

# POLICY RECOMMENDATIONS



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## Introduction

In 2022 and 2023, the International Rescue Committee (IRC) in partnership with six civil society organizations from Germany (Jadwiga), Greece (ARSIS), Italy (Be Free and Dedalus) and Spain (Proyecto Esperanza, SICAR cat) implemented the Transnational Initiative Against Trafficking in the context of Asylum Systems (TIATAS) project.

In this consortium of specialized partners, TIATAS brought together the expertise, geographic presence, and networks required to positively impact outcomes for victims of trafficking (VoTs) among third-country national (TCN) asylum seekers, refugees, and migrants. The project built on existing partnerships with local/regional public and civil society operators who encounter VoTs, potential VoTs and persons at risk of trafficking in the context of asylum procedures, with the aim to strengthen the implementation of the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Anti-Trafficking Directive).<sup>1</sup> The project took place in four countries: Greece, Italy and Spain as main entry points to the EU and Germany as one of the preferred destinations for asylum seekers. TIATAS aimed to strengthen common practices and measures for early identification and safe referral to trauma-informed care of victims of trafficking in the context of asylum procedures, in line with EU standards and through the development of a Transnational Referral Mechanism (TRM). In doing so, it had three sub-objectives, each targeting different groups of people: capacity building and training activities for the organizations in direct contact with trafficked persons, facilitation of access to rights for trafficked persons, and information provision to decision-makers of best practices and challenges that should be addressed to tackle trafficking in human beings. This document contributes to reaching the latter objective.

Tackling trafficking in human beings is a comprehensive effort which involves different areas of action,

such as prevention, protection, prosecution, and collaboration. TIATAS' main goal was to strengthen early and informal identification. Therefore, these recommendations are specifically centered on this issue, but without forgetting that the four areas of actions (the so-called four P)<sup>2</sup> are interlinked.

This document is divided into six sections: the introduction frames the context of the policy recommendations, while the methodological notes describe how the recommendations were elaborated. The third section briefly describes the phenomenon of trafficking in human beings in the EU, it shows data from Eurostat, and gives an overview of the secondary movements of VoTs. Then, some specific aspects of the Anti-Trafficking Directive and the revision that it is currently undergoing is explained, focusing on the aspects that were underlined by the partners as more challenging to implement, or lacking. The sixth section regards the policy recommendations based on the implementation of the project, which are further presented with additional justifications.

## Methodological notes

To create these policy recommendations, in a first step, IRC organized an online conference on [“Fostering Transnational Cooperation in Combating Human Trafficking within the European Union: Best Practices and Innovative Actions”](#), which took place 9 May 2023. The aim of the conference was to widen the conversation around the importance of a European transnational referral mechanism to ensure safety and protection of VoTs across all Member States. For this reason, high-level experts from EU institutions and international NGOs were invited to share their knowledge on anti-trafficking in Europe during the morning sessions. Later in the day, the project partners engaged with other practitioners from their countries to discuss policy recommendations and reporting the conclusions in the plenary afterwards. After the conference, the consortium contributed to the policy recommendations with

1 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.

2 The OSCE Action Plan to Combat Trafficking in Human Beings contains core commitments for action known as the “3 Ps”: Prevention, including addressing root causes and awareness-raising; Prosecution, including investigation and adjudication; and Protection of victims' rights, including assistance and compensation. In 2013, the OSCE added a fourth “P” – partnerships – highlighting the need for enhanced co-operation with international organizations and other external partners, including on issues related to law enforcement, National Referral Mechanisms (NRMs) and joint work between public institutions and the private sector.

their positions and suggestions during dedicated interviews with the authoring policy and advocacy consultant. The recommendations, therefore, are based on the findings of the TIATAS project.

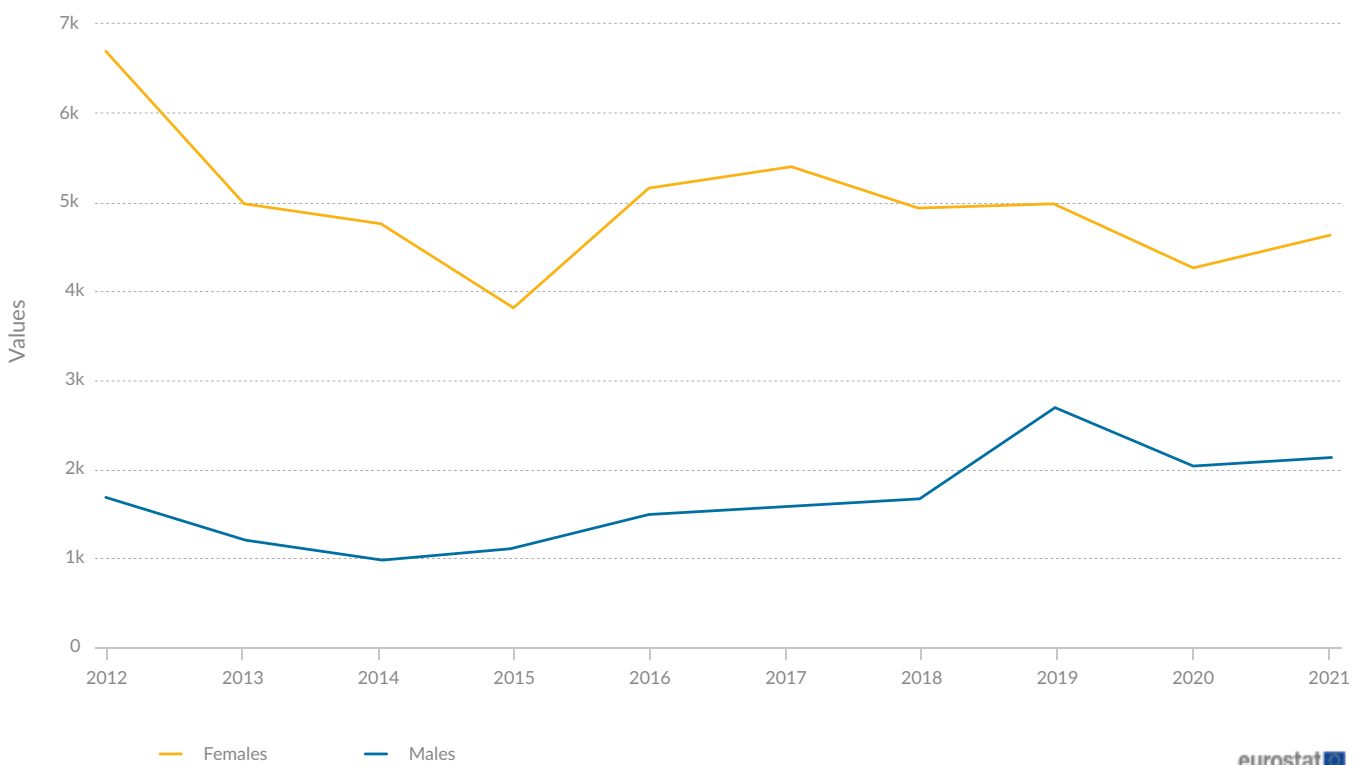
## Trafficking in Human Beings in the European Union in the context of asylum

