NO	Difficult to obtain in practice, with exemption granted only when very strong (medical) evidence supports the request

Possibility to ask for the interviewer to be of the same gender

National legal framework	YES	YES	Yes, but to be asked by the applicant in the preliminary registration interview	YES	YES	Yes, if there are indicators of gender-related persecution	YES
Implementation in practice	When the Asylum Service considers it appropriate, they assign the case to a woman interviewer without asking for their preference. There is a general lack of information on this right	YES	Yes, to the extent of the above	No information available	YES	YES	Not systematically : a request can be made, but it might not always be possible

Possibility to ask for the interpreter to be of the same gender

National legal framework	YES	YES	Yes, but to be asked by the applicant in the preliminary registration interview	No information available	YES	Yes, if there are indicators of gender-related persecution	YES
Implementation in practice	No There is no information on this right	YES	Yes, to the extent of the above	No information available	YES	YES	Not systematically

 WHAT ARE WE LOOKING AT?	 CYPRUS	 FRANCE	 IRELAND	 ITALY	 SPAIN	 SWITZERLAND	 UNITED- KINGDOM
---	---	---	--	--	--	--	---

Possibility to ask for the presence of third parties during the determination interview

National legal framework	YES ^[1]	YES	YES	YES	YES	YES ^[2]	YES
Implementation in practice	Very rarely	Yes, to the extent of possible as it is not funded	Rarely	Yes, cultural mediator for all asylum seekers, plus a psychologist for VTHB	Yes, mainly lawyers	YES	Not systematically allowed

Training of asylum case-workers on vulnerabilities

National legal framework	No information available	YES	No information available	No information available	NO	YES	YES
Implementation in practice	Yes, but not systematic and might not concern all asylum case-workers	YES	No information available	No information available	YES	YES	Yes, ad hoc training provided by some NGOs

¹ Only lawyers are allowed to be present, with the exception of unaccompanied.

² The presence of a relief organisation representative is a legal requirement. There is also the possibility to ask for other persons (legal representative/private person) to be present if they are not asylum seekers.

3.1.3 Main weaknesses identified

With regard to the asylum procedures in general

Overall, it appears that most countries studied do not, or insufficiently, provide procedural safeguards for victims of trafficking.

The three procedural safeguards most commonly contained in the national legal frameworks studied are:

- The possibility for the competent authority conducting the personal interview to prioritise the examination of the claim and thus the date of the interview because of the personal circumstances of the applicant.
- The possibility for the applicant to ask for the case-worker conducting the interview to be of the same gender.
- The possibility for the applicant to be accompanied by a third party (or third parties) during the personal interview.

However, in practice these safeguards might not be implemented concerning victims of trafficking. For instance, in *Cyprus* none of these safeguards are applicable to victims of trafficking. Prioritisation of asylum claims very often does not apply to vulnerable asylum seekers as their vulnerability cannot be assessed prior to their asylum interview. No needs assessment is conducted prior to the interview. Asylum seekers are not informed of their right to choose the gender of their interviewer and interpreter and are not allowed to be accompanied by a third person during their interview. The only exception to this is unaccompanied minors, for whom a welfare officer is present as the Head of Social Welfare Services is their legal guardian. Yet, welfare officers are not trained or experienced to handle such interviews and therefore, their presence is merely typical and not substantial. The Refugee Law does not allow for third parties, other than the lawyer or the legal representative of unaccompanied minors to be present during the asylum interview. At the same time, however, there is a lack of funding for lawyers to be present in these interviews.

In *Spain*, prioritisation of the asylum claim for vulnerable applicants only applies in practice to unaccompanied minors, although the Law [121] - foresees that it should be applicable to all applicants with special needs, including victims of trafficking.

In *Ireland*, a victim of trafficking can request an interviewer of the same sex, but only through the initial questionnaire filled in when registering the asylum claim, which, considering the lack of information and support at that stage of the process is hardly irrelevant.

With respect to other procedural safeguards, in particular the possibility of exempting asylum seekers from accelerated and/or border procedures due to their individual circumstances, which might be their (presumed) trafficking situation, only half of the countries studied provide for the possibility of exemption in such circumstances and only *France* has enshrined such a provision in law [122]. Yet, accelerated and border procedures do not only differ from the regular asylum procedure due to different time-scales, discussed further below, they can also limit the effectiveness of certain legal protections, including access to legal aid. They can also undermine the efficiency of remedies and possibly limit access to reception conditions and social support.

The desirability of some of the above listed procedural safeguard is debated by practitioners. Prioritisation of asylum claims for victims of trafficking, for instance, might not always be in their best interest as short timeframes might prevent a victim from disclosing his or her true story in a coherent and detailed manner. Therefore, it should not be applied systematically, but rather following an individual assessment of the best interest of the victim. The possible omission of a personal interview is similarly perceived as controversial. In *France*, the personal interview is considered as a fundamental safeguard vis-à-vis the right to claim asylum, as declared by the CNDA in May 2016 [123]. According to the law, OFPRA is only exempt from summoning an applicant to the individual interview when it is about to take a positive decision or when the applicant alludes to a medical condition that is “lasting and independent from their will” [124]. On that basis, it would not be relevant to refer to it as a procedural safeguard in the French context.

[121]-Law 12/2009 for Asylum and Refuge, Article 46.

[122]-Ibid.

[123]-CNDA, case N°15029515, Mme K., 24 May 2016.

[124]-Article L.723-6 *Ceseda* as amended by the Law N°2015-925 of 29 July 2015.

With regard to the Dublin Regulation in particular

Despite the Dublin Regulation being an independent procedure, and not explicitly connected to the Procedures Directive, it is an integral part of the overall asylum system which also applies to all the countries studied. In addition, it is of particular relevance to the situation of victims of trafficking, who are often moved by their traffickers from one country to another, either as part of the migratory route or for exploitation purposes, or both. The Dublin Regulation foresees specific provisions for victims of trafficking only with regard to minors. Article 6§3(c) stipulates that “in assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking”. Yet, cases have been reported from *Ireland* where applicants who are victims of trafficking have been transferred back to another Member State, despite declaring themselves as minors. There are no specific provisions in the Dublin Regulation concerning adult victims of trafficking. The dependency clause of Article 16 and the discretionary clause (Article 17(1)) may, however, be applied in cases of victims of trafficking.

According to the discretionary clause “each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation”, including on the basis of practical, political or humanitarian grounds [125] these grounds are not defined in the Regulation. In practice, only the *UK*, amongst the countries studied, is said to apply it to victims of trafficking [126]. However, this is not being referred to in the evaluation of the implementation of the Dublin III Regulation report [127] and UNHCR and the *UK* have specified that they have not been aware that any such practice was actually applied.

In *France, Ireland, Italy, Spain* and *Switzerland* victims of trafficking are regularly processed under the Dublin Regulation. In *Ireland*, application of the Dublin Regulation may depend on the circumstances – where it is claimed that the exploitation occurred in *Ireland*, any transfer will be suspended until there is an investigation. Where the trafficking claim relates to exploitation that occurred in another country covered by the Dublin Regulation, it is still possible for the victim to be transferred but this may not always happen. Where this occurs, the victim can be given details of an NGO in the other EU country and vulnerability and medical issues may be mentioned to the responsible Member State, which has occurred in some cases.

In *Italy*, the National Red Cross Society is frequently contacted by foreign civil society organisations or other Red Cross National Societies seeking advice on where to refer victims of trafficking who are being transferred back to *Italy*. In *Switzerland*, Dublin procedures are regularly carried out in the cases of detected or identified victims of trafficking. Transfers may even be carried out in circumstances where the victim’s presence and testimony are needed in criminal proceedings against the traffickers in *Switzerland*. In these cases, the relevant directives and guidance foresee that a special entry permit for the purpose of participation in the criminal proceedings can be issued.

According to internal guidance, the purposefulness of the application of the sovereignty clause shall be assessed if the exploitation took place in the Member State that *Switzerland* considers responsible for processing the asylum claim. Furthermore any special needs of the person concerned shall be communicated to the responsible Member State when transferring asylum seeker victims of THB. In practice, being detected or identified as a victim of trafficking does not have, or only rarely has, a direct impact on the Dublin procedure.

[125]-See European Commission, Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. COM(2001) 447 final, (Dublin II Commission proposal), [2001] OJ E 334/192 on draft Article 3(3): ‘However, a Member State may sovereignly decide, for political, humanitarian or practical considerations, to agree to examine an asylum application lodged with it by a third-country national, even if it is not responsible under the criteria in the Regulation.’

[126]-European Migration Network, Study on Identification of victims of trafficking in human beings in asylum and return procedures, March 2014, p.24.

[127]-European Commission, Evaluation on the Implementation of the Dublin III Regulation, Final Report, 18 March 2016, p.35-36.



DUBLIN III REGULATION IN SWITZERLAND

A case of the Swiss Federal Administrative Court of 15 August 2016 [128] highlights how transfers of victims of trafficking under the Dublin Regulation are justified. The relevant facts of the case concerned a Nigerian woman who declared that she had met her partner in Libya and entered *Switzerland* with him. He had promised to bring her to Germany, but when in *Italy*, asked for a large amount of money in order to do so and further pressured her to prostitute herself. He then constrained her to prostitute herself in *Switzerland*. She had previously claimed asylum in *Italy*.

The legal representative claimed a suspension of the asylum procedure for the purpose of victim identification and the granting of a recovery and reflection period – both were denied by the State Secretariat for Migration (SEM). In the appeal, the legal representative claimed that if a Dublin transfer should be executed, *Switzerland* needed to obtain guaranties concerning the appropriate support and protection of the applicant from the responsible Italian authorities.

The legal representative further claimed that a removal of the applicant at that point would represent a violation of Article 10, paragraph 2 of the CoE Convention, because the applicant had a pending appointment with the police and that the identification process was therefore not yet completed.

The Court discussed the question of whether the applicant should have been identified as a victim of THB by the SEM. It stated that the medical report submitted could not confirm whether or not the prostitution had actually happened, and that the SEM's assumption that there were no reasonable grounds to believe that the applicant was a victim of THB was therefore justified. Although the Court acknowledged that the applicant had since given an extensive testimony concerning her exploitation - disclosed in the report of a specialised organisation - it stated that establishment of the truth in criminal matters did not fall within the responsibility of the Federal Administrative Court and could thus not be part of the case. The Court further explained that *Italy* has signed the CoE Convention, even before *Switzerland* did, and is prosecuting THB.

Consequently, the Court reasoned that it could be assumed that *Italy* is willing and able to protect victims of trafficking and that the applicant could benefit from her rights as a victim of trafficking in *Italy*. Hence, the Court confirmed the SEM's inadmissibility decision and its order to transfer the applicant to *Italy* with reference to the SEM's declaration that the Italian authorities shall be informed about the applicant's medical condition and possible criminal proceedings.

[128]-Federal Administrative Court, D-4763/2016, 15 August 2016.

3.1.4 Few elements of good practices

Despite the lack of sufficient legal provisions as well as the lack of effective implementation of existing safeguards, several good practices have emerged, including additional safeguards beyond those contained in the Directive.

OFPRA PRACTICES TOWARDS APPLICANTS VICTIM OF TRAFFICKING IN FRANCE



The French determination office (OFPRA) has increasingly taken into account applicants with special needs, in particular victims of trafficking. Since September 2013 and in order to prepare for the transposition of the Procedures and Reception Conditions Directives from 26 June 2013, OFPRA has set up five thematic groups of representatives including one on THB. Each group provides support to adapt OFPRA's guidelines to the new legal provisions and to the examination of asylum claims related to their thematic field. Victims of trafficking seeking asylum are interviewed by protection officers who are trained or supported by trained officers from the thematic group. The proceedings and duration of the interview with a victim of trafficking as well as the examination of the case are adapted.

As a matter of fact, OFPRA may prioritize or postpone the summons for the interview and/or summon the applicant for a second interview if deemed necessary. Indeed, if the applicant victim of trafficking has not revealed his or her situation during the first interview and before the decision is taken by OFPRA, it is possible to share new elements with OFPRA and to ask for another interview. This is only possible in situations where:

1. These elements aim at rounding off the initial story on which the asylum claim is based. For instance, in the event that the applicant victim of trafficking has filed in a complaint against his or her traffickers. Nevertheless, OFPRA considers that applying for asylum and filling in a complaint are two distinct procedures and the later is not a pre-requisite for being granted international protection;
2. These elements add on the initial story. The applicant may have told only one part of his or her true story and omitted to specify he or she is or has been victim of trafficking ;
3. These elements substantially modify the initial story. The applicant has concealed that he or she is or has been victim of trafficking and has based his or her asylum claim on a made-up asylum story.

With regards to the above, it is important to specify that self-identification of victims of trafficking alone is not sufficient to identify a genuine situation of vulnerability. This is particularly true for Nigerian women and girls presumed to be victims of trafficking for sexual exploitation whom traffickers are suspected or are obviously abusing the asylum procedure. In addition, self-identification does not exempt asylum seekers from their duty to cooperate with the asylum authorities that is foreseen by the Qualification Directive [129] transposed in French Law [130]. It is also expected from asylum seekers who assert trafficking at a later stage of the procedure, including at the appeal stage or in case of a subsequent application, that they strive to explain and justify the reason why they have not asserted their victimhood at the initial stage of the asylum process.

Therefore, in practice it remains rare.

In addition, since 2015, interpreters who are working with OFPRA are informed of the issue of THB through awareness-raising and information sessions. Both the asylum officer and interpreter can be of the preferred gender of the asylum applicant if this is justified by the grounds for his or her claim. In addition, OFPRA has the possibility to reverse an asylum claim from the accelerated procedure to the normal one, if deemed necessary considering the particular circumstances of the applicant. OFPRA has already done so in cases of presumed victims of trafficking, in particular in situations where presumed victims applied for asylum in detention. However, this is not systematic and there is still a need to improve information sharing and coordination between OFPRA and support organisations for asylum seekers.

[129]-DIRECTIVE 2011/95/EU of the European Parliament and Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast).

[130]-Ceseda, Article L.732-4§2.

Several other countries studied have established good practices with regard to procedural safeguards for victims of trafficking and their effective application.

In *Italy*, a psychologist is present during the interview with an asylum seeker victim of trafficking, in addition to the systematic presence of a cultural mediator.

In *Ireland*, victims of trafficking are not processed under accelerated procedures. Positive practices in *Ireland* also include the existence of independent legal centres and expert legal practitioners who represent victims of trafficking pro bono in their asylum claims in parallel to their status as victims of trafficking and witnesses in criminal investigation as well as on all related immigration, family reunification, social welfare and other issues the victim may encounter. The State legal aid on the other hand is limited to the asylum claim, while in all human trafficking related matters the person lacks comprehensive legal aid beyond legal information. There is a reported increase in the number of successful asylum claims involving victims of trafficking.

In *France* and in *Spain*, civil society support organisations can share explanative or supporting documents with the determination office, in order to back up cases involving applicants they support and who, in the case of victims of trafficking, might have difficulties to relay their story or detail certain facts and circumstances in a coherent manner.

In the case of *Spain*, this is even stronger at the borders and in detention centres.

In addition to *France*, specific guidance for authorities competent for conducting personal interviews has been issued in *Switzerland* and in the *UK*, to support the interviewing process when it concerns applicants with special needs. In *Switzerland*, guidelines for interviewing officials describe how they can account for the special situation of victims of gender-specific violence or minor asylum seekers during the interview [131]. The responsible persons at the State Secretariat for Migration have formally defined the actions to be taken by their staff if a victim of THB is detected at some point in the asylum procedure. Internal guidelines have been formulated containing questions, based on a list of common indicators of trafficking, which should be asked where interviewing officials detect a presumed situation of trafficking. In such cases, further interviews should be conducted by an interviewing official who underwent THB related training. However, significant differences in how the guidelines are effectively applied by different interviewing officials have been reported. In the *UK*, specific guidance relating to victims of trafficking advises the competent asylum authorities to “carefully consider the timing of any interview including whether an interview during the 45 day recovery and reflection period is not appropriate based on the facts of the individual case, balanced with the need not to unduly delay decision-making”.

Training for asylum case-workers is also provided in *Spain*, in *Switzerland* and in the *UK*, but not on a comprehensive basis.

