



European
Commission

Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms

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Executive summary



Migration and
Home Affairs

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The report builds on individual country fiches elaborated for internal use. The fiches were prepared for each of the Member States by national experts in accordance with an established template.

The United Kingdom left the European Union as of 1 February 2020. The reference period for this study is prior to this date, while the UK was a Member State. The study therefore includes information on the United Kingdom.

For more information on the EU anti-trafficking policy visit <http://ec.europa.eu/anti-trafficking/>

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EXECUTIVE SUMMARY

Identifying victims of trafficking in human beings (THB) efficiently and at an early stage is the first step towards making sure they are treated as rights holders, have access to their rights and can exercise them effectively, which includes receiving appropriate assistance and protection. Formal or informal national and transnational referral mechanisms (NRM and TRM), and other coordination mechanisms put in place in Member States, are highly relevant with respect to victims accessing their rights and being referred to services, including in a cross-border context.

This Study on reviewing the functioning of Member States' national and transnational referral mechanisms aims to ⁽¹⁾:

- give an overview of the situation in all Member States as to the functioning of the NRMs and, where relevant, TRMs;
- provide good practices, models and examples of the functioning of NRMs and TRMs;
- provide specific recommendations with respect to improving the functioning of NRMs and TRMs for the interest of victims, with a view to helping Member States when implementing Directive 2011/36/EU (from this point onwards within this text: 'EU Anti-trafficking Directive') and advising the European Commission.

The objective of this study is to systematically review the functioning of formal or informal referral mechanisms in place, in the context of ensuring access to and realisation of the rights of victims of THB, adopting a human-rights based, victim-centred, gender-specific and child-sensitive approach. The study is, therefore, focused on the present functioning of such mechanisms on the ground and not only on the mapping of their existence. The study conducted is a result of this EU-wide effort, encompassing an extensive review of available sources and fieldwork in all 28 Member States ⁽²⁾.

Background

The European Commission's 2017 Communication stepping up EU action to address THB ⁽³⁾ (from this point onwards within this text: '2017 Communication'), under Priority B – Providing better access to and realise the rights for victims, sets forth as a key action to review the functioning of the Member States' NRMs and TRMs. The 2017 Communication indicates, among other things, that ineffective referral mechanisms at national and transnational level, coupled with a failure to identify all those who fall victim to trafficking continue to prevent victims of trafficking from actually benefiting from the rights they are entitled to.

This study builds on the findings of reports, studies and other relevant deliverables⁽⁴⁾ published by the European Commission as required under Articles 20 and 23 of the EU Anti-trafficking Directive ⁽⁵⁾ and in the context of the EU policy framework on THB ⁽⁶⁾, under the horizontal mandate of the EU Anti-trafficking Coordinator (EU ATC) ⁽⁷⁾.

The 2017 Communication notes that inadequate access to information about victims' rights and ineffective referral mechanisms at national and transnational level, coupled with a failure to identify all those who fall victim to trafficking continue to prevent victims of trafficking from actually accessing the rights they are entitled to.

⁽¹⁾ In October 2018, the European Commission published a call for tender for a study on reviewing the functioning of Member States' NRMs and TRMs. In May 2019, the European Commission awarded the contract to the Consortium led by Ecorys Polska Sp. z o.o., including the International Centre for Migration Policy Development (ICMPD) and the Human Trafficking Studies Centre of Warsaw University (HTSC).

⁽²⁾ Conducted according to the tender specifications and feedback by the European Commission.

⁽³⁾ COM(2017) 728 final, Communication from the Commission to the European Parliament and the Council Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/20171204_communication_reporting_on_follow-up_to_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf).

⁽⁴⁾ EU anti-trafficking action 2012-2016 at a glance, and EU anti-trafficking action 2017-2019 at a glance provide an overview of the work carried out under the EU legal and policy framework.

⁽⁵⁾ The EU Anti-trafficking Directive 2011/36/EU, (<https://ec.europa.eu/anti-trafficking/node/4522>).