Many efforts have been made and steps have been taken to tackle the phenomenon of trafficking in human beings, but the most recent statistics show how it is still prevalent within the EU. The last available data

from Eurostat reported a progressive increase of registered VoTs and suspected traffickers, yet many VoTs still remain undetected. In 2021, there were 7155 registered VoTs (a 10% increase compared with 2020), and 9647 suspected traffickers (a 30% increase compared with 2020).<sup>3</sup> Two thirds of registered VoTs are women and girls (4567 female [64%]; 2105 male [29%]), but the number of men and boys involved in trafficking and severe forms of exploitation formally recognized as VoTs has considerably increased up to 2019. At the same time, the number of convicted traffickers is still low compared with the suspected traffickers, despite a significant increase (a 55% increase compared with 2020).

### Persons involved in trafficking in human beings by legal status and sex

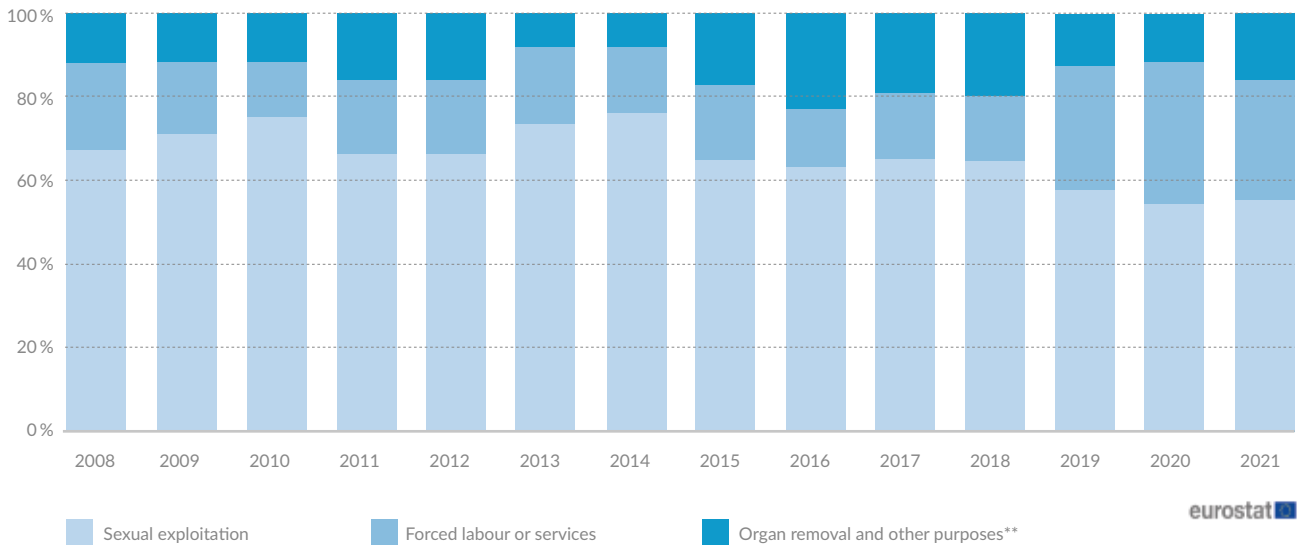
Time / Sex, Time frequency: Annual, Legal status: Victim, Unit of measure: Number, Geopolitical entity (reporting): European Union (aggregate changing according to the context)



Source of data: Eurostat (online data code: CRIM\_THB\_SEX)  
Last update 09/02/2023 11:00

<sup>3</sup> [https://ec.europa.eu/eurostat/databrowser/view/CRIM\\_THB\\_SEX\\_\\_custom\\_6404737/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/CRIM_THB_SEX__custom_6404737/default/table?lang=en) (accessed 31/05/2023).