The Recast Asylum Procedures Directive provides for a number of procedural safeguards to adapt asylum procedures to special needs of vulnerable asylum seekers, including victims of trafficking. However, amongst the countries studied, few of them have adopted such safeguards in their national legislative and policy framework and for those that have done so, they are not always implemented or applicable to victims of trafficking. Only France, amongst countries studied, is providing victims of trafficking seeking asylum with effective procedural safeguards as required by the Directive.

One added-value of this research has been to meet with survivors of THB having been through asylum procedures in the various countries studied as well as to meet with a number of practitioners from both support civil society organisations and institutions to discuss special needs of victims of trafficking in the asylum procedures. The objective was to identify such needs and assess to what extent they are being answered

[131]-Art. 6 and Art. 7 para. 5 AO1; Chapter C10 and D7 of the SEM Asylum and return Compendium.

3.2 UNDERSTANDING SPECIAL NEEDS OF VICTIMS OF TRAFFICKING IN THE ASYLUM PROCEDURES

METHODOLOGY



Identified special needs of victims of trafficking in the asylum procedures are being discussed below in their order of appearance throughout the procedures. Special needs of victims of trafficking seeking asylum as regards reception conditions are discussed in Chapter 4. Special needs highlighted below might, for some part or totally, concern all asylum seekers or other categories of asylum seekers with special needs, including victims of torture or violence and/or unaccompanied minors.

What is described below is derived from the analysis of over 60 discussions and interviews with survivors of THB and practitioners from both support civil society organisations and institutions. Please note that the following list is not exhaustive.

3.2.1 Need for building mutual trust

Due to the very specific characteristics of trafficking and in particular the coercion and influence that traffickers exert on their victims as well as their isolation from society, building trust is fundamental to give them the opportunity to self-identify as victims of trafficking and/or tell their true story during the asylum procedure.

■ Reported lack of trust from the applicants who are victims of trafficking

Although trust has been identified as being central to an asylum process responsive to the needs of trafficking victims, the majority of the people interviewed reported a lack of trust in state officials. This lack of trust also extended to other persons from the host society, with some interviewees reporting their compatriots and third country nationals sharing a similar language who had already been through the asylum process as being more trustworthy.



“There is no possibility to have contact with institutions they seem to be very far. Meeting people having experienced the same procedure could be a way to reduce anxiety, build trust and feel safe.”

S. – interviewed in Rome

Most interviewees reported the need to be carefully listened to by all those involved in the asylum process, which helped to build trust and also facilitated a sense of security and calm.



“If they listen to what problems we have. Especially women. What we went through, what we experienced in Arab countries or in our country as well. And I would be very happy if they would listen to us and suggest solutions to us.”


L. – interviewed in Zürich

In the case of Cyprus, interviewees did not specifically express feelings of distrust towards the Asylum Service. They, did, however, report a lack of trust in the Office of Combating Trafficking in Human Beings of the Police. A number of interviewees reported very bad and even violent experiences with the Police while being interviewed for the purposes of identification as a victim of trafficking.

■ Perceived lack of trust from the authorities

The issue of trust, or a lack thereof, came up on a number of occasions throughout the interviews. In the first place, interviewees from all of the countries studied described how they would be met with scepticism or outright doubt when telling state officials of the situations they had escaped from. Interviewees also reported incidences where their own representatives doubted or did not believe their story. Such distrust also extended to the age of the applicants, as a number of interviewees reported that they were not believed when declaring themselves as minors and therefore did not receive adequate support and care.

Building trust is challenging in several of the countries studied (*France, Ireland, Italy and Spain*) as those involved in the asylum process are aware of abuse of the system by traffickers, who can force their victims to apply for international protection to obtain temporary leave to remain in the country for the duration of the asylum procedure. Although this in itself cannot be the sole reason for the distrust described above, from the authorities, undoubtedly it increases any suspicions they have as to the truthfulness of asylum claims. At the same time, victims are being provided with forged documents and instructed to give a fake story to asylum actors, including support organisations. Combined, the foregoing makes authorities suspicious as to victims' stories as such, who themselves, in many instances, recognised their distrust.



“For me, when I said my age, they all refused to believe me. I found it very difficult because it's not everybody that comes to seek asylum that lies. Most of them are saying the truth. It's just that it's difficult for them to believe. [...] For my case it was very difficult because I was trafficked in Italy. So when I arrived there, the lady that brought me asked me to go to the guards in Italy, to see them and tell them I travelled through although I never knew it was asylum as well. The passport she used for me said I was 30 years, and said my name was Happiness Adelma. So everything was just a lie.”

C. – interviewed in Dublin

In the *UK* and in *Switzerland*, the lack of trust from authorities cannot be attributed to abuse of the asylum process by traffickers, but rather to a general disbelief in the occurrence of the sort of exploitation victims of trafficking experience. Such disbelief highlights the need for raising awareness amongst practitioners and staff in the asylum process, thus making the crime and the exploitation it entails for its victims more visible.

■ Confidentiality

In all countries studied, asylum officials have the obligation not to disclose anything relating to an asylum claim, in line with the principle of confidentiality. This is unless the information provided could lead to a criminal investigation, in which case they may disclose information received in the asylum procedure to the police and other competent authorities. The *UK* is the exception here as asylum authorities may disclose information to other organisations and asylum seekers are made aware of this at the beginning of the asylum process [132] While there have been few concrete examples reported where this has negatively impacted on the asylum-seeking victim of trafficking trust towards the system and in particular towards the asylum process, it is an important issue to take into consideration.

In *Spain*, a specific procedure has been set up whereby the Asylum and Refuge Office (OAR) informs the Police Headquarters for Foreigners and Borders, without prejudice to the processing of the application for international protection [133] A similar formal information exchange mechanism has been established in *Switzerland* between the State Secretariat for Migration (SEM) and the Human Trafficking and Migrant Smuggling Section of the Federal Criminal Police Department (Commissariat MM/Fedpol).

In *Cyprus*, almost all those interviewed reported that the Asylum Service had been informed by the Police, in detail, about their cases and the information shared during any interviews, without their consent. Although the above mentioned obligations do not concern police but asylum officers, such practices have been generally negatively perceived by the interviewees.

3.2.2 Need for information provision and legal support

Asylum procedures are complex, yet in most of the countries studied victims reported difficulties in finding reliable information on such procedures. In many cases, victims received information from members of their own community, including members of the community who had previously been trafficked. These played a central role in proceedings, including during the registration and lodging of their claim and in their preparation for the individual interview(s) conducted.

“I felt abandoned at the really beginning of the procedure since it was really difficult to get any reliable information.”



“We [the interviewee and her friend both Ethiopians and having escaped domestic servitude] asked each other to have as many information as possible to lodge our asylum claims and for our procedure to end positively. So for example we asked Sudanese and Ethiopians”.

H. – interviewed in Paris

Generally speaking, although information on rights of victims of trafficking within the asylum procedure is seen as a means of building trust and empowering victims, the information provided to victims was deemed insufficient by interviewees.

“When I came into the country I actually didn’t have any idea what asylum was all about. Even at this stage of the first interview, even the second interview I have no idea what it was all about. [It would have helped me to tell my true story] Probably if I had full knowledge of what asylum is all about. And I had the full knowledge that I shouldn’t be scared of the people I went to see. That I could trust them.”



A. – interviewed in Dublin

“Having access to information from different organisations was very useful to trust the asylum system”



S. – interviewed in Rome

Presumed victims of trafficking should systematically be informed of their rights and entitlements when they identified as victims of trafficking, including when they are detected in the asylum process. The requirement that identified victims cooperate with authorities, found in most of the studied countries, however, acts as a block to presumed victims seeking formal identification.

Where applicable, they should also be informed about their right to benefit from a recovery and reflection period. Indeed, several interviewees reported their need to take some time to rest, both physically and mentally, prior to entering the asylum process. Coupled with adequate legal and psycho-social support this would place them in a better position when entering the asylum process.

[132]-Asylum Seekers are informed at the start of the screening/asylum interview that their information is held in confidence but may be shared with other government departments, agencies, local authorities, law enforcement bodies, international organisations and the asylum authorities of other countries they may have responsibility for the asylum claim. This enables them to carry out their functions including the prevention and detection of fraud.

[133]-Report submitted by the Spanish authorities on measures taken to comply with Committee of the Parties Recommendation CP(2013)10 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 29 October 2015.



“It is better to get calm first and begin with the process afterwards.”

G. – interviewed in Madrid

A particular challenge raised by several asylum practitioners, particularly in *France*, in *Switzerland* and in the *UK*, was a lack of knowledge on human trafficking and the processes for identifying victims. In the *UK*, for example, asylum officials have reported that they were unsure how to explain the NRM and trafficking to asylum seekers. Overall, many of the persons interviewed reported that they lacked the knowledge and capacity to address the issue of trafficking. Consequently, there was strong support amongst practitioners for training, support, and the presence of experts on trafficking to help them in assisting victims and referring them towards support organisations.

All those interviewed identified the need for legal support from the outset of the asylum process



“In my opinion I would say that it’s very important for them [victims of trafficking applying for asylum] to have a lawyer from the beginning, so that the lawyer can bring up the case and stand by her. For me there was no lawyer to do [that], it was very difficult for me.”

C. – interviewed in Dublin

The actual presence of lawyers and legal support organisations has been assessed by all interviewees as being amongst the most important supports in helping them navigate the asylum process.



“Or if I have help from outside. [...] Like an independent person that I can trust and who support me fully and have my own interests at heart, I’d probably be able to come out.”

A. – interviewed in Dublin



“The support received from Barcelona City Council services and CEAR was really useful, in particular legal and psychological support. However, it would be better to always receive legal support from the same person.”

S. – interviewed in Barcelona

3.2.3 Need for a specific and flexible approach with regard to time-scale

Amongst the countries studied, only *France*, *Ireland* and *Spain* have defined fixed time-scale for asylum seekers to lodge their claims. Respectively, these are 21 days, 10 days and 1 month. Several practitioners from *France* have reported that victims of trafficking have difficulties revealing the true circumstances behind their claim within this 21 day-period. The French Protection Office, OFPRA, is aware that it might prevent some applicants from disclosing either parts of or their full story. It is thus widely accepted within the OFPRA that the story given by applicants when initially making a claim may differ from that given during the asylum interview, which is particularly relevant for victims of trafficking, without prejudice to asylum seekers' duty to cooperate with the Office.

Therefore, support organisations should always remind victims that they do not have to stick to their initial story and can provide additional or different information at the interview stage where this is for the purpose revealing the true circumstances behind their claim. Similarly, the one month limit found in *Spain* has been reported as restrictive and potentially creating difficulties for applicants. However, in cases where victims of trafficking are detected early in the process, and are able to benefit from a recovery and reflection period according to the Protocol, the timescale for lodging a claim is extended to three months.

The situation is different in *Ireland*, where the initial claim must be lodged through a questionnaire, which provides very little opportunity to disclose a situation of trafficking. At the same time as receiving the questionnaire the applicant is also notified of the date of their substantive interview, which is usually 10 working days after the date on which the questionnaire should be returned. It therefore provides applicants with a very short period of time to prepare for the interview and thus has the potential to create similar difficulties as those described above for applicants.

Furthermore, it is not possible for victims of trafficking who are claiming asylum to be formally identified and thus receive a reflection and recovery period. Nevertheless, there were a number of incidences reported by interviewees where they were able to tell their actual story in the above timeframe and without the involvement of support organisations.

Once the claim has been lodged, the determining authority has to invite the applicant for a substantive interview, as described above in the case of *Ireland*, and make a decision on their claim. Amongst the countries studied, *France*, *Italy*, *Spain* and the *UK* have defined an overall time-frame for making such a decision. In theory, it is six months (renewable under certain circumstances) in *France*, *Spain* [134] and in the *UK*. In *Italy*, the overall time scale for deciding on a claim is 33 days, including 30 days to invite the applicant to the personal interview, and 3 days to issue the decision afterwards (renewable up to 18 months). There are procedural deadlines in *Switzerland*, but they are currently of little importance in practice. However, an amendment of the Asylum Act, which is expected to enter into force in 2019, will introduce a new process essentially aimed at accelerating the asylum procedure.

The new procedure includes shorter and stricter time frames. In the future, a final decision should be reached and Dublin transfers or removals to the country of origin (if applicable) should be carried out within an overall period of 140 days in 60% of all cases. If a case cannot be treated within the accelerated procedure, it will be processed in a so called extended procedure (foreseen for the other 40% of the cases). The other countries studied have no defined time-scales.

In practice, there have been several cases reported from *Cyprus*, *Ireland*, *Switzerland* and *Spain* where victims have waited several years for their asylum claim to be processed. For instance, two interviewees from *Spain* waited five years and three and a half years respectively before a decision was taken on their asylum claim. Even interviewees from *Italy*, for whom the asylum procedure took on average a year, assessed the process as being too long and complicated. Almost all persons interviewed reported that the asylum procedures in the different countries studied were too long and unclear, putting applicants in situations of real distress.

[134]- Under the regular procedure, while under urgent procedures the delay is of three months.



“I’m not sure if it was just for me, or all of the other women, but for me it took so long. I almost gave up. Because I didn’t have enough feedback from them with my case, I was close to giving up. I remember I tried to take my own life twice when I was in direct provision. Just because it was taking so long. I didn’t know what’s going to happen to me. I know they have to carry out their investigation but in my case it was definitely too long”.

A. – interviewed in Dublin

Although such delays are not particular to victims of trafficking, owing to their vulnerabilities and because there sometimes are other procedures (identification procedures under the NRM and/or criminal investigations) being conducted at the same time, it often takes longer for such applicants.

Nonetheless, there were cases reported where the overall duration of the asylum procedure was reasonable and thus caused few problems for victims. It must be specified, however, that in these cases, the trafficking experience had been disclosed to the asylum authorities by the victim from the outset of the process.

On the other hand, processing time-scales that are too short are not necessarily in favour of the applicant victim of trafficking. Therefore, in the *UK*, a 2014 ruling from the High Court of Justice (HCJ) has held that the Detained Fast Track (DFT), described as a process “designed to facilitate the expeditious determination of applications for asylum and of appeals... [which] involves the detention of all applicants for asylum whose claims the Secretary of State considers can be determined quickly”, does not allow vulnerable or presumed vulnerable individuals to effectively submit their asylum case [135]. In a recent ruling, the HCJ has reiterated that the categories of vulnerable individuals is non-exhaustive and includes victims of human trafficking, and has stated that in such cases the DFT presented an “unacceptable risk of failure [...] to identify such individuals [...] and even when such individuals were identified, to recognise those cases that required further investigation (including, in some cases, clinical investigation)” [136]. It should be noted that DFT was suspended as a result of successful litigation on fairness grounds.

Overall, depending on the stage of the asylum process where applicants are detected as victim of trafficking, and depending on their specific situation and circumstances, they may need to have their asylum claim either prioritised or delayed, in order to give them time to recover and be able to tell their story. Therefore, the system has to be flexible enough to allow for tailoring any time-scales to the victim’s situation and needs.

3.2.4 Need for a more victim-centred approach within the Dublin system

In each of the countries studied, there were cases reported whereby victims of trafficking had been transferred under the Dublin Regulation, even in circumstances where the victim had been trafficked in the receiving Member State or the traffickers were still present there.

A number of interviewees reported difficult circumstances surrounding proposed and actual transfers under the Dublin Regulation, including where they were minors and/or pregnant at the time of such transfers. In such circumstances, the special needs of victims are systematically overlooked.



“They didn’t inform me before they deported me. And because I had my baby with me, with the pain and all, they still take me back to *Italy*. I was sleeping at 4 o clock in the morning when they knock at my door. It was the manager in [Name of the accommodation centre]. So he says the Guards are here to see me.”

C. 16 years old at that time – interviewed in Dublin

[135]-R (Detention Action) v Secretary of State for the Home Department [2014] EWHC 2245, §1

[136]-High Court of Justice, JM, RE, KW and MY v. SSHD [2015] EWHC 2331 (Admin), §74.

Furthermore, given the particular characteristics of trafficking, there are circumstances, reported by interviewees in certain studied countries [137], where the first asylum claim introduced was done so under the influence and coercion of the applicant's traffickers, without the victims even knowing they have actually introduced an asylum claim.



“Interviewer: So did you claim asylum in *Spain* before? Did your trafficker make you claim asylum?

— J. : Yeah but I didn't know it was- ah- so I was surprised when he was telling me that I claimed asylum before that. And they are going to deport me and my little daughter. So I was explaining to her, I never understand it.”