## Form of exploitation for registered victims\* of trafficking in human beings, 2008-2021



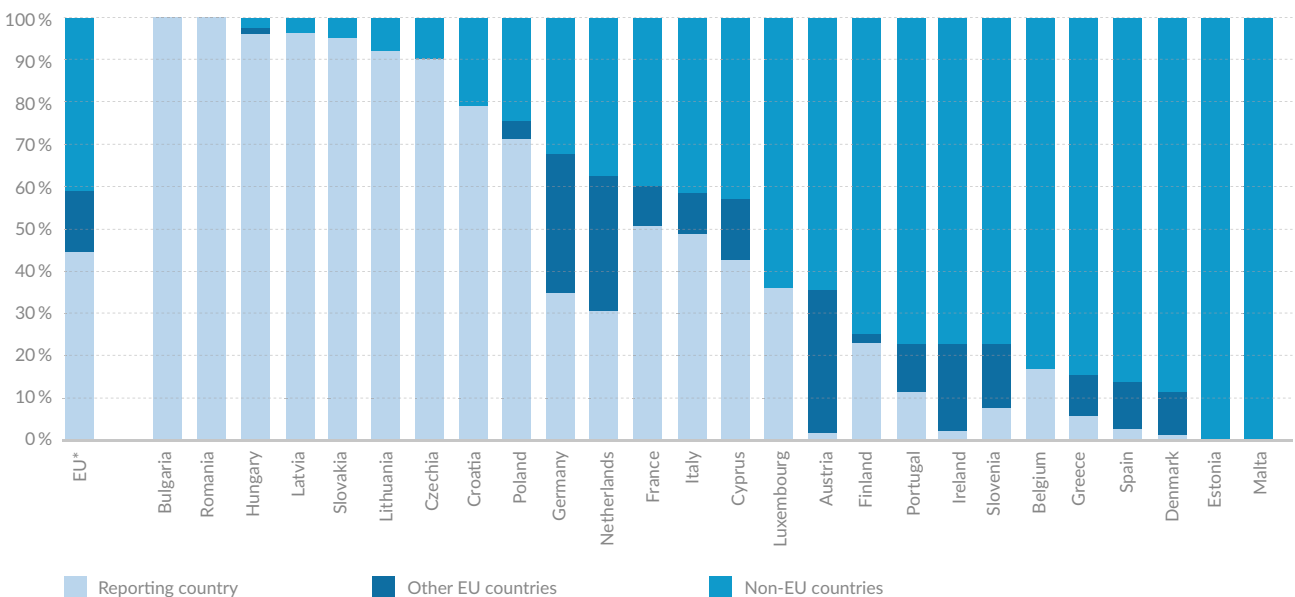
\* Calculated on responding countries and on known values. No adjustments were made. More than one form of exploitation can be recorded for a victim.  
 \*\* Organ removal and other purposes including use for benefit fraud, criminal activities and forced begging.

Statistics on the forms of exploitation are difficult to collect due to multiple factors, including the hidden nature of the crime, the possibility of multiple exploitations at the same time, and the different definitions of the forms of exploitation in the Member States. Available data shows that sexual exploitation remains the predominant form of exploitation recorded across

the EU in 2021 (64 %). Yet, labor exploitation has seen an increase in the last three years (25%), while other forms of trafficking in human beings represent 8 % of cases.

Regarding the nationalities mainly found among VoTs, data shows that, in 2021, 60 % of VoTs came from EU countries, while 40 % were TCN.

## Registered victims of trafficking in human beings by citizenship, 2021



\* Known values, data is missing for Sweden  
 Source: Eurostat (crim\_txb\_vctz)

The lack of data on the number of identified VoTs in international protection procedures does not allow a full picture of the situation and neglects the particular risks for migrants and asylum seekers of being trafficked and exploited. Especially unaccompanied minors are often a target for criminal networks.

In the context of the TIATAS project, the procedures linked to the Dublin III Regulation<sup>4</sup>, which is determining the Member State responsible for the examination of the asylum claim based on the first country where an asylum seeker is identified and gets their fingerprints scanned, were of particular interest. Secondary movements of asylum seekers from EU entry points (i. e. Greece, Italy and Spain) to other Member States (i. e. Germany), and their return bring significant challenges in protecting VoTs and demonstrate the need for sound transnational cooperation and coordinated mechanisms.<sup>5</sup> In cases of exploitation of an asylum seeker in the Member State responsible for the examination of the asylum claim, it could be traumatic for the victim to be returned to that Member State, even though in accordance with the Dublin Regulation, the transfer can take place. However, doubts have arisen regarding the “reflection period” that should be granted to the victims in accordance with the 2004 Residence Permit Directive<sup>6</sup> and which could not be applied in case of transfers. Trafficked people may be at risk not only in their own country, but also in the first asylum application country: re-trafficking, difficulties to (re-)integrate, and lack of adequate assistance.<sup>7</sup>

4 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (recast).

5 [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics\\_on\\_countries\\_responsible\\_for\\_asylum\\_applications\\_\(Dublin\\_Regulation\)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)).

6 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

7 See: GRETA, 2020 GUIDANCE NOTE on the entitlement of victims of trafficking and persons at risk of being trafficked, to international protection <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>; EMN, 2021 Third-Country National Victims of Trafficking in Human Beings: Detection, Identification and Protection [https://home-affairs.ec.europa.eu/system/files/2022-08/Human-trafficking-study\\_CZ.pdf](https://home-affairs.ec.europa.eu/system/files/2022-08/Human-trafficking-study_CZ.pdf).