J. – interviewed in Dublin

3.2.5 Need for specific guarantees during the personal interview

The personal interview is a crucial step in the asylum procedure. However, it also constitutes a particularly challenging moment for victims of trafficking

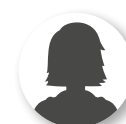
■ Friendly environment

Most victims interviewed highlighted the need to be heard with kindness and interest during asylum interviews. This is particularly important given the difficult stories being told by victims which can bring up painful memories and thus lead to harm for the victim. A friendly environment can also help the victims who have given a first story that does not reflect their genuine fears and true circumstances, which could otherwise negatively impact the assessment of their claim.



“I feel the protection officer did not let me give more details about my exploitation pathway, especially in Saudi Arabia. I had the feeling the protection officer was not interested in knowing about the violence I had suffered. At the beginning of the interview, I had decided to stick to the former story I had paid for but I change my mind at the end, trying to express my genuine fears. But I did not have the opportunity to mention clearly I had been victim of trafficking.

H. interviewed in Paris



“She [the interviewer] listened to me. But the second...I mean when I went outside and came back in, then she was not like in the beginning anymore [when the interviewee considered she was nice]. And then I started to cry, could not talk anymore.”

L. interviewed in Zürich

The above testimony of one of the interviewees in *France* has been balanced by extremely positive feedbacks from many French support organisations whose staff members have accompanied victims of trafficking during their personal interview at OFPRA. Overall, they have reported that the asylum officers were particularly mindful of the well-being of victim applicants they heard and were careful in the way they formulated their questions.

[137]-The UK in particular is not affected by this issue – there is no evidence to suggest that the asylum system is being used in this way by traffickers.

■ Being supported during the interview

All interviewees reported that it had either been, or would have been, beneficial for them to be accompanied by a support person during the interview. It requires taking into account any logistic or practical aspects to ensure such support can be provided. For instance, in *France*, the third party participating in the interview to support the asylum seeker has to be authorised by OFPRA.



“It is better to be accompanied by someone during the interview”

S. interviewed in Barcelona



“The second interview was less hard as I was supported”

G. interviewed in Madrid

However, in one situation reported from *Ireland*, the support person was actually part of the trafficking network and was answering on behalf of the applicant, pretending the latter was mentally ill and thus could not disclose her story herself. When being interviewed for the purpose of the TRACKS project, A. stated that if the person who was influencing her had been taken away, and she instead had an advocate from a support organisation accompanying her, she might have been able to disclose her true story to the asylum authorities.

Consequently, it is important to always ask the persons what they need and what would best answer their needs, to the extent of what can effectively be provided to them in order not to create unrealistic expectations that will later be deceived. Being supported during the interview also means that parents with children are offered childcare during their interview.

■ Preferences for gender

Most of the women interviewed reported that they had no preference about the gender of their asylum officer or interpreter and that it was not of particular relevance to them. Some women believed they would be better understood by an interviewer of the same sex but that it was not a determining factor.



“I think a woman would understand me better. But listen, may be for other women that me it might easier to talk to a woman but my reasoning is that it is not because a man has hurt me that I will perceive all men in the same way.”

H. – interviewed in Lyon

A number of women interviewed still expressed a strong preference for being interviewed by a same-sex case worker, revealing the necessity to adopt a tailored approach to the person's specific needs.



“The translator present was a man and he had the feeling that I didn't want to tell my problems in the presence of a man. He knew I can speak Arabic and that's why he sent me to L, so I can talk about my problems directly with her. [..]

This helped me, I really didn't want to talk about my problems in front of a man.”

L. – interviewed in Zürich

Yet, considering that it is a safeguard provided by the Procedures Directive, asylum applicants being victims of trafficking should be asked of the case-worker conducting the interview, as well as the interpreter. The victim's needs in this respect should not be decided by their support organisation/person or by the national authority in charge of conducting the personal interview. Therefore the onus for this is on asylum authorities, and requires a certain level of pro-activeness to not only offer the possibility of a specific gender for interviewer and interpreter, but also explain why this might be

relevant for the asylum seeker since a) individuals may not recognise or even fully realise what difference the gender of interviewer/interpreter will have until they are in the interview and b) may not appreciate they have the right to specify the gender and it is acceptable for them to express a preference.

■ Being asked and questioned on trafficking

A significant number of interviewees indicated that they were not asked – or not asked enough, about trafficking and thus were not encouraged to talk about it. This suggests that indicators of trafficking might not have been detected by the applicant's case-worker or by the asylum officers conducting the interview. It could also suggest that in situations where the trafficking situation was known, it was either not considered as being part of the international protection needs or, and this has been reported by case-workers in several countries studied, that they did not dare asking direct questions on the trafficking situation fearing the victims' reactions.

In addition, some interviewees indicated that although they wished to talk about their experience as victims of trafficking, they were not given the opportunity to do so.

“No, I was not asked [about trafficking]. But the interview was not accepted.



Well, I had lots of problems, I had a lot to tell, but I was always interrupted. Then I could not really tell my problems, because they said ‘no, now you have to stop’ and then she asked something different, and so I could then not really tell what I experienced in Ethiopia and abroad too, this I could then not really tell. “

L. – interviewed in Zürich

■ Multiple interviews: do or don't?

It was reported by a number of victims that being required to give multiple interviews to multiple authorities, without support, led to instances of secondary harm and re-traumatisation.

In Cyprus, for example, victims must first participate in multiple interviews in order to be formally identified as victims of trafficking. After these interviews, victims, if they apply for asylum, must still undergo an asylum interview. This often leads to distress and re-traumatisation of victims, especially since psychologists or other professionals are not allowed to accompany them during their interviews. Indeed, one person interviewed reported that the interview conducted by the Asylum Service, which followed interviews conducted by the Police, led to further harm and trauma. This was particularly unnecessary, given that the interview conducted by the Asylum Service was identical to those conducted by the Police. Conversely, victims of trafficking might not be in a position to disclose their actual status during the first interview, either because they are still extremely vulnerable and need more time to recover, or because they are still under the influence of the traffickers. They might also lack information on the procedure at that time. It is therefore extremely important that the first instance determination office can invite the person to a second interview.

“In the first interview in 2001, I was very afraid, and I said what the madam told me to say. I didn't know the madam wouldn't be aware of my declaration. I didn't know it was confidential. In the second interview, in 2014, I told the truth, even what happened to me in Spain. The person attending was kind and nice, so it was not so hard.”



R. – interviewed in Madrid

“But anyways, at that time [of the interview] I had...um, I could not think anymore, I didn't know how it was anymore. In this moment I was very stressed, scared and yes, I was badly off [...] In that moment I didn't want to be questioned anymore, would be very happy if we had stopped.”



L. – interviewed in Zürich

3.3 ACCESS TO INTERNATIONAL PROTECTION FOR VICTIMS OF TRAFFICKING : WHAT JURISPRUDENCES TELL

As previously explained in Section 1.2.1 of this report, victims of trafficking seeking asylum might apply for international protection on a number of different grounds, which may not be connected to their trafficking experience. Nevertheless, in circumstances where their trafficking situation forms part of the asylum claim, the applicant might be granted subsidiary protection or refugee status when there are risks of persecution in case of return. To better understand the criteria used to determine access to international protection for victims of trafficking, the case law from European and national courts (specifically those in the countries studied) are described and analysed below. Naturally, there might be cases where either the person is not granted international protection or it is not the form of protection which best answers the victim's specific circumstances. International protection should be considered as a possible form of protection but neither as the single form of protection, nor to-be-systematically-preferred. It should be noted however that in terms of level of protection, it remains unmatched and is still the highest level of protection that an individual could be granted.

3.3.1 European case-law

At the level of European courts, only the European Court of Human Rights (ECtHR) has developed practice on cases related to trafficking in human beings. Article 4 of the Convention enshrines the right not to be held in slavery, servitude and forced labour. However case-law remains scarce and only six judgements are known "in which the Court has dealt with abuses inflicted by non-state actors (i.e employers) reaching the level of severity of Article 4" [138]. Amongst these six judgements, *Siliadin v. France* [139] and *Rantsev v. Cyprus and Russia* [140], have led the ECtHR to expand Article 4's material scope to trafficking in human beings. In *Siladin*, the ECtHR first determined that Article 4's material scope covers harm inflicted by private parties and, thus, that States have positive obligations flowing from Article 4. On the basis of the aforementioned decision, and referring to existing international instruments such as the Palermo Protocol, the Court has extended Article 4's scope to include a positive obligation that States Parties protect individuals against human trafficking. Such positive obligations are threefold :

(a) Adopting and implementing an appropriate legislative and administrative framework, including an immigration policy framework

(b) Adopting and implementing protective measures, including through "adequate training to those working in relevant fields to enable them to identify potential trafficking victims"

(c) Investigating trafficking cases

In a recent decision *J and others v. Austria*, the Court has ruled that Article 4 imposes a positive obligation on States Parties to identify and support victims of human trafficking separately from criminal proceedings [141].

Although the above cases do not directly reference to international protection, the positive obligations thus far developed in the case law of the ECtHR could be extended to circumstances where the protection of victims of trafficking depends on their identification within the asylum process. Indeed, the positive obligation of States Parties to protect individuals from trafficking is framed in a way that cases where victims of trafficking seeking asylum have not been adequately identified and supported within the asylum process could be deemed a violation of Article 4.

3.3.2 Domestic case-law

The aforementioned analysis is supported by the previously mentioned [142] Swiss Federal Administrative Court's decision of 18 July 2016, publication of which in the official collection of court decisions is pending. The Court first considered and summarised the ECtHR's jurisprudence concerning Article 4 ECHR in relation to trafficking, highlighting that the positive obligations arising from Article 4 should be seen in the context of the comprehensive approach of the Palermo Protocol and the Council of Europe Convention. The Court further stresses a procedural obligation to investigate where there are credible grounds to believe that Article 4 ECHR has been violated. Similar to Articles 2 and 3, Article 4 can thus obligate States Parties to adopt protection measures for victims of trafficking, including when they are not formally identified as such. The case also stipulates that the non-refoulement principle can be derived from Article 4 ECHR in cases with a real risk of re-trafficking or retaliation. This jurisprudence is particularly important in the Swiss context as it is the first time that the Federal Administrative Court has explored the obligations relating to the protection of victims of trafficking in international law and their applicability in the asylum procedure. The Court reminded the SEM of its fact-finding duties based on the inquisitorial principal. The authorities must take action when there is evidence of human trafficking [143].

Within the countries studied, the domestic courts in *France*, *Ireland* and the *UK*, while overlooking the procedural issues considered above, have addressed the questions relating to the situations in which victims of trafficking should be granted international protection. The below analysis is based on a collection of the available judgements from the jurisdictions describing the circumstances where victims should be granted international protection.

(a) Subsidiary protection

Today, although the French National Court of Asylum (CNDA) tends to grant refugee status to victims of trafficking seeking international protection, this is only a recent development. For several years, the CNDA had only granted subsidiary protection to victims of trafficking, considering that trafficking constituted ill treatment alone. Such judgements relied on the belief that the criteria to be granted refugee status were not met because trafficking did not correspond with any of the categories found in the Geneva Convention [144]. Indeed, in the case of *Ms O.*, the Court considered that the social group criteria could not be applied based on the measures taken by Nigeria. According to the judge, the fact that the government had adopted legislation to fight against prostitution and human trafficking demonstrated that there was no reason to assume that victims of such exploitation might be rejected and discriminated against by the society. It was therefore not legally justified to apply the Geneva Convention [145]. However, the Court further found that in cases of return there was still a risk of inhuman and degrading treatment for victims of trafficking as it could not be demonstrated that the protection of the Nigerian State was effective. Consequently, subsidiary protection was granted.

(b) Refugee status

To grant refugee status domestic courts have developed criteria for determining the meaning of 'social group', as well as other factors, in order to protect victims of human trafficking as members of such group. These are: the geographical origin, the nature of the relationship with their trafficker and whether they have been successful in escaping their influence, the insufficient protection of the authorities, the possibility of internal relocation and the fact that the group the victims belong to is considered as a social group by the rest of the population. These criteria are considered together by the Courts.

[138]-EDAL, *Ibid*

[139]-ECHR, *Siliadin v. France*, 26 July 2005, Request N°73316/01

[140]-ECHR, *Rantsev v. Cyprus and Russia*, 7 January 2010, Request N°25965/04, §§276 – 282

[141]-ECHR, *J. and Others v. Austria*, 17 January 2017, Request N°58216/12, §115

[142]-Federal Administrative Court, D-6806/2013, 18 July 2016

[143]-Association Humanrights.ch, Suspected human trafficking in asylum proceedings – reprimand from the Federal Administrative Court, 14 September 2016, available here : <http://bit.ly/2qQvCx6>

[144]-CNDA, 23 October 2009, 642112/09000931, *Mlle E.* and CNDA, 1st October 2010, N°1000102, *Mlle O*

[145]-CNDA, 29 July 2011 N°10020534, *Mlle O*

■ Geographical origin

The geographical origin criterion derives from the joint assessment of the possibility for internal relocation; the effectiveness of the protection possible by national authorities and of the perception the rest of the population has towards a distinct group.

In *France*, the National Court of Asylum (CNDA) has recognised that women from Kosovo who are victims of trafficking constitute a social group and shall therefore be granted refugee status [146]. This is based on a joint OFPRA and CNDA country report. The same comprehensive approach is applied to cases of Albanian women victim of trafficking for sexual exploitation [147].

In addition to an entire country, sub-region of a country alone has also been recognised as a geographical location. Indeed, until recently [148], the CNDA considered that amongst Nigerian victims of trafficking only those originating from Edo State constituted a social group [149]. Based on a number of sources “the CNDA stated that many young women who are recruited in the State of Edo, and who are exploited by force by human trafficking networks, are subjected to a form of violence for reason of their gender which shall be considered as persecution. In case of return to their country, they face serious reprisals by traffickers, as well as real risks of being subjected to human trafficking again, or being ostracised by their family or community or seriously discriminated against” [150]. However, in the case of Ms. F, the geographical limitation to Edo State region has been lifted by the CNDA which now considers that Nigerian women victims of trafficking constitute a social group, whatever their region of origin, providing that the other criteria are met. In that case, OFPRA has advocated for such decision.

Finally, on the basis of the decision SB [151], the Upper Tribunal in the *UK* (UT - *UK*) has stated that “former victims of trafficking for ‘sexual exploitation’ can be considered to be members of a particular social group in one country but not in another” [152]. In this particular case and in order to specify its argumentation, the Upper Tribunal found in its decision that “In the context of Moldovan society, a woman who has been trafficked for the purposes of sexual exploitation is a member of a particular social group within regulation 6(1)(d), the particular social group in question being ‘former victims of trafficking for sexual exploitation’[153].

■ Internal relocation

The issue of internal relocation has emerged in a number of cases. In AM and BM, the UT-*UK* found that “Albania is a country where there is a real fear that traffickers might well be able to trace those who have escaped from them or indeed those whom they fear might expose them. Whether such persons would be motivated to do so is, of course, another matter, as we have discussed above. It is therefore a country where, at least, internal relocation is problematical for the victim of trafficking” [154].

Issues have similarly emerged in the context of internal relocation in Nigeria.

The Refugee Appeal Tribunal in *Ireland* (RAT) has ruled against the possibility of internal relocation in Nigeria [155]. In the *UK*, the ruling of the Courts has changed several times. Although the Asylum and Immigration Tribunal (AIT - *UK*) previously held that internal relocation was possible due to the large scale of the country and the fact that the victim could be supported by Nigeria’s National Agency for the Prohibition of Trafficking in Persons (NAPTIP), this decision had been overturned [156] with the Court of Appeal finding that relocation would not have been possible in that specific case. In 2016, this decision has been overtaken [157] and the guidance set out in PO (trafficked women) Nigeria [158] should no longer be followed.

146-CNDA, 15 March 2012, N°11017758

147-CNDA, 25 November 2016, N°16021789 and N°16021790

148-CNDA, 30 March 2017, N°160115058, Mme.F

149-CNDA, 29 April 2011, 10012810, Mlle E.F

150-EDAL Case summary, *France* - CNDA, 29 April 2011, Miss E., n°10012810.

151-Upper Tribunal, PSG – Protection Regulations – Regulation (6) Moldova CG [2008] UKIAT 00002, 31 October 2007

152-Upper Tribunal, AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC), §160

153-Ibid, §102

154-Ibid, §187

155-RAT, 1658864-ASAP-14

156-Asylum and Immigration Tribunal, PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046, §204, 23 November 2009

157-Upper Tribunal, HD (Trafficked women) Nigeria CG [2016] UKUT 00454, 17 October 2016.

158-See in particular the guidance set out in §191-192

New guidance on that matter sets out that “there will be little risk of being trafficked if received into a NAPTIP shelter or a shelter provided by an NGO for the time that she is there, but that support is likely to be temporary [...]. For a woman who does face a real risk of being trafficked if she returns to her home area, the question of whether internal relocation will be available as a safe and reasonable alternative [...] require a detailed assessment of her particular circumstances. For a woman who discloses the characteristics of vulnerability [...] internal relocation is unlikely to be a viable alternative” [159].

■ Protection by national authorities

In each of the above mentioned decisions, the assessment of the level of protection guaranteed by national authorities has been crucial to the determination whether or not to grant refugee status to victims of trafficking. As previously mentioned, in the *UK*, the AIT referred to the NAPTIP as proof that the Nigerian State could effectively protect victims of trafficking [160]. However, this approach has been considered as “erroneous” and “defective” by the *UK* Court of Appeal [161]. A similar position had been adopted by the RAT in *Ireland* [162]. The 2016 ruling of the UT-*UK* states that “For a woman returning to Nigeria, after having been trafficked to the United Kingdom, there is in general no real risk of retribution or of being trafficked afresh by her original traffickers” and that to determine whether she would face such a risk it “will require a detailed assessment of her particular and individual characteristics” [163].

In *France*, the CNDA has systematically considered the specific security context in the country of origin of the claimant when considering the possibility that they could be offered effective protection by national authorities. On that basis, the CNDA has considered that it was not possible for victims of trafficking originating from Nigeria [164], Kosovo [165] and *UK*kraine [166], to benefit from effective protection by national authorities, especially in situations of trafficking for sexual exploitation organised by criminal gangs specifically owing to the possible involvement of state agents.

A lack of protection by national authorities helps determination authorities assess the risk of persecution, including in cases concerning the return of former victims. However, there has been a case where refugee status was granted on the basis of past persecution alone, which was deemed to meet the threshold for atrocious persecution, causing ongoing psychological suffering. Consequently, in that case, it was not necessary to show a risk of future persecution or a lack of protection by national authorities [167].

■ Escaping the influence of traffickers

It seems that there is a general approach shared by all domestic courts: a victim of trafficking cannot be granted asylum if she or he does not demonstrate serious and sustained, if not successful, attempts to leave the traffickers or if she or he remains under the influence of her or his traffickers. This criterion is continuously recalled by the judges in their decisions, in the *UK* and in *France* [168].

The CNDA, for instance, has recently rejected an appeal challenging an OFPRA decision because the appellant did not prove she had attempted to leave her traffickers. Furthermore, it was not obvious whether she was still under the influence of her traffickers [169].

■ Perception and distinct identity of that group from the society

The above criteria are not sufficient to determine if a victim of trafficking belongs to a social group considered as such by the rest of the population in that country. In the *UK*, the UT stated in its decision from 2008 : “that, in order for ‘former victims of trafficking’ or ‘former victims of trafficking for sexual exploitation’ to be members of a particular social group, the group in question must have a distinct identity in the society in question” [170].

159-HD (Trafficked women) Nigeria CG [2016] UKUT 00454, §192-193

160-Asylum and Immigration Tribunal, PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046

161--Court of Appeal, 22 February 2011, PO v SSHD, Civ.132, Appeal N°AA/01314/2005, §44

162-RAT, 1658864-ASAP-14

163- HD (Trafficked women) Nigeria CG [2016] UKUT 00454, §189-190

164-CNDA, 29 April 2011, 10012810, Mlle E.F.

165-CNDA, 15 March 2012, N°11017758

166-CNDA, 12 July 2012, N°11026228

167-RAT, 1707072-ASAP-15

168-Please see the decisions quoted below

169-CNDA, 17 March 2016, N°14005909, Mme O.

170-PSG – Protection Regulations – Regulation (6) Moldova CG [2008], §112, c).

In order to identify whether victims are considered as such a group in their country of origin by their community or family the UT-UK has ruled that: "In cases where the members of a social group share a common background which is an immutable characteristic and which they cannot change (for example, the sharing of a common past experience) or they ought not to be required to change, then if the common background defines the group by giving it a distinct identity in the society in question which has nothing to do with the actions of the future persecutors, then the group exists independently of the feared future act(s) of persecution and circularity is avoided" [171].

Thus, based on the fact that they share a common background or a common history, the judges have ruled that victims of trafficking are members of a social group. Adopting this approach has led the UT-UK to define former victims of trafficking as members of a social group in cases involving Moldovan [172], Albanian [173] and Nigerian applicants [174].

Similarly, in *France*, the Council of State [175], "[a]fter reiterating the definition of a refugee as set out in Article 1A(2) of the 1951 Refugee Convention, and the definition of a social group as set out in Article 10 of the Qualification Directive (2004/83/EC), [...]" said that "beyond the procuring networks from which [the victims] were at risk[...]", it should be also investigated if "surrounding society or institutions perceiv[e] them as having a particular identity that would constitute a social group within the meaning of the [Geneva] Convention" [176].

(c) Comparative application of the social group criteria and its incidence on granting international protection

A crucial difference may be drawn from the above comparative analysis of French and UK case-law regarding application of the social group criteria. In *France*, the CNDA establishes a causal link between an asylum applicant's membership in a particular social group and the risk they will be persecuted if they returned. Through its judgements the CNDA has linked the existence of a social group to the risk of persecution faced by that group. The social group definition is not independent from the persecution, even if the Court admits that a social group is an objective social element.

Thus, whereas the CNDA could recognize that an applicant is the member of an ethnic or religious group, without there being a finding that there is a fear of persecution in case of return, a social group will only be found when its members are persecuted [177]. This interpretation of the Geneva Convention, based on Article 10.1(d) of the Qualification Directive, leads French judges not to grant protection to victims of trafficking in countries where, according to the judges, these victims are not perceived by the society as members of this group and consequently are – or risk to be, persecuted. In cases where the refugee status is rejected because it is not possible to recognise a social group but the claimant still faces risks of persecution from the traffickers in the country of origin, he or she will be granted subsidiary protection.

When a claim is based on the social group criteria, the judge first assesses the perception of the group and of its members by the rest of the society. Then, the judge examines whether there is a risk of persecution generated by this perception. Despite that its impact can be positive, this approach, in particular the obligation that applicants clearly claim belonging to a social group, is rather restrictive. It has been criticized both by UNHCR in 2012 [178] and by the French National Consultative Commission on Human Rights [179] in 2015, as it does not correspond to the spirit of the Geneva Convention.

The approach differs in the UK. The judges may recognise the existence of a social group regardless of whether members of that social group are persecuted due to their affiliation to that group or not. Recognising the existence of a social group is therefore unrelated to potential persecutions their members might suffer from which consequently leads to situations whereby an applicant is clearly recognised as a member of a particular social group without being granted international protection because of the absence of risk of persecutions. This approach has been adopted by the House of Lords [180]. In 1999, on the basis of an intervention from UNHCR [181].

171-Ibid, §112.

172-Ibid.

173-Upper Tribunal, AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC), §166.

174-RAT, 1658864-ASAP-14

175-Council of State, 25 July 2013, N° 350661, §5.

176-EDAL, *France* - Council of State, 25 July 2013, n° 350661.

177-Council of State, 23 June 1997, 171858, Ourbih.

178--UNHCR, Position du HCR relative à l'application de l'article 1A(2) de la Convention de 1951 ou Protocole de 1967 aux victimes de la traite en France, June 2012

179-See report, pp.172-176.

180-Islam (A.P.) v. Secretary of State for the Home Department; R v. Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.), 25 March 1999

181-UNHCR intervention before the Court of Appeal of England and Wales in the case of Islam (A.P.) v. Secretary of State for the Home Department Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.) (Conjoined Appeals), 25 March 1999

4.

SPECIAL NEEDS OF VICTIMS OF TRAFFICKING SEEKING ASYLUM WITH REGARD TO RECEPTION CONDITIONS



The Palermo Protocol and the Anti Trafficking Directive specify a number of minimum standards on the basis that trafficked people are vulnerable. Yet, the recast Reception Conditions Directive falls short of specifically stating what trafficked people should be provided with within the context of the asylum system, while nevertheless categorising trafficked people as a vulnerable category. Therefore pulling the various legislations together, trafficked people are vulnerable and need special considerations, and these considerations are clearly spelled out in the Protocol and Directive that specialise in trafficked persons' needs. Article 11(5) of the Anti-trafficking Directive lists the following elements as the minimum assistance and support measures that Member States have to provide to victims of trafficking : "standards of living capable of ensuring victims' subsistence through measures such as provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate".

The Palermo Protocol also refers to employment, educational and training opportunities as measures that should be considered by State Parties to provide for the physical, psychological and social recovery of victims of trafficking. While the recast Reception Conditions Directive includes schooling and education for minors (article 14), employment (article 15), vocational training (article 16), material reception conditions – including amongst others housing and a daily expenses allowance (article 18) as well as health care (article 19), amongst reception conditions it governs, the only articles which specifically refer to the special needs of applicants relate to the provision of material reception conditions and health care. On that basis, appropriate and safe accommodation as well as health support, including mental health care, are to be considered as the minimum reception conditions to be tailored to special needs of victims of trafficking seeking asylum. This Chapter will explore these special needs with regard to accommodation and health care and will also highlight other needs expressed by victims of trafficking themselves.

4.1 RECEPTION CONDITIONS APPLIED TO VICTIMS OF TRAFFICKING SEEKING ASYLUM

There is no legal framework in place in any of the countries studied making it compulsory for authorities to adapt reception conditions to the special needs of victims of trafficking within the asylum system, despite that in several countries, in particular *France, Cyprus, Italy* and *Spain*, the reception conditions guaranteed to asylum applicants with special needs should be adapted.

In practice, in studied countries, reception conditions offered to applicants victim of trafficking differ widely from one to another. The dissimilar identification processes followed in each of the studied countries is one possible explanation for these differences. Without being identified, it is not possible for victims in some countries to access reception conditions tailored to their individual needs. A failure to identify victims as such can emerge from deficiencies within the identification processes. Another factor is limited resourcing, so even when special needs are identified, they cannot be sufficiently provided for within the services currently available.

All in all, when considering to what extent the above described needs are met in the countries studied, three main scenarios might be brought out and are thus developed in the below sections.

METHODOLOGY



The below sections only apply to adults except if specified otherwise. A separate box providing with an overview of available care for children can be read below at the end of part 4.1.

4.1.1 Victims of trafficking seeking asylum primarily considered as asylum seekers

In *Ireland*, in the *UK* and in *Switzerland*, reception conditions offered to victims of trafficking seeking asylum are not tailored to their specific situation but follow general rules applicable to all asylum seekers. This primarily has an impact on the type of accommodation to which they are entitled.

In *Ireland*, accommodation for asylum seeking victim of human trafficking is the same as accommodation for all asylum seekers. Once an applicant lodges an application for asylum he or she is referred to the Reception and Integration Agency (RIA), which has an office in the ORAC building. RIA is responsible for the provision of reception services to asylum seekers and operates a system of dispersal using privately contracted hostels around the country. However, the system was not devised as an accommodation solution for victims of trafficking to, inter alia, remove victims from their traffickers. Therefore, the dispersal policy can also result in re-locating victims to any part of the country, consequently removing them from their established support network and leaving them vulnerable to further exploitation for a considerable period of time. The system of direct provision itself was also contemplated as a temporary accommodation solution for asylum seekers but in practice it has been used for periods of time exceeding several years and widely criticised [182]. RIA has responsibility for providing accommodation to all victims of trafficking, excluding Irish nationals.

The issue of identification is central to the provision of services to victims. Unidentified victims are unable to obtain a renewable temporary residence permit which would allow them to move out of direct provision and into privately rented accommodation and also give them access to social welfare, training and employment. Victims of trafficking who have lodged an asylum claim cannot be formally identified or receive the temporary residence permit. As a result the vast majority of victims, those who have claimed asylum and those who are EU citizens, remain for considerable periods of time unidentified and living in direct provision. In its 2013 country report, GRETA urged the authorities to review the policy of accommodation for victims of trafficking and to consider setting up specialised shelters for victims of trafficking.

The RIA accommodation system is inadequate in many ways for victims of trafficking. The care for residents in RIA hostels is contracted to private operators and the quality of care varies largely across the board. Several reports [183]. [184] have concluded that the direct provision system is inadequate for catering for women who have been subjected to rape, sexual violence and other types of violence because of its lack of gender sensitivity, which is a recognised best approach to assisting trafficking victims and is a specific requirement under the latest EU law [185]. Victims living in these accommodations have very little privacy to recover and, until recently, all the centres were mixed gender. Recently a female only accommodation centre was opened in county Kerry in Southern *Ireland*. While this opening is welcome, the centre's location is isolated and removed from many of the dedicated services for trafficking victims, which eliminate any advantages associated with gender specificity. At the same time, if one can argue that such isolated location could increase security for victims vis-à-vis their traffickers, in practice, the RIA hostels are well known to the public and could thus be easily traced by victims' traffickers.

No training or preparation for employment are offered to victims of trafficking in RIA centres as they do not have the right to work while they are in the asylum system [186], therefore their reintegration is delayed, particularly in cases where formal employment has not been exercised by the individual in the past, as for instance in cases of trafficking for sexual exploitation. Currently a victim of trafficking who is granted temporary permission to remain under the Administrative Immigration Arrangements has the right to work, the right to access training and education, the right to access social welfare payments and the right to private rental accommodation, while the victim of trafficking in the asylum process has none of these rights and lives on a weekly payment of only €19.10 which is inadequate in *Ireland*. Similarly, despite an example of best practice in *Ireland* in the context of the referral of victims of trafficking by the police to the Health Service Executive Anti Human Trafficking Team for individual care planning, they cannot secure access to social welfare

182-FLAC (2009), *One size does not fit all: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*.

183-Akidwa, *Am only Saying it Now: Experiences of Women Seeking Asylum in Ireland, 2010*.

184-Immigrant Council of *Ireland*, *Asylum Seeking Victims of Trafficking: Legal and Practical Challenges*, UN Gift sponsored report, 2011.

185-EU Directive 2011/36/EU.

186-*Ireland*, the *UK* and Denmark have opted out of the recast Reception Conditions Directive 2013/33/EU.

payments, training courses, private rental accommodation etc. for victims of trafficking in the asylum process as the current policy prohibits it. This again highlights the two tier system and shows that an asylum seeking victim of trafficking is at a disadvantage having made a claim for asylum.

In the UK, asylum seekers who are victims of trafficking should have access to healthcare, asylum support - if they pass the “destitution test” [187] that amounts to just over £5 a day for single adults, Asylum Support accommodation, NRM outreach support as well as assistance to return home. Legal Aid also remains in scope for asylum seekers who have been trafficked, but if the trafficked person does not/has not applied for asylum yet, legal aid is only available after they have received their positive grounds decision. The standard procedures for housing asylum applicants apply to victims of trafficking who claim asylum, even if they are confirmed as victims through the NRM [188]. This means most will be housed in Asylum Support accommodation rather than in specialist trafficking safe houses. Asylum Support accommodation is situated in dispersal areas [189] away from London and the South East, and where the number of asylum seekers does not exceed an upper limit of one asylum seeker to 200 residents. Two hundred local authorities are currently signed up to national dispersal arrangements. Nevertheless contractors, such as G4S and Clearsprings report finding it hard to find sufficient accommodation [190]. As a consequence, asylum seekers have sometimes been housed in hotels and hostels temporarily [191]. According to practitioners met for the purpose of the study, however, victims housed in dispersal areas do not tend to have as good access to specialist services as they would in bigger places like London. Cases where victims were being dispersed far away from their support networks once claiming asylum have also been reported. In addition, asylum seekers housed in Asylum Support can be moved at any time and there have been cases where victims were moved back to the place where they were exploited. Finally, it negatively impacts access to healthcare - already becoming increasingly difficult from an administrative point of view - as those that are moved around the UK due to the asylum process have to re-register every time. According to practitioners, it also has damaging effect on victims trying to recover.