## Best practices

### IDENTIFICATION OF VICTIMS OF TRAFFICKING AT THE MADRID BARAJAS AIRPORT

In Spain, there are no specific standard operating procedures (SOPs) for the identification of victims of trafficking among asylum seekers. A first step was made at the Madrid airport (Barajas)<sup>8</sup> to implement a procedure for the identification of human trafficking indicators among asylum seekers at arrival. A similar practice is also applied at the airport of Barcelona (El-Prat). In 2019, the Department of Migration of the Ministry of Labour, Migration and Social Security, together with the Government Delegation against Gender Violence of the Ministry of Equality and five specialized anti-trafficking NGOs providing comprehensive support to trafficked persons (Spanish Red Cross, Proyecto Esperanza-Adoratrices, APRAMP, Diaconía and the White Cross Foundation) signed a pilot procedure for the referral of potential victims of trafficking seeking international protection at the Madrid Barajas Airport. The purpose of this procedure is to establish guidelines for the adequate referral of cases concerning

adult asylum seekers and their families requesting international protection during their arrival at the airport, when it is suspected that they may be subject to a situation of human trafficking. The detection of signs of trafficking by any professional who may meet the presumed victim of trafficking is sufficient for the activation and application of this procedure: the formal identification as a victim of human trafficking by the State Security Forces and Corps is not necessary. If, in this context, possible signs of trafficking are detected, the specialized organization on duty at the airport will be notified and will carry out an assessment of the situation and the needs of the possible victim with the aim of proposing the most appropriate reception resource within the reception system for applicants and beneficiaries of international protection coordinated by the Ministry of Labor, Migration and Social Security, according to the individual situation.

### IDENTIFICATION OF VICTIMS OF TRAFFICKING BY THE ITALIAN MOI AND UNHCR

In 2016, the Italian Ministry of Interior, together with UNHCR, issued guidelines for the identification of victims of trafficking among asylum seekers, which have been further updated in 2021.<sup>9</sup> The guidelines provide necessary information to the asylum territorial commissions in charge of the refugees' status assessment regarding the identification of potential VoTs. They list indicators to detect human trafficking, SOPs to properly refer the presumed victims to an anti-trafficking specialized organization, as well as a model Memorandum of Understanding (MoU) to be signed between the

commissions and the anti-trafficking organizations. Recently, the Tribunal of Venice and the anti-trafficking organizations of Veneto region signed an MoU for the identification of (presumed) VoTs within the appeal procedure to the negative decision of the territorial commission.<sup>10</sup> The protocol's goals are the identification of (presumed) VoTs and severe forms of exploitation, training and capacity building activities for both Tribunal personnel and anti-trafficking operators, outreach, and sensitization on the topic.

<sup>8</sup> El Gobierno pone en marcha un procedimiento de derivación de potenciales víctimas de trata de seres humanos en el aeropuerto de Barajas, 15/10/2019, available at <https://inclusion.seg-social.es/web/guest/w/el-gobierno-pone-en-marcha-un-procedimiento-de-derivacion-de-potenciales-victimas-de-trata-de-seres-humanos-en-el-aeropuerto-de-barajas> (accessed 12/06/2023).

<sup>9</sup> UNHCR Guidelines "L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral" available at <https://bit.ly/3KwhQoD>.

<sup>10</sup> DELIBERAZIONE DELLA GIUNTA REGIONALE n. 192 del 28 febbraio 2022: Approvazione dello schema di Protocollo d'intesa tra la Regione del Veneto e il Tribunale di Venezia per l'identificazione delle vittime di tratta e di grave sfruttamento nell'ambito del progetto N.A.V.I.G.A.Re. – Network Antitrattra Veneto Intersezioni Governance Azioni Regionali. Deliberazione della Giunta Regionale n. 692 del 31 maggio 2021. Available at: <https://bur.regione.veneto.it/BurVServices/pubblica/DetaglioDgr.aspx?id=471635> (accessed 12/06/2023).

The two initiatives are of great impact and importance for prompt identification of VoTs in the context of asylum, but they need to be supported by adequate funding to make sure that the anti-trafficking operators are enough to address the workload.

## The Anti-Trafficking Directive and its implementation

Failure in the identification of (presumed) VoTs results in a denial of the full enjoyment of their human rights. When VoTs are not identified as such, they are not allowed to access the protection and assistance they are entitled to, to escape from the traffickers and rebuild their lives. Furthermore, identification is essential in the field of prosecution of perpetrators. If the VoT remains invisible and not identified as such, the traffickers and the criminal network behind the victim will remain undetected and, consequently, unpunished.

In the framework of the international and EU fight against trafficking in human beings, the evolution of the related law and policy instruments has brought several improvements. The provisions were overall focused on the phenomenon as a crime addressed primarily through law enforcement agencies and through the adjustment of national legal frameworks. With the 2002 UN OHCHR “Recommended Principles and Guidelines on Human Rights and Human Trafficking”<sup>11</sup> and the 2005 adoption of the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings,<sup>12</sup> policy makers started to adopt a more human rights-based and victim-centered approach in tackling trafficking in human beings.

At the EU level, it is important to mention the Council Directive 2004/81/EC on the residence permit issued to TCN who are identified victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. This Directive fore-

sees the possibility to grant a period of reflection to those victims of trafficking who are willing to cooperate with the authorities in the fight against trafficking in human beings, although the 2005 CoE Convention clearly states that the provision should be granted to presumed victims too, and without prejudice to the activities carried out by the competent authorities. The lack of a reflection period and a regular permit of stay for presumed victims, might cause failure to start the recovery process or to identify the victims in the first place, because of the lack of assistance from a specialized anti-trafficking organization.