“The more people are moved around the less of an opportunity there is to build trust and rapport with services – support networks are lost.”

Practitioner involved in UK Focus group

Potential victims who are not housed in specialist accommodation (including those housed by asylum support) must still be offered outreach support through the NRM. However, the Anti-Trafficking Monitoring Group recently reported that only around half of victims accommodated in Asylum Support during the 45-day recovery and reflection period received outreach support [192]. For those that do, however, outreach support typically lasts for the length of time it takes to make a trafficking decision. In 2013, the average days that asylum seekers victim of trafficking received outreach support was 118.[193]

As they are primarily treated as asylum seekers, victims of trafficking who apply for asylum do not have the right to work. In the majority of cases, asylum seekers in the UK can only apply for the permission to work after waiting, through no fault of their own, 12 months for an initial decision [194], after which they are only entitled to apply for jobs listed on the current Shortage Occupation List which for the most part require a degree level qualification.

187-A person is “destitute” if they do not have adequate accommodation or enough money to meet living expenses for themselves and any dependants now or within the next 14 days.-

188-In theory, there should be a chance to request special accommodation for special needs but in practice this assessment is rarely made and it is rarely provided..

189-The policy of dispersal was introduced by the Immigration and Asylum Act 1999 in the UK so that “no one area would be overburdened by the obligation of supporting asylum seekers.”

190-The work of the Immigration Directorates, Q3 2015, p.20

191-Ibid, p.24

192-The Anti-trafficking Monitoring Group, Time to Deliver, February 2016, p.6.

193--UK, Home Office, Review of the National Referral Mechanism for Victims of Human Trafficking, November 2014, p.34.

194--UK Home Office, Immigration Rules, Permission to Take Employment, §360.

In *Switzerland*, reception conditions for asylum seekers who are victims of trafficking similarly do not differ from those for other asylum seekers. Asylum seekers first spend an initial period (maximum 90 days) in one of the federal reception and processing centres. According to OSAR, this sort of housing is highly unsuitable for victims of trafficking, in particular due to lack of privacy and insufficient psycho-social support. After that initial reception period, asylum seekers, including asylum seekers who are victims of trafficking, are transferred to a canton. Their reception then falls within the competence of the different cantons and housing conditions vary between the allocation cantons or even between the communes within them. In general, housing is still unsuitable for asylum seeker victims of trafficking after the allocation to a canton because they are accommodated as asylum seekers and not as victims of trafficking who have specific protection needs.

Although in some cantons organisations specialised in supporting victims of trafficking provide protected housing and tailored support for potential victims, asylum seeker victims of trafficking are usually not accommodated in such structures, as special reception conditions for asylum seeker victims of trafficking are not intended or required in law. Receiving permission to move from an asylum centre to a shelter for victims of trafficking is difficult in practice but is sometimes arranged. If being referred to specialised accommodation would necessitate a change of cantons, it becomes almost impossible. In practice, access to protected housing during the ongoing asylum procedure largely depends on the support of individuals committed to help the victim and on the respective authorities' willingness to cooperate. Finally, as GRETA has already noted in their report on *Switzerland*, there are still no specific shelters for male victims of trafficking [195].

As GRETA further indicated, the level of assistance and tailored support for victims of trafficking depends on the canton in which they are identified [196]. To a certain extent this is also the case for access to health care, especially psychological care. Even though all victims of trafficking seeking asylum have access to health care services, the services available differ. Multi-disciplinary cooperation initiated by the authorities is often limited to the prosecution of the traffickers and neglects ensuring the victims' emotional and physical health. It is down to the persons in need of help to initiate the required steps. Thus, asylum seeker victims of trafficking often only undergo basic and emergency psychiatric treatment. There are specialised therapy facilities in the cantons of St Gallen, Zurich, Bern, Vaud and Geneva that provide medical, psychotherapeutic and psychosocial counselling, treatment and advice to traumatised persons, including asylum seekers. These centres offer a wide range of therapies and work together within the Support for Torture Victims association. However, they are not specialised in the treatment of victims of trafficking per se. In addition, since a referral is needed for treatment, and due to high demand and the limited capacities of these facilities, access to them can be restricted in practice.

Asylum seekers cannot engage in any gainful employment during the first three months after filing an application for asylum. The canton of attribution may extend this restriction for a further three months if the asylum application is rejected at the first instance within the first three-month period. After this time limit, asylum seekers are allowed to work if certain conditions are met [197]. Although the legislation allows asylum seekers access to post-compulsory education programmes, in practice this access can be hindered, mainly through administrative constraints.

4.1.2 Victims of trafficking seeking asylum primarily considered as victims of trafficking

In *Italy* and *Spain*, victims of trafficking seeking asylum tend to be accommodated in housing designed for victims of trafficking and receive tailored care and support to meet their specific needs.

In *Italy*, asylum seeker victims of trafficking may be accommodated within the Protection System for Refugees and Asylum Seekers (SPRAR) dedicated to vulnerable people – which includes but is not limited to victims of trafficking, and can also access social protection programmes for victims of trafficking.

195-Two shelters for the accommodation of male victims of THB, currently in the planning stage, have been mentioned in different contexts, but no further information was available at the time of writing this report.

196-GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by *Switzerland*, §140 and §142.

197-Article 43 Asylum Act.

According to Article 17 of the Legislative Decree 142/2015, reception conditions need to take into account specific needs of vulnerable asylum seekers, including victims of trafficking. Consequently, the SPRAR system offers specific places for vulnerable asylum seekers, including victims of trafficking. The SPRAR system is funded by the ministry of the Interior and the municipalities. Its objective is the empowerment of the beneficiaries. For each beneficiary an individual plan is designed based on the needs and capabilities of the person. The plan is implemented by a multidisciplinary team that must ensure collaboration with local stakeholders and services in order to promote the social inclusion of beneficiaries. With respect to victims of trafficking specifically, the SPRAR system must ensure coordination with the social protection programmes described below. Beneficiaries also receive support from a linguistic mediator and assistance to access social, health and educational services.

Within the SPRAR system beneficiaries may be hosted in :

- Apartments and small reception centres (less than 15 beneficiaries)
- Medium reception centres (between 15 and 30 beneficiaries)
- Big reception centres (more than 30 beneficiaries)

Medium and large collective centres generally do not benefit from autonomy or allow for the active participation of beneficiaries due to logistic constraints and management issues. Adequate assistance cannot be guaranteed in bigger centres. On the other hand, apartments and small reception centres are characterized by the gradual self-development of beneficiaries who are supported by external intervention from support organisations. It is considered as the most efficient form of SPRAR reception setting.

There is not, however, sufficient places, while *Italy* is witnessing an increase in the number of arriving migrants which must be accommodated. In practice, newly arrived migrants tend to be accommodated in SPRAR reception centres so as not to be left without accommodation. As a result, in many cases victims of trafficking are accommodated in normal reception centres (CARA or CAS). In these centres, there is little to care for applicants with special needs and often victims of trafficking are not detected. Staff members neither have sufficient tools to identify indicators of trafficking, nor do psychologists have sufficient time to undertake in-depth interviews and build trust with asylum seekers.

At the same time, asylum seeker victims of trafficking can benefit from social protection programmes for victims of trafficking. Up to May 2016, there were two sorts of social protection programmes, both funded by the Government and local authorities (regions and municipalities). The first [198] establishes special funds to implement short term protection programmes (three months renewable for another three months). These programmes aim at identifying and protecting victims. Once the victim has been identified, he or she may enter into the second form of protection programmes (described below), or initiate a voluntary return procedure or, if the victim is a minor, enter into special protection programmes run by local services. These programmes provide victims of trafficking with basic assistance: protected shelter, health and social assistance. There are no specific social inclusion activities, nor empowerment activities. From 2006 to 2012, 166 social protection programmes governed by Article 13 have been funded. The second form of social protection programmes [199] provides victims of trafficking with a residence permit of six months (renewable for another six month-period) in order to allow them to escape from the traffickers and to participate in a social protection programme. The involvement of the victim in a criminal procedure is not required to benefit from such residence permit, thus allowing for psycho-social recovery, trust building and possible future cooperation with authorities. The social protection programmes under Article 18 guarantee the following services: secured accommodation, psychosocial assistance, legal assistance, cultural and linguistic mediation, guidance to access local services, vocational training, vocational guidance and job placement. From 1999 to 2012, 665 social protection programmes governed by Article 18 have been funded.

Both programmes were implemented throughout *Italy* and were run by local authorities in collaboration with authorised non-for profit organisations.

198-See Article 13 of the Law 228/2003

199-See Article 18 of the Legislative Decree 286/1998

In May 2016, a Decree from the Italian Prime minister [200] defined the establishment of a unique programme of identification, assistance and social inclusion of people victim of trafficking. This programme includes both former Articles 13 and 18 activities and is totally funded by the Government. The programme is implemented through local projects throughout *Italy* and aims at ensuring temporary protection (accommodation and health/social/psychological assistance), the availability of assistance and social inclusion activities. Although it is accessible to all asylum seeker victims of trafficking, in practice it is quite rare.

Every project must include :

- Identification activities, including the activities related to the reflection period
- Temporary assistance leading up to social inclusion activities
- Long term assistance aiming at vocational training and job placement
- Empowerment activities in order to consolidate beneficiary's autonomy

These projects must contain :

- Accommodation with a confidential address
- Single men, single women and families are kept separate
- Health, social, psychological and legal assistance
- Activities promoting empowerment and autonomy
- Relationships with local services and organisations promoting social inclusion
- Active participation of the beneficiaries into the activity of the reception centre
- A free help line

There is a need for more social protection programmes to guarantee adequate protection to all victims of THB, in particular men and minors.

In theory, both within the SPRAR system and social protection programmes, job placement activities and vocational trainings are available. Given that asylum seekers are entitled to work two months after they have introduced their claim, this does not create any issues with regard to the situation of victims of trafficking seeking asylum.

Throughout *Italy*, there are several examples of protocols and memoranda of understanding between Prefectures, municipalities and non-for-profit organisations aiming at linking international protection, social protection projects and communities. For instance in Turin, a memorandum of understanding has been concluded between the Prefecture and the Municipality which provides for the possibility to suspend the interview with the National Asylum Commission when a victim of trafficking is detected. From then on, staff members from the Municipality social services are involved in the decision making process.

In *Spain*, persons seeking international protection detected or identified as victims of trafficking are referred to specialised organisations offering comprehensive care and legal services, tailored support, and other specialised services designed to address their specific needs. Such tailored support encompasses specialised legal advice and interpretation; 24-hour telephone support; adequate information provision; access to adequate and safe accommodation; social care and assistance to meet basic needs; medical and psychological care and training and support for job searches. They are specifically dedicated to victims of trafficking. The first accommodation places for asylum seekers victims of trafficking should open in December 2017.

Accommodation provided to victims of trafficking by support organisations falls into the following categories :

- Emergency provisions, for those arriving at night and urgently needing shelter. Emergency provisions are usually provided for one to two months. This period of time allows to know the persons and assess their situation, their needs as well as their objectives.

- Initial shelter provisions, for those already identified by the police and who are going to stay for a certain period of time.
- Long term shelter provisions, for those who decide to stay in *Spain*. These provisions provide for educational projects on everyday life, on health, on labour and legal advice. The objective is to allow them to gain full autonomy in supporting them to get a paid job or study.

The organisations normally offer external services as well. This means that victims of trafficking use the different services provided by the NGO with the support of social workers, lawyers, and psychologists, but do not live in the shelter. The support given to victims lasts for approximately two years / two and a half years, depending on the needs of the victim. In *Spain* which is highly decentralised, some provisions are funded by the National Government and some are paid directly at the Autonomous Community and Provincial levels. In that context, although a clear mapping of all the resources specialised on trafficking should be available, it is fiercely lacking.

With regard to healthcare, applicants for international protection and victims of trafficking have equal access to the basic health services from the National Health System and to medical or any other type of care required to meet their specific needs during the period for which their temporary stay in *Spain* is authorised [201]. The care programmes for victims of trafficking are managed by organisations with proven experience in this area and are funded mainly by public tenders from the ministry of Health, Social Services and Equality and the ministry of Employment and Social Security and, where appropriate, by Autonomous communities.

4.1.3 Reception support applied to victims of trafficking seeking asylum varies

In two countries studied, *France* and *Cyprus*, reception support provided to victims of trafficking seeking international protection tend to vary either due to a lack of sufficient capacities within the tailored programme for victims of trafficking, also applicable when they are asylum seekers, or depending on the gender of the victim and the type of exploitation.

In *France*, the revised Law on Asylum states that the special needs of asylum applicants have to be assessed and taken into consideration when offering reception conditions and thus, throughout the asylum process, including if such needs would emerge at a later stage [202]. However, the identification process for vulnerable applicant having special needs, in particular victims of trafficking, suffers from a number of difficulties described in the above section 2.

In practice, there is no specific accommodation or sheltering system dedicated only to asylum seekers victim of trafficking. Nevertheless, the National Reception and Protection Programme for Victims of trafficking (AC.Sé) offers sheltering and accommodation places for victims of trafficking, in 51 different shelters throughout *France*, including when they have applied for international protection. AC.Sé gathers 17 non-for profit organisations that offer accommodation places to victims of trafficking. The AC.Sé programme is based on geographical remoteness from the trafficking location for security purposes, the multiplication of reception sites and the confidentiality of their location.

The organisation Accompaniment Reception Place (ALC), based in Nice, coordinates the programme. When identifying victims of trafficking and when there is a real urgency for the victims to be removed from their current location, any organisation can contact ALC to ask for a placement within AC.Sé. Even though the programme is opened to all adult victims of trafficking whatever their gender and type of exploitation, in practice it mainly supports women who have been trafficked for the purpose of sexual exploitation. This is particularly true for asylum seeker victims of trafficking as statistics from the AC.Sé programme show that almost all victims supported by AC.Sé who are also involved in an asylum procedure are Nigerian women who are victims of sexual exploitation. In 2016, 82 referrals were submitted to the AC.Sé programme amongst which 60 concerned Nigerian women originating from Edo State, all of them victim of trafficking for sexual exploitation 203-AC.Sé national programme, Annual report 2016, March 2017.

The AC.Sé programme generally meets the needs of victim of trafficking seeking asylum as it guarantees secured accommodation; adapted psycho-social support offered by trained staff members and provides for legal support throughout the asylum process. However, owing to a lack of places, it does not offer support to all victims who ask for such. This is particularly so for victims seeking asylum for whom there are difficulties finding accommodation places within the AC.Sé programme. Indeed, within the programme victims of trafficking are sheltered and accommodated in Accommodation and Social Rehabilitation Centres (CHRS). However, depending on Prefectures certain beneficiaries are favoured and CHRS receive directives on the number of places available for certain categories of vulnerable people.

Consequently, several of these centres refuse to accommodate trafficked asylum seekers, as the Prefecture considers they should be accommodated in Reception Centres for Asylum seekers (CADA). Nevertheless, as these asylum seekers are also victims of trafficking, they also fall within the scope of the AC.Sé Programme and some Prefectures do not oppose to their accommodation in CHRS.

For these victims of trafficking seeking asylum who are not integrated into the AC.Sé programme – and they are the majority – they can be accommodated in :

- Non-profit organizations, specialized in support to victims of THB (Foyer AFJ, Comité contre l'esclavage moderne, Amicale du Nid). Victims are accommodated in secured places (in centers or appartements), and receive legal and psycho-social support. These facilities are perceived positively by the victims and the support organisations as it empowers them and favours autonomy as well as building social ties. Nevertheless places are limited and are available in a few cities only. Moreover, a number of pilot projects have been recently experienced in France, set up by non-for profit organisations as well as institutions, looking for new solutions, for instance, accommodating victims in host families.

- CADA – CADA are adapted to the procedural needs of the victims when it concerns the asylum procedure but staff members working such centres are not trained to support victims of trafficking. With regard to security issues, CADA are not adapted to accommodate victims of trafficking as these centres are open and their location is not confidential, i.e everyone can have access to the centres, and in most cases there is no staff members present during the weekend and nights.

- Emergency reception centres - Similar issues as identified above are present in such centres. In addition, this reception option is very precarious due to the instability of the situation. In theory, people are supposed to stay only temporarily in the emergency centres and it is therefore challenging to set up adequate psycho-social support and to build trust with the victims. The uncertainty the persons find themselves into is damaging their recovery and stabilising.

As for sheltering, the most commonly used solution is to place the victim in a hotel which is not secure and can leave the person with no permanent support. Due to the very limited number of available places within AC.Sé and no other existing system, it is often the option adopted when a victim is identified in CADA for instance or presents him or herself to an NGO to ask for immediate shelter as he or she has ran away.

In general, although psycho-social and mental health support for asylum seekers who are victim of trafficking should be a priority, the support available is not sufficient. This is mostly because of a lack of means and resources and a lack of training of asylum practitioners.

With respect to employment, asylum seekers are not allowed to work during the first nine months of the asylum procedure. There is an exception for unaccompanied minors who can complete a traineeship while seeking international protection. For that purpose, an agreement has to be granted by the Prefecture, which hinders its effective implementation in several part of *France*. For victims of trafficking seeking international protection, there is nothing specific foreseen in the law, unless they are already in receipt of a residence permit [204] under article L316-1, which allows them to work

In *Cyprus*, the Refugee Reception Conditions Regulations of 2005 – 2013 include clear provisions that in providing reception conditions, including material reception conditions, all authorities involved have to take into account the specific situation of vulnerable applicants, including persons who have suffered as a result of torture, rape or other serious

204-A temporary residence permit (valid at least 6 months) can be granted to victims of trafficking who filled in a complaint and/or who testified in Court against a person suspected to be a trafficker. A permanent residence permit (valid for 10 years) can be granted to victims of trafficking when the person prosecuted is condemned.

types of psychological, physical or sexual violence. Other than this provision, no explicit reference is made to victims of trafficking.

An asylum seeker who is identified as a victim of trafficking might be referred to the shelter for victims of trafficking, but only if that individual is a migrant woman who has/may have experienced human trafficking for sexual exploitation. In other cases, asylum seeking victims of human trafficking may be referred to non-for profit organisations to cover their housing needs. Most of the time, asylum seeking victims of trafficking are asked to find accommodation on their own and apply for reception conditions (as asylum seekers), or guaranteed minimum income (as identified victims of human trafficking) so as to cover the expenses of such accommodation. In addition, they might be “advised” to find “a friend” or a community member to accommodate them or to rent them a room in their house. In a number of cases it has been reported that Social Welfare Services (SWS) put them in contact with other victims of trafficking or a community member so as to accommodate them or to rent them a room in their house.

Yet, systematic delays of 1 to 3 months for the initial assessment of an application for reception conditions and delays of up to two years, for the initial assessment of an application for guaranteed minimum income are being reported. As a result, asylum seeking victims of human trafficking do not have the means to pay their rent, and tend to move from one place to another. In addition to the fact that it is a rather precarious situation not favouring recovery and stabilising, it might also negatively impact the assessment of their application for reception conditions or guaranteed minimum income. Indeed, if the authorities try to visit or to contact the victims and cannot find them, they are likely to stop the examination of such applications. Communication challenges have been reported that negatively impact adequate access to reception conditions for victims of trafficking. These challenges result from both communication difficulties due to lack of interpretation services and a lack of awareness and training amongst SWS’ officers.

Yet, and according to the Anti-trafficking legislation, a presumed or identified victim is entitled to appropriate and secure housing. The Law also provides for the possibility for the SWS to run shelters for victims of trafficking. In practice, there is only one shelter run by the SWS currently operating and it is dedicated to female victim of trafficking for sexual exploitation. Several issues have been identified in relation to its functioning, including, in particular, limited access to the shelter to support organisations and NGOs, and pressure placed on victims housed there to testify before the court and collaborate in ongoing investigations. Victims have no right to keep their laptop and phones, so as to avoid them maintaining or re-establishing contact with their traffickers. While this measure is intended to protect victims, as there is no other communication channel put in place by the SWS, it further undermines the possibility for victims to get in touch with support organisations and NGOs. At the moment, the shelter mainly hosts unaccompanied girls seeking asylum who are not victims of trafficking, except one girl who is presumed to be victim of trafficking.

The Refugee Reception Conditions Regulations provide asylum seekers and their families with access to health care, if they do not have sufficient resources. Asylum seekers residing in the reception centre are presumed not to have sufficient resources. Vulnerable persons, as defined in the Regulations, receive necessary treatment at public health centres and are allowed to benefit from special health care or other assistance. Nevertheless, reported failures with regard to the identification or detection of victims of trafficking prevent them from accessing such tailored health and psychological support. The law allows victims of trafficking to have full and free access to health care. In practice, however, even the access to specific health care and therapeutic programs [205] by individuals formally identified as victims of trafficking has been identified as very challenging. This is so because of a lack of capacities and resources from the side of the health professionals and services and because of a lack of information of victims of trafficking as regards their rights. Asylum seekers also have full access to health care, however, the issue is that after their asylum application is examined and if granted protection – they must have 3 years of contributions at the social insurance scheme to be granted access to health care.

Regarding their access to employment, victims of trafficking seeking asylum are treated differently and have different rights depending on whether they present the confirmation letter for having introduced an asylum claim or their residence permit for being identified as a victim of trafficking when registering before the Labour Office. In the first case scenario, the person will be considered as an asylum seeker and will be prevented from working during the first six months of the asylum process. In the second one, the person will have full access to the labour market, vocational training and education under the condition they cooperate with the authorities in the prosecution of their traffickers.

There are also cases where victims of trafficking seeking asylum have not severed their connection with the traffickers and stay with them or where undetected victims of trafficking seeking asylum are not accommodated at all mainly due to lack of places and because they have not been identified as being in a particular vulnerable situations. In both cases, they are likely to receive none or very limited legal and psycho-social support.

CHILDREN VICTIMS OF TRAFFICKING



60%
of trafficked children
in local authority care
go missing!

Children victims of trafficking have a number of different special needs that make their assistance even more challenging. The reception conditions available to child victims form a vital aspect of them receiving appropriate protection.

In accordance with the Convention on the Rights of the Child, the best interest of the child must be a primary consideration “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.” However, reception conditions for minor asylum seeker victims of THB are generally precarious.

In the *UK*, local authority housing for unaccompanied minors and foster homes are often not appropriate. Support is not comprehensive enough and as a result, lots of children go missing or are unaccounted for within the system. The 2014 NRM Review highlighted the risk of children going missing within “the first 48 hours of a child coming into care” and estimates that “60 per cent of trafficked children in local authority care go missing” [206]. If children are perceived to have ‘willingly’ left, they are classified as ‘absconders’ with no regard for the psychological factors at play or for the fact that they may have been re-trafficked due to a lack of comprehensive support.

In *Switzerland*, several cantons have set up special centres for the reception of unaccompanied minor asylum seekers, and other cantons are required to set up similar structures. There are no specific structures for (asylum seeking) child victims of THB [207].

In *France*, there is a general agreement amongst practitioners that the child care system should be favoured over specific shelter for victims of trafficking. Child victims of trafficking have to be integrated in child care facilities where they are to benefit from tailored support due to their specific needs but within a child-centred and not victim-centred environment. This is currently being experimented in Paris and should be expanded in other cities and regions [208]. However, there is so far a lack of training and awareness of most specialised educators supporting minors in care facilities.

In most countries studied, in particular in *France* and in *Spain*, there is no compulsory and systematic training of unaccompanied minors’ legal representatives on THB and other vulnerabilities such as gender-based violence.

Importantly, in *Spain*, it has been reported that decisions to refer a minor victim of trafficking from general provisions to specialised ones are usually based on economic criteria. One practitioner interviewed for the research explained that: “If the administration remains the legal representative of the minors and Amaranta [209] provides for the daily care (provisions and services), they have to pay for it. If there are available places in conventional centres for minors, local government prefers to keep minors victims of trafficking in those normal provisions”.

There have been many cases of children disappearing from these facilities mainly because they are well-known by the traffickers.

206-Home Office, Review of the National Referral Mechanism for Victims of Human Trafficking, November 2014, p.65.

207--GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by *Switzerland*, §139 and §142.

208-See Chapter 5 on the Way forward for more information on this project.

209-There are two main support NGOs working with children victim of trafficking in *Spain* - APRAMP and Amaranta Foundation.

4.2 IDENTIFIED RECEPTION NEEDS OF VICTIMS OF TRAFFICKING SEEKING ASYLUM

METHODOLOGY



Special needs highlighted below might, for some part or totally, concern all asylum seekers or other categories of asylum seekers with special needs, including victims of torture or violence and/or unaccompanied minors. What is described in this section is derived from the analysis of over 60 discussions and interviews with survivors of THB and/or practitioners from both civil society support organisations and State institutions. It mainly concerns reception conditions as described by the Recast Reception Conditions Directive (material reception conditions, health including mental health, education and employment) but also concerns other reception needs not necessarily covered by the Directive but which have appeared to be fundamental in the particular case of victims of trafficking and are highlighted by the Anti-trafficking Directive [210], such as for instance safe accommodation and provision of relevant assistance as soon as “the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected” to trafficking in human beings.

In cases of victims of trafficking seeking asylum, tailored legal support is backed by the provision of appropriate reception conditions. It is necessary to take into account throughout the below section that the provision of sufficient legal support to navigate the asylum procedures successfully is central when considering the special reception needs of victims of trafficking seeking asylum.

4.2.1 Need for a safe space

Interviews conducted have highlighted the common need amongst victims of trafficking for a safe space. It is of paramount importance in the context of the asylum process as in many cases victims of trafficking tend to be accommodated in reception centres for asylum seekers where lack of security and privacy have been systematically reported.

The need for gender-specific facilities and child and mother-care when relevant, also constitute part and parcel of victims of trafficking special needs when it concerns reception conditions.

■ Guaranteeing secured accommodation

The majority of the persons interviewed were accommodated in reception centres for asylum seekers, generally accommodating over 50 people, and stated they did not feel comfortable and safe in such places in particular because there were visitors and anyone could enter the centre



“I could not go to an asylum seekers’ facilities, as I was not safe there. There are no protection measures, everybody can enter, and there are many strangers. I could not have been calm there, specially having children.”

G. – interviewed in Madrid



“I did not feel safe in the reception centre. I felt people could know I was living there and I was afraid of visitors coming to visit other girls”

S. – interviewed in Rome

The interviewees who have been accommodated in secured reception centres, specifically shelters dedicated to victims of trafficking, said they undoubtedly felt safer.

Nevertheless, safe shelter also means in most cases that there are some restrictions including with regard to the use of the telephone and internet and to their freedom of movement. This has been experienced as stressful and causing much anxiety by several interviewees who felt bored and imprisoned.



“Not to go out, it was so boring because we stay in there inside the shelter like the prison. Like a prisoner. [...] No telephone, no internet. That was so traumatizing because I was like asking them, I’m not a criminal, I’m not a criminal, why can’t I communicate with my family? Because maybe they will be thinking I am dead because I stayed long in that house.”

S. – interviewed in Nicosia

■ Guaranteeing privacy and gender-specific accommodation

The need for privacy was reported by a number of interviewees. Indeed, many of them experienced being accommodated in big reception centres where rooms are shared, and did not find this arrangement appropriate or comfortable. There have been cases where interviews with the support organisation running the reception centre where also not entirely confidential and private as there was no dedicated room for that. People interviewed reporting such difficulty said they did not feel comfortable telling what happened to them as they did not want anyone to know it



“They have a private room [in the reception centre], they [the police] would take you there [for interviews in relation to the investigation]. So this is ok. In the very first place they took me I was not happy with it. When the police came and took me to a room in the second building, B block. There is microwave there; there is fridge there, so some people keep their stuff there. So people were coming to take their stuff and they...Some people would see you.”

J. – interviewed in Dublin

In addition, these centres are often mixed gender and for most women interviewed who have been sexually exploited for instance, it has been, or still is, a particular difficult experience precisely because of their special needs as victim of trafficking.



“It bothered me that there were men. Me, I’m very shy kind of. After what happened to me, you know I don’t know. I feel less confident. About myself. Like I am worthless. I did not feel safe. Men were hitting on me. I’m underage. It was not ok.”

R. – interviewed in Dublin



“The only thing I am not satisfied with it to be currently accommodated within the same premises as men.”

H. – interviewed in Lyon

Some women interviewed have witnessed situations whereby women and girls accommodated in the reception centre were sexually exploited or working into prostitution outside of the reception centre. They have also reported many cases where clients were roaming around the facilities and men from the reception centre asking for services.



“Even when I was pregnant in Baleskin people were talking to me. But I was not giving it there. I say what? I say no you don’t try me, don’t try that. Don’t deal with me. I don’t want this nonsense. Because people like to - when you are pregnant [...]. They try to come, I say no.”

J. – interviewed in Dublin

■ Consideration for child and mother-care

Several situations have been reported by the interviewees whereby they were pregnant and/or had their children with them when applying for asylum. In such cases, they had additional special needs either as mothers or pregnant women. These needs are not systematically taken into consideration. Indeed, at least two interviewees have had to endure very poor reception conditions while being pregnant, including one eight-month pregnant woman being detained at the airport for three weeks in very a precarious situation. Such circumstances can lead to illness and psychological distress.



“When I arrived to the airport I was eight-month pregnant and the airport is not a proper place for retaining a pregnant woman for three weeks. Rooms are shared between different people, I had to sleep with people I didn’t know, and beds are very bad, hygienic conditions are not good. I got an infection, and although I was taken to the doctor, I was very worried that I could give birth there. The food was not appropriate and my suitcase was removed from me and I was not allowed to change my clothes. I was looking for ways of committing suicide because I had very hard times.”

G. – interviewed in Madrid

Taking into account pregnancy and motherhood is crucial for victims of trafficking physical and psychological rehabilitation.



“In the shelter, they have supported me a lot. I was feeling ok and my child was happy. That made me happy.”

G. – interviewed in Madrid

Indeed, these situations affect the victims' physical and mental health, all the more if their pregnancy is a result of their exploitation and if their children are kept by the traffickers to blackmail them and put additional pressure on the victims. Second, becoming a mother has for many of them constituted a turning point making them want to leave their trafficking situation. In one reported case, unfortunately not isolated, the victim was herself a minor which required additional needs for her and her child.



C. was a minor – first pregnant and then with a young infant – housed in a reception centre for 14 months. This facility is meant to serve as short-term accommodation for adult women. She and her infant child lived with two women and another child, without any privacy and a lack of security. Throughout her time at the reception centre, C. and her baby suffered significant health issues – compounded by inadequate medical care and a lack of nutrition in the reception centre – leading to a period of inpatient hospitalization. C. was eventually recognised as a minor and put in foster care. She found the experience at the foster home much more comfortable, and her foster mother provided her with emotional and practical support, and would mind her baby when she had an appointment with medical professionals or state authorities. Once she went into foster care, she was able to attend school. C. is still living with her foster mother.

C. – story explained by ICI – interviewed in Dublin

4.2.2 Need for tailored mental health support

The need for tailored and systematic mental health support has been described by the majority of interviewees as one of the things that helped them the most throughout the asylum process. The psychologist is always referred to as one of the person that has helped them the most. Not only the psychologist but also the legal advisor is referred to as a fundamental support person in throughout the whole asylum process. Therefore, the need for legal and mental health support go hand in hand.



“Without the support from a legal advisor and a psychologist I would not have endured the whole procedure. The psychological support in particular gave me the possibility to be strong.”

S – interviewed in Madrid

Conversely, the lack of such support has been felt as strongly missing, including during interviews with authorities.



“The problem for me was not really the accommodation in itself it was rather that they [the organisation running the reception centre for asylum seekers] did not refer me to other support organisations [for victims of trafficking] or to the psychologist.”

H. – interviewed in Lyon



“She said nobody can come with me, because even my psychologist at the Future World she says she want to come with me but they said “no” [...] I really wanted to have my psychologist with me... [...] because she talks to me nicely. She was a nice person to me...”

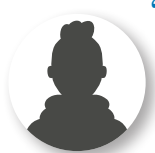
O. – interviewed in Nicosia

While there is a clear need from victims of trafficking to benefit from tailored mental health support, there is a strong lack of both financial resources and capacities from professionals to answer these needs or to refer the victims to specialised professionals. Health professionals in particular are not necessarily trained to assess and face situations such as torture or trafficking. Cases have been reported from several countries studied of health professionals who said they would feel overwhelmed in such situations. This is even more important as front-line professionals working with asylum seekers are not equipped to deal themselves with mental health issues of applicants who are victim of trafficking. They have to be able to refer the victim to the relevant professionals and can ensure the persons that they will receive adequate support.