A milestone in the legal and policy framework is the 2011 Anti-Trafficking Directive. The Directive is the fundamental EU legislative act addressing trafficking in human beings, and adopts an integrated, holistic, and human rights-based approach that represents a step forward and allows a higher level of coherence among the Member States of the EU. Despite the great importance of this Anti-Trafficking Directive and the effort made to prevent and combat trafficking in human beings, new challenges have arisen since 2011, and the European Commission proposed to revise it, based on the data collected, the relevant stakeholders consulted, and the Member States.<sup>13</sup> The following discussion takes into consideration the aspects of the Directive and its proposal of revision,<sup>14</sup> which TIATAS partners considered crucial during the project implementation.

The basis of the Directive primarily lies in the CoE Convention, but it provides higher standards for (presumed) VoTs’ assistance. It defines trafficking in human beings, setting the ground for a shared definition of the phenomenon within the legislative framework of the Member States (articles 2 and 3). In this regard, the revised version proposes to add to the non-exhaustive list of forms of exploitation provided, forced marriage as a particular form of violence against women, and illegal adoption.

Article 11 is particularly relevant for the purpose of this work: it sets obligations for Member States to

11 Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005.

12 UN OHCHR. (2002). Recommended Principles and Guidelines on Human Rights and Human Trafficking Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. E/2002/68/Add.1.

13 See Communication on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, COM(2021) 171 final; Council conclusions of 26 May 2021 setting the 2022-2025 EU priorities for the fight against serious and organised crime through the European multi-disciplinary platform against criminal threats (EMPACT).

14 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Brussels, 19.12.2022 COM(2022) 732 final 2022/0426 (COD).



provide assistance and support as soon as there is an indication that the person might have been trafficked (paragraph 11.2) and irrespective of their willingness to act as a witness (paragraph 11.3), suggesting to adopt the so-called “social path” approach to the identification. It also acknowledges the importance of early identification, by inviting Member States to establish a National Rapporteur or equivalent mechanism whose tasks are to monitor trafficking trends and gather data in close cooperation with relevant civil society organizations. Importantly, it also maintains the establishment of appropriate mechanisms to enhance early identification in the framework of VoTs’ protection (paragraph 11.4): the article is the basis for the establishment of National Referral Mechanisms (NRMs). However, the different implementation of this article in the Member States, created many forms of NRMs,<sup>15</sup> which may hamper or slow down the early detection of VoTs and their consequent protection. Hence, the new proposal foresees the formal establishment of an NRM through laws, regulations, or administrative provisions and the appointment of national focal points for the referral of VoTs. This provision is considered the first move towards the establishment of a European Referral Mechanism for cross-border cases, also envisaged in the 2021 EU Strategy on Combatting Trafficking in Human Beings.<sup>16</sup>

To prevent and combat trafficking in human beings, Member States are requested to provide training to all officials who might meet a VoT while performing their duties (article 18). Moreover, the EU Commission proposed to add a paragraph to article 18 to criminalize “the use of services which are the objects of exploitation” to reduce the demand of services provided by trafficked persons. This provision is the expression of the neo-prohibitionism policy orientation regarding commercial sex, which criminalizes the client to presu-

mably reduce the demand.<sup>17</sup> Finally, in relation to VoTs’ access to justice, Member States shall ensure free legal counseling and representation, also for the purpose of claiming compensation (article 12 and 15).

## Referral mechanisms

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) published in 2022 the second edition of the 2004 “National Referral Mechanisms (NRM) – Joining Efforts to Protect the Rights of Trafficked Persons”,<sup>18</sup> a practical handbook on the NRM and its implementation in State parties. An NRM is the most effective framework for assuring a human rights-based and victim-centered approach to combat trafficking in human beings. It is a cooperative, national framework through which governments fulfill their obligations to protect and promote the human rights of (presumed) VoTs, coordinating their efforts in a strategic partnership with civil society specialized organizations, survivor leaders, and the private sector. However, the NRM needs to be efficiently implemented by the actors to be working, as its formal establishment alone does not correspond to a real and practical functioning. One of the components of an NRM is the identification of (presumed) VoTs: while declaring the importance of early identification, the handbook encloses the sense of a multi-agency and multidisciplinary work, maintaining that the identification process of presumed trafficked persons made by different actors through cooperation is the core of the NRM. The mechanism should be designed to formalize the cooperation among government agencies and other stakeholders working with trafficked persons and includes a coordinator (usually a high-level government official) and a roundtable made of agency representatives who develop policy and procedural recommendations regarding (presumed) VoTs.

15 Study on reviewing the functioning of Member States’ National and Transnational Referral Mechanisms – Publications Office of the EU (europa.eu) 16/10/2020 (accessed 13/06/2023).

16 EU Strategy on Combatting Trafficking in Human Beings (2021-2025) (europa.eu) (accessed 13/06/2023).

17 The Neo-prohibitionism and prohibitionism approach to public policy originated from the understanding of both forced and voluntary prostitution as a form of sexual exploitation, perpetrating gender inequality and supporting the expectation that men have rights to use women’s body. The translation into public policies of the approaches developed by radical feminists is prohibitionism and neo-prohibitionism, which aim at tackling prostitution criminalizing the clients and sex workers (in the case of prohibitionism), or the clients (in the case of neo-prohibitionism). See, among the others, Outshoorn, Joyce (2004). *The Politics of Prostitution: Women’s Movements, Democratic States and the Globalisation of Sex Commerce*. Cambridge University Press; Limoncelli, S.A. (2009), *Human Trafficking: Globalization, Exploitation, and Transnational Sociology*. *Sociology Compass*, 3: 72-91. <https://doi.org/10.1111/j.1751-9020.2008.00178.x>.