4.2.3 Need for being empowered

■ Financial sustainability

More than any other category of asylum seekers, victims of trafficking need to regain financial autonomy. Indeed, they may not fully escape the influence of their traffickers nor avoid falling into other exploitative situations without sufficient means and resources to be financially autonomous.



“From the time the Police say «you are free to go [from the state shelter],» they just left me like that [...] and especially when I gave birth to this baby it was so tough, [ts sound] it was not easy.”

S. – interviewed in Nicosia

This need has been emphasised by many practitioners met in the various countries studied but it has rarely been mentioned in the interviews by the victims themselves who rather highlighted their need for more autonomy in choosing their food and cooking, going out from the shelter, and speaking the language of the host country.

Nevertheless, they have been cases reported where the victims found themselves in really destitute situations, including after they had been recognised as refugees. For instance, C. interviewed in Nicosia received no welfare assistance for one week after she had left the shelter for victims of trafficking. After a week, the Welfare Office gave her less than €100 for a whole month. She applied for the Guaranteed Minimum Income in September 2016, but she had received no answer by the time of the interview in February 2017.

■ Daily-life autonomy

In *Ireland*, asylum seekers in the direct provision system do not have the right or facilities to choose and cook their own food. At the same time, the food served has been described as inedible, of poor quality and poor nutrition, monotonous and culturally inappropriate. [211] In interviews, it was reported that this arrangement has interfered with victims' recovery and regaining of control over their own lives. The issue of food and the need for self-catering options for residents is one of the recommendations in the recent report of a working group established to review the current system [212]. Yet, although the RIA has stated that many recommendations raised by the working group have been accepted, there is, as of yet, no change in the above approach. It is further detrimental that victims of trafficking do not have privacy in their accommodation rooms, which they share with other asylum seeking residents occupying the same room, sometimes with their children, for various periods of time.

This issue of food has also been brought up by interviewees in *Cyprus* as being a real issue at the time they were staying in the shelter for victims of trafficking.

In *France*, some support organisations for victims of trafficking are providing for shelters located within individual or small shared apartments for two to four persons. They justify such approach by the need for victims of trafficking to regain autonomy and independency. The victims live by themselves and have to organise their daily-life. They receive legal and psycho-social support from the organisation which is provided at the organisation offices. It obliges the victims to go out and progressively build up new habits. Nevertheless, this approach also raises security and confidentiality issues. Therefore, the victims have to endorse it and apply the required rules such as for example not inviting people to the apartment and avoiding as much as possible to disclose their address.

Gaining or regaining daily-life autonomy also requires an understanding of what is going on around them. This relates in particular to adequate information provision (as seen in Chapter 3 section 2) and sufficient understanding and mastering of the language of the country the victim is in.

■ Prospects for the future

Although this was not at the core of the interviews conducted, most interviewees have at some point referred to their desire to move onward mainly through employment or education. In addition to their desire to have sufficient means for living a decent life, several have also spontaneously expressed this willingness to have plans for the future and integrate into their country of residence. However, as other asylum seekers and refugees, they face obstacles such as learning the language or skills recognition. In addition, victims of trafficking might face additional difficulties such as post-traumatic disorders and, in some cases, their security requires they stay in shelters and do not go out without being accompanied.

“I asked them when I can go back to school and they said... my social worker said ok but until school resumed, I never got back. But they said I should start going to the Labour office to find a job and I went there. And she said what would I like to do. I told her maybe in a hair salon, and she said she found me a job already. But em...I need to learn Greek.”



C. – interviewed in Nicosia

211-Keelin Barry, What's food got to do with it: Food experiences of asylum seekers in direct provision, Published by Nasc, 2014.

212--The Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers.

5.

WAY FORWARD

METHODOLOGY



Initiatives and projects highlighted below have been emphasised during national focus group meetings and discussions with practitioners as good practices that can favour bringing gaps. They are not exhaustive nor do they reflect the whole systems in place. Both national and local based actions are reported below

5.1 TRAINING OF RELEVANT STAKEHOLDERS WITHIN THE ASYLUM SECTOR

In *France*, the number of asylum officers and interpreters being trained on trafficking and the specific needs of asylum applicants who are victims of trafficking is increasing. As already mentioned, OFPRA has developed a comprehensive approach to the examination of asylum claims based on human trafficking. Since 2013, a thematic group has been created to harmonise asylum officers' practices as regards trafficking and training is being provided internally. Moreover, asylum officers are also trained by support organisations working specifically with victims of trafficking and other asylum applicants who have experienced trauma. The training provided aims in particular at strengthening their capacities with regard to conducting interviews with these applicants, for instance in being able to take on board trauma and to build trust with traumatised and vulnerable applicants.

In *Switzerland*, the second National Action Plan to Fight Human Trafficking for the years 2017 to 2020, which was adopted by the KSMM Steering Committee on 30 November 2016, foresees further awareness-raising and training actions. The aim is to "compile a training and awareness- raising strategy for all professions in *Switzerland* that come into contact with human trafficking. [213] Specific trainings on the asylum-THB nexus are being organised since 2014 both by the SEM for their staff members and by civil society organisations, in particular OSAR.

There are various training initiatives in the *UK*, with attempts across the sector to work together and create improved training for police, asylum officials, health workers and other frontline workers. This is currently largely ad hoc and inconsistent although great efforts have been made to improve this. There are also smaller scale initiatives such as the "Marginal Voices" group whereby survivors of trafficking use drama based activities to educate and train frontline officers on trafficking.

5.2 REFERRAL AND COOPERATION BETWEEN RELEVANT ACTORS

In *France*, the OFPRA thematic group on trafficking is developing an information sharing and consultation mechanism together with civil society organisations and institutional partners. This contributes towards the potential cooperation between all relevant stakeholders to improve the identification of victims of trafficking amongst asylum seekers and thus the ability to take into account their specific needs throughout the asylum process. In addition, in *France*, the law [214] provides that OFII can share with OFPRA information relating to identified vulnerabilities. In return, OFPRA derives from that same article the possibility for the Office to inform OFII about the special needs of an applicant and ask for his or her reception conditions to be adapted. Such cooperation shall respect the confidentiality of the claim and be exercised only with the explicit consent of the applicant. In practice, however, such cooperation remains scarce. Finally, local partnerships exist between asylum support organisations and trafficking support organisations from civil society. These partnerships aim at exchanging information on particular cases and referring victims of trafficking seeking asylum or willing to apply for asylum to one another in order to provide appropriate and comprehensive support.

213-Action number 4 of the National Action Plan to Fight Human Trafficking 2017-2020.

214-Ceseda, Article L.744-6, according to the revised Law on Asylum, 29 July 2015.

In *Italy*, in the municipalities of Milan and Turin there are mechanisms for cooperation between the municipalities and asylum determination authorities when cases of trafficking are identified in the asylum process.

In *Switzerland*, a workgroup on the asylum-THB nexus, established by the KSMM and led by the SEM, allows for joint discussions between state and NGO stakeholders. It serves the implementation of action number 19 of the second National Action Plan to Fight Human Trafficking to “optimise processes to ensure identification of human trafficking victims and provide victim assistance during the asylum (including Dublin) procedure” as well as to outline these processes in a publicly available document. [215]

In the *UK*, the NRM Hub is situated in the same office as some of the Asylum Determination team, meaning that in practice frontline asylum officers can seek guidance and support from trafficking focal points. This can be seen as a positive interim measure to up-skill and build the capacity of asylum teams, however in the longer term this can confuse the two separate systems and generate conflation in the decision making process.

5.3 ACCOMMODATION : SAFE AND SUITABLE

In *France*, a pilot project implemented in the Département of Paris started in 2016 focuses specifically on the protection of minor victims of trafficking. The main focus of this project is the accommodation needs of these victims. Indeed, in June 2016 an experimental agreement was signed between Paris police headquarters, the Minors' division of the district attorney, the Juvenile Court, the Paris Bar, Paris Municipality, the Département of Paris, the competent Inter-ministerial Mission (MIPROF) and Hors La Rue – a civil society organisation providing support to minor victims of trafficking. The objective is to better adapt the child-care system to victims of trafficking and to improve the coordination of relevant stakeholders. The agreement defines a system for protecting minors' victim of trafficking, including if they are seeking asylum. It is based on geographical dispersal and the provision of care and support by caregivers specifically trained on trafficking. It also foresees a judicial emergency procedure in order for minors to be referred as quickly as possible and for a legal representative to be appointed immediately. In September 2016, 34 underage Nigerian girls had joined the programme, amongst who three were under 12 years old. Most of them had introduced an asylum claim and several were detected by asylum practitioners when making their asylum claim. Although there is no requirement to cooperate with the authorities to join the programme, one third of the girls who had been integrated into it in September 2016 were involved in legal proceedings. If successful, the programme is to be expanded to other territories in *France*.



“Autonomous and independent accommodation is the best option for the rehabilitation of the victim. However, it has to go with legal and psycho-social support.”

Legal practitioner supporting victims of trafficking in Bordeaux, France

In *Ireland*, the centres should be proofed for offering a safe, private place for appointment as victims of trafficking need to be visited by investigating police and outreach supports, while their privacy with respect other residents is preserved.

In the *UK*, while there are widespread concerns about the suitability and safety of accommodation for asylum seeker victims of trafficking, good practice has been identified in Scotland where anti-trafficking support organisations, the accommodation provider and other key agencies meet regularly to identify and address any safety or support concerns for those placed in Asylum Support [216]. Practitioners met highlighted the importance of safe houses that provide longer-term and intensive support. One cited example included the charity Bakhita House [217] opened in June 2015 in London. The organisation Hestia, which is operational in England, has opened a men only safe house in 2016. However, in practice, male asylum seekers will most likely not access it because they will be accommodated within the asylum estate rather than be provided with trafficking-specific accommodation.

215-Action number 19 of the National Action Plan to Fight Human Trafficking 2017-2020.

216-The Anti-trafficking Monitoring Group, Ibid

217-Cartias, Bakhita house: A refuge for women escaping human trafficking and modern slavery, June 2015.

5.4 ACCESS TO APPROPRIATE HEALTH SUPPORT

In *France*, there are several health care centres specialised on mental health care for victims of torture and violence who are in exile, such as the Primo Levi Centre, Parcours d'Exil and the Essor Centre. The latter is managed by Forum réfugiés-Cosi in Villeurbanne, close to Lyon and it provides support to asylum seekers and refugees, including victims of trafficking. The care offered to these patients is twofold: somatic and psychological. Medical care and physiotherapy contribute to relieve victims of trafficking from somatic pains and allow for a progressive recovery of their body-sphere. In addition, psychotherapeutic consultations offer the opportunity to discuss the current situation of the person, their psychic resources and difficulties they face. If they want to and at their own pace, the patients can come back to what they have been through, tackle the violence they have undergone and express related feelings such as shame, guilt or anger. Victims of trafficking are supported within a caring environment which gives them the possibility to tell their life story, without any constraint to do so. In several cases, this approach has proven to be effective and has contributed to improve the patients' self-image and trust in their own capacities and environment. All in all, the objective when caring for victims of trafficking is to support them in developing their subjectivity and in expressing wishes which contrasts with the status of objects they have been relegated when being exploited.

In *Ireland*, health and mental health care for asylum seekers can be highlighted as best practice in *Ireland*. Once an asylum seeker makes an application they are issued with a medical card which offers free visits to a general practitioner doctor and free medicine with a doctor's prescription for those living in direct provision. The main reception centre in Dublin, the Baleskin centre does initial screening for new arrivals before they are then dispersed across the country. The problem with the dispersal policy is that much of the specialists are in Dublin as well as other NGOs that offer support, especially psycho-social support. Of course even with a medical card, victims must join the waiting list like Irish citizens and waiting lists for many specialists are very long for patients with a medical card who cannot afford to go private. However an asylum seeker is treated the same as an Irish citizen in this regard. The Baleskin centre could be the opportune place for early identification of victims of trafficking in the asylum process who may not yet have disclosed their full trafficking experience if staff were trained in the indicators of trafficking. It is not the case for now.

Similarly, in Catalonia, *Spain*, there are specialised public health centres that victims of trafficking can access and there are dedicated time-slots for them. Practitioners working in these centres are trained and sensitised to trafficking.

While in some parts of the *UK*, asylum seekers who are victims of trafficking struggle to access health services (including mental health), an asylum health bridging team in Glasgow can be cited as a good example. There, victims are allocated a coordinator to help them navigate the health system and access their rights. The team offers an initial health assessment for all newly arrived asylum seekers. They aim to identify immediate health needs and facilitate medical attention if required. [218]

218-To know more, see Glasgow Community Health Partnership – Asylum seekers and refugees.

219-The Anti-trafficking Monitoring Group, Time to Deliver, February 2016

5.5 EMPOWERMENT OF VICTIMS AND TRUST BUILDING

In the *UK*, peer-support groups, run by specialist civil society organisations, for both children and adults have been reported as a good practice. Practical examples from the *UK* have been reported including one boys and young male support group run by ECPAT *UK* and The Children's Society, "providingxw a safe environment for young people to build confidence and skills, and participate in the process of the change". The importance of such groups was reiterated in the report, *Time to Deliver*, in relation to a peer support groups for young mothers who are victims of trafficking. These groups provide a space for young mothers to socialise and be supported in their parenting [219]. The British Red Cross runs women's groups to support asylum seeking women who have experienced any form of violence. These groups provide peer support, activities, socialisation and 1:1 casework support.

Along a similar line, in *France*, the NGO Les Amis du Bus des Femmes located in Paris focuses on community work with Nigerian women victim of trafficking for sexual exploitation. They organise in particular group discussions where women exchange ideas and opinions on trafficking, exploitation, prostitution etc. The NGO has also hired a number of former victims of trafficking to act as mediators towards Nigerian victims. This has proven to be quite successful, in particular to convince underage and young girls to ask for protection. Another interesting initiative from *France* relating to empowerment of victims who are seeking asylum is the existence of two internship programmes run by Amicale du Nid, in the Rhône Département as well as in Paris. These programmes are part of a national plan in place for several years which aims to facilitate access to the labour market of persons in great social distress: the workshops on adjustment to active employment. They usually run for a six-month period renewable for the same duration and the participants receive a monthly allowance. Several organisations in *France* providing psycho-social support to precarious populations offer these workshops. However, Amicale du Nid is the only organisation supporting victims of trafficking and women in prostitution that offers the possibility to enter these programmes. While the persons have to legally stay on the French territory to be allowed to enter the programme, there is no requirement as concerning their residency status and persons seeking asylum are thus able to join the programme.

In 2016, 34 persons have benefitted from the internship programme offered by Amicale du Nid Rhône, including 15 Nigerian women.

6.

RECOMMENDATIONS

The below recommendations are based on the findings of the TRACKS project, for the purpose of which seven European countries have been studied, namely *Cyprus, France, Ireland, Italy, Spain, Switzerland* and the *UK*.

These recommendations are addressed to the relevant authorities and institutions as well as to policy and legislation makers at national and European levels to whom the relevant legal frameworks apply. As described in Chapter 1 of the report, the common relevant legal framework applicable goes beyond the European Directives and Regulations and encompasses the Palermo Protocol, the Convention on Action against Trafficking of the Council of Europe and the Convention and Protocol relating to the status of refugees.

At EU level, the European Commission shall ensure that the relevant Directives [\[220\]](#)(recast), the Reception Conditions Directive (recast) and the Anti-trafficking Directive are fully transposed and implemented in an appropriate manner in order to guarantee that victims of trafficking who are seeking asylum are effectively identified, supported and referred to the relevant support organisations and/or mechanisms. In that perspective as well as in order to guarantee compliance with the international law and standards, the co-legislators should, when needed, revise the Community law. States shall guarantee that the special needs of asylum applicants who are victims of trafficking are individually assessed and taken into consideration as relevant throughout the asylum process, without undermining their right to be formally identified as victim of trafficking and to benefit from the rights they are entitled to as such. Formal recognition, adequate support and effective protection have to go hand in hand.

Disclaimer

These recommendations are formulated by the project partners only and do not reflect the views of the European Commission nor the associate partners.

OVERARCHING RECOMMENDATIONS

1. Set up or improve existing data collection systems on victims of trafficking seeking international protection in order to better assess and monitor the scale of the phenomenon and enhance the tailored support provided to these victims. This should be done in line with the principle of data protection and in cooperation with the civil society.

In particular,

1.1 National authorities responsible for granting international protection should collect relevant data on asylum seekers who are victims of trafficking, with full respect for the principle of confidentiality of the asylum claim as well as witness protection and for the security and dignity of the person.

1.2 Where a national referral mechanism exists, it should include in its data collection system referrals made by and to the asylum authorities

▲ At EU level, a specific cross-sector multi-stakeholder working group should be set up by the European Commission, including amongst others EASO, Eurostat, UNHCR and Member States' representatives, to discuss the relevant methodologies and approaches that could be developed to collect such data in a coherent, consistent and protective way.

▲ At national level, a similar cross-sectoral working group should be set up bringing together the relevant institutions and organisations, including national authorities and offices responsible for the asylum procedures and receptions conditions, the national rapporteur on trafficking, the national authorities responsible for the identification of victims of trafficking, service providers to asylum seekers and civil society organisations providing support to asylum seekers and/or victims of trafficking.

▲ Where possible at national levels, data should be extrapolated based on available outcomes within the asylum system for trafficked people.

2. Provide systematic and regular training as well as capacity-building and support activities to all relevant practitioners in the asylum system in order to improve the identification of victims of trafficking seeking international protection as well as the identification of their special needs

6. RECOMMENDATIONS

In particular,

2.1 Sufficient funding and resources, including staff resources, should be made available by the EU and Member States to ensure that regular, quality and targeted training is offered to asylum practitioners, including asylum officers responsible for the determination of international protection status and interpreters as well as case-workers working for service providers in the asylum system.

2.2 Likewise, qualitative training on international protection needs should be provided to persons involved in the identification of victims of trafficking.

2.3 States should facilitate information sharing and capacity-building between relevant practitioners at national and local level on the issue of victims of trafficking in the asylum process and how their specific needs are identified and can be taken into account throughout the asylum system.

▲ The EASO training curriculum on trafficking and international protection can be a very useful and relevant tool to support Member States on the above.

▲ National Action Plans on the fight against trafficking in human beings should better reflect the asylum-THB nexus and the particular issues pertaining to the support and protection of victims of trafficking seeking international protection in order to favour the comprehensive and sustainable implementation of actions such as training and capacity building.

▲ The tool-box created and completed within the context of the TRACKS project should be considered as a relevant support tool for strengthening capacities of practitioners.

3. Ensure sustainable, transparent and regular cooperation between relevant stakeholders, including amongst others, state representatives at national and local levels, asylum authorities, asylum service providers and organisations providing support to victims of trafficking and/or asylum seekers to improve the support that should be provided to victims of trafficking in the asylum system and meet their special needs.

In particular,

3.1 Clear cooperation and coordination mechanisms between the above mentioned practitioners should be defined or, when they exist, should be strengthened at national and local levels.

3.2 Clear rules governing information sharing between practitioners should be defined or, when they exist, should be reminded to all practitioners, with full respect for the principle of confidentiality of the asylum claim and for the security and dignity of the asylum seeker.

▲ Promote the existing efforts and the successful attempts of cooperation led by the EASO office in this regard with a view to bringing the multinational best practices to national level.

▲ National legislation on asylum and trafficking in human beings should clearly specify a duty on the officers involved to inform asylum and anti-trafficking authorities respectively when it transpires in either of the two procedures that an asylum seeker is victim of trafficking and vice versa.

▲ National Action Plans on the fight against trafficking in human beings should specifically provide for the situation of victims of trafficking with international protection needs and include governments and civil society. National governments should lead and provide the environment for these forums to exist and set-up coordination mechanism at national and local levels

▲ When deemed necessary, formal channels for communication and information sharing should be set up at national levels for all relevant stakeholders to coordinate their actions. To facilitate such process, specific interlocutors/referral persons should be designated within all relevant organisations – be they civil society organisations or institutions.

DETECTION OF VICTIMS OF TRAFFICKING WITHIN THE ASYLUM SYSTEM

4. Fully comply with state parties' obligations derived from Article 4 ECHR and Article 10 of the CoE Convention to take action to detect victims of trafficking in the asylum process, in order to be able to offer them the appropriate support and protection they should be entitled to.

In particular,

4.1 Set up, or in case they already exist, strengthen clear and effective mechanisms to detect vulnerabilities, including trafficking in human beings, at each stage of the asylum process, including reception conditions, and ensure there are trained professionals to carry out this obligation.

4.2 Clearly define the roles and responsibilities of each actor with regard to the detection of vulnerabilities, including trafficking in human beings, as well as what they should do or refrain from doing when they detect a victim of trafficking.

▲ On the basis of the information received from Member States on the transposition of Article 24 of the recast Asylum Procedures directive and of Articles 2.k) and 22 of the recast Reception Conditions directive, the European Commission, in consultation with EASO, UNHCR and relevant civil society organisations, should address detailed guidelines to Member States for them to improve detection of victims of trafficking, as applicants with special needs, in the asylum process, both with regards to their special procedural and reception needs.

▲ The findings gathered in the TRACKS consolidated report should be considered as relevant material to draft such guidelines.

5. Fully guarantee the right to be formally identified as a victim of trafficking without prejudice to the right to seek and be granted international protection, in accordance with Article 14(5) of the CoE Convention.

In particular,

5.1 Reconcile the different legal and policy frameworks that apply respectively to asylum seekers and victims of trafficking to ensure compatibility of procedures and rights attached to each of them, in particular as regards protection, housing, health care, employment and access to social welfare.

5.2 Member States that have not yet set up a National Referral Mechanism (NRM) should do so as soon as possible and include the nexus between trafficking and asylum.

5.3 The most favourable and appropriate rights and benefits shall be granted to meet the needs of victims of trafficking seeking international protection, irrespective of their status as asylum seekers, where this is the case.

5.4 Improve the coordination between the NRM (and similar mechanisms) and asylum procedures, in particular concerning the interviews, with full respect to the principle of confidentiality of the asylum claim and to the security and dignity of the person. Multiple interviews where the individual is expected to recall the case might lead to re-traumatisation and re-victimisation and should therefore be avoided as much as possible when it does not breach the principle of confidentiality.

▲ The above mentioned issues could be discussed in the context of the EASO working group on vulnerable applicants, for example on the occasion of EASO international conference on international protection and trafficking in human beings. In parallel, the EU Anti-trafficking Coordinator Office could focus on this topic and organise a joint meeting with civil society organisations' representatives from the EU Civil Society Platform against THB and national rapporteurs on trafficking.

▲ These discussions should lead to detailed action plans on how to practically reconcile the different legal frameworks applicable respectively to asylum seekers and victims of trafficking and ensure that the most favourable and appropriate rights and benefits can be granted to meet each individual needs.

IDENTIFICATION OF SPECIAL NEEDS OF VICTIMS OF TRAFFICKING SEEKING ASYLUM

6. Systematically assess the special needs of asylum applicants who are identified or are potential victims of trafficking.

In particular,

6.1 The Recast Asylum Procedures Directive foresees that special procedural guarantees shall apply to asylum seekers who are identified as vulnerable applicants. While acknowledging the above, it is necessary that special procedural needs of those applicants who are victims of trafficking are assessed on an individual basis, taking into account the specific circumstances and views of each victim.

6.2 The Recast Reception Conditions Directive, in combination with the Palermo Protocol and the Anti-Trafficking Directive, foresees that special reception conditions shall be granted to asylum seekers who are victim of trafficking. While acknowledging the above, it is necessary that the special reception needs of the applicants are assessed and evaluated on an individual basis, taking into account the specific circumstances and willingness of each victim.

6.3 Considering that many victims of trafficking remain unidentified throughout the asylum process, as soon as there is reason to believe that an asylum applicant might be a victim of trafficking, his or her special needs should be assessed accordingly.

6.4 Maintain attention to the special needs of victims of trafficking in the asylum process, as defined by the Anti-trafficking directive as deriving from pregnancy, health, seriousness of the violence suffered by them and accordingly attend to such needs.

▲ Specific mechanisms should be set up to guarantee an individual assessment of the best protection solution as well as the appropriate reception conditions. Such assessment would include a multidisciplinary analysis of different options, carried out jointly by the victim, asylum and other migration authorities, law enforcement, legal assistance and victim support services, as well as other actors where appropriate (for example guardians in cases of minors). It should lead to the identification and proposal of the relevant procedural and reception solutions that shall be granted throughout the asylum process as well as where relevant throughout the NRM.

TAKING INTO CONSIDERATION IDENTIFIED SPECIAL NEEDS IN THE ASYLUM SYSTEM

7. Grant victims of trafficking who are seeking asylum the rights they are entitled to as victims of trafficking as soon as there are reasons to believe that they are victims of trafficking, irrespective of whether or not they have been formally and/or conclusively identified as such in the respective Member State, and irrespective of the fact that they are asylum seekers.

In particular,

7.1 Ensure availability and effective access to specialised legal advice, protection, social support, and medical and mental care as well as adequate housing.

7.2 Allow for a recovery and reflection period that shall be offered and granted, at the minimum in the meaning of the CoE Convention (safe and adequate accommodation, access to specialised support and information on the person's rights and options, including the right to seek international protection). In addition to enabling the victim to make an informed decision about whether or not to cooperate with law enforcement agencies, the recovery and reflection period must create the conditions which allow victims of trafficking to effectively avail themselves of the asylum procedure or make an informed decision not to do so.

▲ The Commission should take the necessary steps to ensure that EU legislative instruments on asylum and trafficking are aligned so as to allow for and clearly provide the rights of victims of trafficking when they are seeking asylum or when an asylum seeker is identified in the asylum process as a victim of trafficking, with a view to provide for the most extensive rights.

▲ The relevant Commission Directorates on asylum and trafficking should cooperate and mainstream in each other's work the issues of asylum and trafficking respectively.

▲ Member States are to ensure the availability of services, and that these services are activated as soon as reasonable, and not only when people enter the NRM. Clear referral pathways are to be agreed and implemented with referring agencies properly resourced to meet the needs of the people they support.

▲ Victims of trafficking who are seeking asylum shall have access to these services. For this to be effective they need to be informed or to know where they can find reliable information. The creation of one stop shops or the setting up of a hotline informing on trafficking in general and on the nexus with international protection in particular, might be relevant in many cases.

8. Effectively apply the necessary procedural safeguards to victims of trafficking who are seeking asylum, including, but not limited to, the safeguards foreseen in the Recast Asylum Procedures Directive that should apply to asylum applicants identified as applicants with special needs.

In particular,

8.1 Assess the relevance to prioritise the examination of the asylum claim made by victims of trafficking. Alternatively, assess the relevance to postpone the summons to the asylum interviews, when necessary and based on an individual needs' assessment.

8.2 Ensure that asylum claims of victims of trafficking are not processed under accelerated or border procedures.

8.3 Ensure that victims of trafficking are provided with adequate legal support and information prior to the asylum interviews and are actively involved in the whole process.

8.4 Ensure that, if they want to, victims of trafficking can be accompanied during their asylum interviews by approved third parties including, when relevant, by a lawyer, psychologist, cultural mediator or any other relevant support professional or authorised person of trust.

8.5 Ensure that victims of trafficking can be interviewed by a same-gender person if they want to. Similar gender-sensitivity provisions shall apply for the provision of interpretation services, at all stages of the process including possible appeal.

8.6 Apply after an individual examination of the case the criteria and the discretionary clause to victims of trafficking under the Dublin Regulation to avoid transfer to a Member State where they had been or may be exploited or where no sustainable victim protection is available.

8.7 Adopt a child-friendly approach and systematically consider the best interest of the child in situations where the applicant is a minor victim of trafficking (self-declared or presumed).

▲ The ongoing revision of the Recast Asylum Procedures Directive is an opportunity to go further and provide appropriate procedural safeguards to victims of trafficking seeking international protection.

▲ If the revision of the Recast Asylum Procedures Directive leads to the adoption of a Regulation, instead of a Directive, more detailed guidelines should be provided to Member States on how to meet special procedural needs of each 'category' of vulnerable applicants, including victims of trafficking. Contrary to unaccompanied minors and victims of torture there is no detail on the procedural guarantees that should be applied to victims of trafficking in the existing Directives.

▲ These guidelines could be produced by EASO, thanks to their growing expertise on vulnerable applicants, in consultation with civil society organisations providing direct support to victims of trafficking in the asylum procedure. National determination offices should also be consulted to share their perspective on this issue and share the reality of their missions and tasks. The findings gathered in the TRACKS consolidated report should be considered as relevant material to draft such guidelines.

▲ For the Member States that are not bound by the Recast Asylum Procedures Directive, they should acknowledge that while not being bound by this directive, the Directive aims to encapsulate minimum standards that are recognised as good practice and are therefore in the interest of trafficked people. Member States could use the asylum forum as recommended in section 3 above, and seek the support and guidance from civil society about best practices in supporting trafficked asylum seekers through their asylum system. *Ireland* should opt in to the Directive or adopt the Regulation, if such is the outcome of the revision.

9. Effectively provide appropriate reception conditions meeting special needs of victims of trafficking who are seeking asylum, as foreseen by the Recast Reception Conditions Directive in combination with the Palermo Protocol, the CoE Convention and the Anti-Trafficking Directive

In particular,

9.1 Guarantee the provision of safe accommodation. The level of safety of such accommodation is to be determined with the victim depending on her/his needs.

9.2 Guarantee the provision of appropriate health support, in particular mental health care as early as possible and throughout the asylum process.

9.3 Guarantee, as far as possible, the provision of appropriate accommodation where victims of trafficking can have privacy and a certain level of autonomy.

9.4 Take due consideration of the obligation for a provision of gender-sensitive assistance to victims of trafficking in the asylum process. For instance, depending on the needs of the victims, the possibility should be offered to the victim not to be accommodated in facilities where men and women are accommodated together.

9.5 Provide victims of trafficking seeking asylum with the opportunity to engage into empowering activities including, when legally possible, employment, vocational training and education.

9.6 Provide long-term subsistence, including access to the appropriate therapy and provision of financial assistance. Such support is to be adaptable to the person, as not everyone needs the same level and form of support.

▲ Individualised assessments should be guaranteed for each person to determine how long they require support for, and the availability of that support to be provided for an extended period if required.

▲ In countries where victims of trafficking seeking international protection are being accommodated within the general asylum reception system, the authorities responsible for providing material reception conditions shall take into account identified and reported needs as well as a gender-perspective. In order to meet the special reception needs of victims of trafficking who are seeking asylum, the system shall be adaptable and cooperation with support organisations should be emphasized.

▲ Sufficient means and resources shall be made available to provide for secured shelters for victims of trafficking, including when they are seeking asylum. A sufficient level of health, psycho-social and legal support shall also be made available.

INTERNATIONAL PROTECTION FOR VICTIM OF TRAFFICKING

10. Fully respect the right of victims of trafficking to be granted international protection, in cases where there is a nexus to one of the Geneva Convention grounds, in particular the membership to a particular social group.

In particular,

10.1 Member States shall acknowledge that trafficking by itself may be a ground for asylum on its own, and therefore they are to develop processes for authorities to grant asylum on this ground.

10.2 Evidence such as formal complaint to the police, cooperation with the authorities and involvement in a criminal procedure cannot be made mandatory or represent a pre-requisite to international protection.

▲ An EU round-table, followed if relevant by a training programme, involving UNHCR and EASO, should be organised to gather representatives from Member States, in particular representatives from asylum determination authorities and competent courts, in order to discuss the application of the Geneva Convention to victims of trafficking, raise issues and share practices to better protect victims of trafficking. If relevant, law enforcement authorities may be associated as well. It could build upon activities of networking already undertaken by EASO.

Published by Forum réfugiés-Cosi 12/2017

Photo credits : UNHCR - Fotolia - All rights reserved

The people shown in this document only illustrate the document.

They are in no case victims of human trafic, although some of them are or have been asylum seekers

Graphic design and layout : Alkantara - 69160 Tassin la Demi-Lune
Printed in France, on FSC paper that meets environmental standards.



TRACKS

IDENTIFICATION OF
TRAFFICKED ASYLUM SEEKERS'
SPECIAL NEEDS

Coordinated by



Implemented by



In association with



Co-funded by the European Commission



www.forumrefugies.org