18 OSCE/ODIHR. (2004). *National referral mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons – a Practical Handbook*.

NRMs should include several actors, such as lawyers, diplomats, psychologists, shelter workers, law enforcement officers, public prosecutors, policy makers, cultural and linguistic mediators, public servants and social workers, case workers and so on. All of these actors are bound to locally applicable and changing laws and focus on different aspects of anti-trafficking efforts. To be efficiently implemented, a holistic NRM must present a high level of state ownership, with pro-active involvement of civil society specialized organizations. An NRM's creation and its implementation should follow twelve principles: **Human Rights-Based, Victim-Centered, Gender-Sensitive and Trauma-Informed Approach, Best Interests of Children, Non-Conditionality** of VoTs' assistance and protection upon a victim's cooperation in criminal proceedings, **Recovery and Reflection period** for people who are presumed victims, **Non-Punishment** of victims who committed crimes as a direct consequence of being trafficked, **Non-Detention, Social Inclusion, Partnership and Cooperation** at different levels (from the international to the local), **Transparency and Accountability, Effectiveness** as a result of the NRM's dynamics, and **Flexibility** are essential to promptly respond to the new challenges and patterns in trafficking in human beings and severe forms of exploitation that arise. At the national level, all Member States have some sort of formal or informal NRM in place, although in some countries the NRM is based on engagement of individual professionals and civil society specialized organizations relationships.

In 2010, the International Centre for Migration Policy Development (ICMPD) issued the Guidelines for the Development of a Transnational Referral Mechanism (TRM) for Trafficked Persons,<sup>20</sup> which refers to mechanisms designed for the comprehensive assistance and transnational support of trafficked persons. A TRM is a co-operative agreement for the cross-border comprehensive assistance and/or transfer of identified or potential trafficked persons. It builds upon the existing

SOPs and mechanisms in place in the Member States, it is not an independent instrument. A TRM links all stages of the referral process from the initial screening, through formal identification and assistance, to voluntary assisted return, social inclusion, and the civil and criminal proceedings. Multi-agency and multi-disciplinary involvement is at the core of a TRM, which encourages cooperation between governmental institutions, intergovernmental agencies and non-governmental organizations of countries of origin, transit and destination of the trafficked persons. According to the guidelines, TRMs should assist (presumed) VoTs (identified and referred to the NRM in the country of destination) during the decision-making process regarding their options to stay in the country of destination or to return to the country of origin, receiving the necessary protection and assistance to be able to make an informed decision, and to be assisted in the reintegration process in the country of origin.<sup>21</sup>

However, in the framework of the present recommendations, the TRM involves two or more Member States dealing with a case of trafficking in human beings, when VoTs secondary movements occur. The victim might be interested in returning to an EU transit country or may be obliged to return under the Dublin Regulation for asylum procedures, and not to the country of origin. A TRM would facilitate and ease the cross-border cooperation to ensure the (presumed) VoT's adequate assistance and protection. VoTs moving within the EU without a TRM established and efficiently working, face risks of having their rights violated because of re-traumatization or re-trafficking (if the VoT was able to free themselves from the exploitation circle). A TRM can reduce these risks by enacting cooperation among Member States and sharing of the information previously gathered.

The TIATAS project developed standard operating procedures for transnational referrals of VoTs for service providers in other EU Member States,<sup>22</sup> which set

19 European Commission, Directorate-General for Migration and Home Affairs, Gregulska, J., Healy, C., Petreska, E. et al., Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms – , Publications Office, 2020, <https://data.europa.eu/doi/10.2837/697914>, available at Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms – Publications Office of the EU (europa.eu) (accessed 13/06/2023).

20 <https://www.icmpd.org/file/download/52503/file/Guidelines%2520for%2520the%2520Development%2520of%2520a%2520Transnational%2520Referral%2520Mechanism%2520for%2520Trafficked%2520Persons%2520-%2520South-Eastern%2520Europe.pdf>. Dipartimento per le Pari Opportunità et AL., 'Linee Guida per lo sviluppo di un sistema transnazionale di referral per le persone trafficate in europa: TRM-EU', 2010, available at <https://www.icmpd.org/file/download/48274/file/Guidelines%2520for%2520the%2520Development%2520of%2520a%2520Transnational%2520Referral%2520Mechanism%2520for%2520Trafficked%2520Persons%2520in%2520Europe%2520IT.pdf> (accessed 09/06/2023).

21 TACT project <https://www.iomfrance.org/tact/index.html>, HOF BSR- Transnational Referral Mechanism of the Baltic Sea Region <https://bsr-trm.com/>.

out the minimum requirements for the transfer of case management, victim consent, data protection, and capacity of the receiving partner (psychosocial, case/social worker, legal) of transnational referrals of victims of trafficking. They outline the required steps, responsibilities, documentation, and information necessary to successfully conclude the transfer of case management without diminishing rights and opportunities.

Although not formally established in the EU, there have been several EU-funded interventions aimed at TRM development, and Member States use a broad range of tools that serve to foster international cooperation on trafficking cases. These instruments are both formal and informal, the most frequently used being the informal ones which include cross-border cooperation among anti-trafficking specialized organizations on risk assessment and evaluation of the safety of the (presumed) VoTs before and upon return, as well as the provision of adequate services in the countries of origin and destination.<sup>23</sup>

of NRMs and TRMs, essential mechanisms to ensure victims' access to their rights, as the TIATAS partners encountered many difficulties regarding the practical implementation of such mechanisms.

The recommendations aim at ensuring (presumed) VoTs' access to their rights at all stages of assistance provision by strengthening the early identification and safe referral (both national and transnational).

## Policy recommendations

These policy recommendations draw from the observations and findings emerged during the TIATAS project's activities and provide evidence-based guidance to policy makers and individual professionals. They should be implemented to address the challenges that prevent Member States from properly addressing and tackling trafficking in human beings in the context of asylum. Some recommendations are already part of the EU policy framework but are not completely or properly implemented by governments. Hence, they need to be binding in the original provisions by the EU or better implemented by the national governments. Some recommendations require concerted advocacy and political will to reach a consensus and become a reality. They particularly focus on the improvement

<sup>22</sup> Standard Operating Procedures for transnational (cross border) referrals of VoT clients to service providers in other EU Member States, available at <https://tiatas.net/resources/> (accessed 12/06/2023).

<sup>23</sup> European Commission, Directorate-General for Migration and Home Affairs, Gregulska, J., Healy, C., Petreska, E. et al., Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms – , Publications Office, 2020, <https://data.europa.eu/doi/10.2837/697914>, available at Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms - Publications Office of the EU (europa.eu) (accessed 13/06/2023).

## RECOMMENDATIONS TO THE EUROPEAN COMMISSION

### 1 Ensure that an NRM is formally established and efficiently working in each Member State

#### What?

An NRM should be formally established building upon pre-existing effective, informal relationships and structures, existing practices, national contexts, and following a multidisciplinary and multi-agency approach which involves civil society specialized organizations, governmental agencies, and all the relevant actors at the different governance levels.

#### Why?

Although in each Member State there is some kind of cooperation mechanism in place which aims at early identification and protection of (presumed) VoTs, not all the mechanisms are formalized, and not all the relevant actors are embedded, which may lead to discrepancies in the implementation and a lack of focus on protection aspects.

### 2 Establish a formal Transnational Referral Mechanism (within the EU) with a high level of state ownership and participation from specialized anti-trafficking civil society organizations

#### What?

Structures and cooperative frameworks already existing should be formalized to allow for referral of victims and potential victims of trafficking, to protect and promote the rights of trafficked persons. SOPs on the functioning of the referral mechanisms should be created and dedicated funding must be allocated for the implementation of the referral mechanisms. A European Computerized System for data collection about assisted VoTs should be created and be accessible by all anti-trafficking specialized organizations across the EU, so that the reconstruction of the personal story can be easier and made without further trauma for the victim. This tool should adopt a victim-centered approach that protects personal data. Another tool that should be created is a database of EU anti-trafficking organizations which provide services applying a victim-centered and human rights-based approach to smoothen cross-border cooperation. These mechanisms should have a testing phase to adjust according to the feedback of the actors involved and be evaluated and monitored.

#### Why?

European and Transnational Referral Mechanisms are not formally or informally established, although secondary movements of victims of trafficking have increased. Current transnational referral mechanisms are often based on temporary project funding, running the risk of discontinuation after the project's conclusion.

### 3 Ensure knowledge exchange among the Member States on how National and Transnational Referral Mechanisms work in the different countries

#### What?

Regular exchange should be coordinated on the European level to make sure that anti-trafficking specialized organizations know how (official or unofficial) NRMs work in the country where they need to refer a victim or potential victim of trafficking, as well as from which they are receiving a referral for a victim or potential victim of trafficking. The same applies once a European Referral Mechanism is established in consultation with anti-trafficking specialized agencies, to properly refer cases.

#### Why?

Anti-trafficking organizations need to know how to proceed to ensure that the referred persons can access the NRM and services that are in place in the different country a person is being referred to, as well as the assistance they got from the previous.

### 4 Amend the Dublin III Regulation to include a specific provision for (presumed) VoTs

#### What?

Following a human rights-based and victim-centered approach, presumed VoTs who fall under the Dublin III Regulation, should not be returned before their recovery, unless this is their choice. VoTs who are returned to another Member State according to Dublin Regulation, should be referred through a TRM and enter the NRM as soon as they enter the receiving Member State. In case of potential victims, they should be referred to the NRM and given information to the specialized agencies to avoid safety risks, re-trafficking, re-traumatization and disappearance. There should be anti-trafficking specialized agencies at the airports when returns under the Dublin III Regulation take place, to identify trafficking indicators.

#### Why?

Project partner organizations reported that, in case of a VoT claiming asylum, in practice, the status of asylum seeker prevails over that of being a VoT, and the victim's needs are not taken into account enough during returns. Often, information on victims that are returned under Dublin Regulation are not shared in a reasonable time, and this might cause delay in protection and assistance.

### 5 Ensure that all presumed VoTs are granted the reflection period, and a residence permit

#### What?

According to the Council Directive 2004/81/EC, the concession of a permit of stay for the duration of the reflection period is foreseen for those victims of trafficking TCN willing to cooperate with authorities in the fight against the trafficking of human beings. „Victim's cooperation“ should be defined as the willingness of the victim to exit exploitation and to join a social integration project. Even VoTs who do not want to testify as witness against their exploiters in the first place should be granted the reflection period and the residence permit. Specialized anti-trafficking organizations and cultural mediators should assist the victim during this period.

#### Why?

The reflection period is an effective best practice and humanitarian measure for the protection of victims, it is the first step toward recovery from their experiences and to make an informed choice whether or not to cooperate with law enforcement.

## RECOMMENDATIONS TO THE EU MEMBER STATES

### 1 Ensure a complete and coherent transposition and implementation of the Anti-Trafficking Directive

#### What?

The Directive is transposed in many different ways within the national normative frameworks. A complete and correct transposition and implementation of the Anti-Trafficking Directive needs to be done, in a coherent and comprehensive way. To simplify and streamline the implementation, it should be transposed in an *ad hoc* law which can guarantee a comprehensive understanding.

#### Why?

The Directive is not fully transposed with a coherent and comprehensive law in all the Member States.

### 2 Ensure that an independent National Rapporteur is appointed in each Member State

#### What?

The National Rapporteur is essential for the assessments of trends in trafficking in human beings, the measuring and monitoring of anti-trafficking policies, including the gathering of statistics in close cooperation with relevant civil society specialized organizations active in this field, and reporting. It improves coordination and coherence between all NRM stakeholders and relevant agencies. It assures the topic of trafficking in human beings is well addressed in the political and policy agenda.

#### Why?

An NRM is not always formally established in the Member States or substituted by an equivalent mechanism. Often it is not an independent body or person, but a department of the government. Therefore, the National Rapporteur does not guarantee efficient coordination of the NRM.

### 3 Ensure that all relevant actors are embedded in the NRM and sufficiently trained

#### What?

It is important that all the agencies and organizations (such as NGOs, workers' rights organizations, sex workers' rights organizations, the asylum system, health care sector, and Dublin units, etc.), which might identify victims of trafficking and refer them through the NRM, are involved and adequately trained. They should be aware of the NRM and how it works, the SOPs in place and who to contact to refer a victim or potential victim of trafficking.

#### Why?

Several organizations are not taken into account in the NRM or are not adequately informed on the existence and referral procedures of the NRM and rely on informal contacts or may not be able to ensure a proper referral.

#### 4 Ensure the application of the social path and encourage its utilization

**What?**

Although the provision of the social path is foreseen in the different normative frameworks, its application is lacking and needs to be increased as a feasible way for a VoT to escape the criminal network and access their rights without being re-traumatized.

**Why?**

In several countries cooperation of the victim of trafficking in the criminal proceedings is often requested by law enforcement, without focusing on the well-being and protection of the victim of trafficking.

#### 5 Ensure specialized legal counseling free of charge

**What?**

Through the NRM, legal counseling services should be offered to VoTs, both children and adults, as stated in the Anti-Trafficking Directive.

**Why?**

VoTs should be able to access free legal counseling, because it allows for an informed reflection period and access and protection of victims' rights and provides assistance to the victims in case they decide to sue their exploiters. Free legal counseling is not offered in each Member State.

#### 6 Ensure training and capacity building actions on identification of victims of trafficking to front line workers in the asylum system

**What?**

Ensure that all the people whose job might lead them to meet a victim or potential victim of trafficking are sufficiently and adequately trained to spot trafficking indicators and on how to refer a (presumed) VoT through the NRM. Particularly, training is needed for asylum case handlers, law enforcement, and police.

**Why?**

In all countries, lack of training among practitioners is still an issue and many victims of trafficking remain undetected.

# RECOMMENDATIONS TO THE EU MEMBER STATES AND EU COMMISSION

## 1 End pushbacks

### What?

Pushbacks are illegal, they contravene the principle of non-refoulement, enshrined in several international human rights instruments. Trafficking of human beings is a violation of human rights, and their victims are not able to access their rights if they are pushed back.

### Why?

Pushbacks happen frequently at the EU borders, both at sea and land borders. VoTs travel through mixed migration flows, sharing the routes, the means, the transports, and the smugglers of other groups of asylum seekers and migrants and, therefore, run the risk of being illegally pushed back.

## 2 Ensure the non-punishment of the VoTs

### What?

The principle of non-punishment should be included in anti-trafficking legislation in a way that is binding for the Member States. It foresees that VoTs are not punished for illegal conducts that they committed as a direct consequence of being trafficked. It should apply at all stages of the criminal justice system, as well as in non-criminal proceedings that expose the victim to possible punishment.

### Why?

The non-punishment principle is not embedded in all the national legislations, and it is mentioned in the preliminary remarks of the Anti-Trafficking Directive.

## 3 Address labor exploitation through policy and normative actions

### What?

Labor exploitation is constantly increasing in the EU and should be properly addressed through policy and normative frameworks targeting this phenomenon. There should be dedicated funding to design interventions against labor exploitation and Member States should address the phenomenon in supply chains. The topic should be on the policy agenda of all the Member States. The EU Commission should finalize the Corporate Sustainability Due Diligence Directive, taking into consideration all the complexities.

### Why?

Public policies are often not designed to address labor exploitation and leave little room for actions against it.



# Imprint

## Published by

International Rescue Committee IRC Deutschland gGmbH  
Wattstraße 11 | 13355 Berlin | [IRCDeutschland.de](https://www.ircdeutschland.de)  
<https://tiatas.net>

## In partnership with

ARSIS – Association for the Social Support of Youth  
BeFree Società Cooperativa Sociale  
Dedalus Cooperativa Sociale  
Adoratrices Esclavas del STMO Sacramento y de la Caridad – Proyecto Esperanza  
Adoratrius Esclaves del Santíssim Sacrament I de la Caritat. Comunitat de Sants (SICAR cat)  
STOP dem Frauenhandel ökumenische gGmbH (Jadwiga)

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Laut & Deutlich

06/2023

## Disclaimer

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Funded by  
the European Union

This publication was funded by the European Union's  
Asylum, Migration and Integration Fund.