⁽⁶⁾ The EU Strategy towards the eradication of trafficking in human beings 2012-2016 and the 2017 Communication stepping up EU action to address THB (https://ec.europa.eu/anti-trafficking/eu-policy/commission-sets-out-priorities-step-eu-action_en).

⁽⁷⁾ https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

The European Commission second progress report (2018) ⁽⁸⁾ indicates increasing cooperation, including transnational cooperation with other EU and non-EU countries, neighbouring countries, international organisations and civil society.

The report also highlights persistent shortcomings in the functioning of NRMs, in particular the need to ensure: a multidisciplinary approach and involvement of civil society (as relevant), appropriate training and capacity building for all those engaged, equal implementation of the mechanism in the whole national territory, specific protection measures for child victims and a mechanism for reviewing negative decisions.

The EU has funded several projects focused on or relevant for specific phases of NRMs and TRMs, and specific actions have been implemented under the policy framework on THB ⁽⁹⁾.

Context

THB within the EU remains a key threat ⁽¹⁰⁾. In 2015 and 2016, 20 532 victims of THB were registered in the 28 EU Member States (MS) ⁽¹¹⁾. Nearly half (44 %) were citizens of the EU, including 22 % who were citizens of the reporting country and 22 % who were citizens of another Member State. Over half of all victims (56 %) were non-EU nationals. The top five EU Member States of citizenship of registered victims in the period indicated were Romania, Hungary, the Netherlands, Poland and Bulgaria. The top five non-EU countries of citizenship of victims registered were Nigeria, Albania, Vietnam, China and Eritrea.

Trafficking for sexual exploitation remains the most reported form of this crime, accounting for over half (56 %) of victims registered ⁽¹²⁾. The second most frequent, labour exploitation, was experienced by around one quarter (26 %) of the registered victims. Other forms of exploitation account for the remaining 18 % of victims.

Evidence shows that THB is gender specific ⁽¹³⁾. In 2015 and 2016, women and girls constituted over two thirds (68 %) of victims registered, and men and boys one third (32 %) ⁽¹⁴⁾. Females (women and girls) were 95 % of registered victims of trafficking for sexual exploitation; while males (men and boys) accounted for 80 % of registered victims of trafficking for labour exploitation. In the case of trafficking for other forms of exploitation – 68 % were female victims and 32 % male ⁽¹⁵⁾. The harm from trafficking for sexual exploitation are different from the harm from trafficking for labour and other forms of exploitation, which has a significant impact on the specific needs of victims ⁽¹⁶⁾.

Traffickers take advantage of particularly vulnerable groups, including children: in the period between 2015 and 2016:

- children constituted almost one quarter (23 %) of THB victims registered in the EU,
- EU child victims registered were twice the number of non-EU child victims,
- child victims were mainly girls trafficked for the purpose of sexual exploitation ⁽¹⁷⁾, accounting for 23 % of the registered victims of THB for sexual exploitation.

⁽⁸⁾ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_com-2018-777-report_en.pdf

⁽⁹⁾ European Commission (2016), Study on comprehensive policy review of anti-trafficking projects funded by the European Commission, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf) EU anti-trafficking action 2012-2016 at a glance, and EU anti-trafficking action 2017-2019 at a glance provide an overview of the work carried out under the EU legal and policy framework.

⁽¹⁰⁾ Europol (2017), Serious and organised crime threat assessment: Crime in the age of technology, (www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017).

⁽¹¹⁾ European Commission (2018), Data collection on trafficking in human beings in the EU, DG Migration and Home Affairs, (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf).

⁽¹²⁾ European Commission (2018), Data collection on trafficking in human beings in the EU.

⁽¹³⁾ European Commission (2016), Study on the gender dimension of trafficking in human beings, DG Migration and Home Affairs, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf).

⁽¹⁴⁾ European Commission (2018), Data collection on trafficking in human beings in the EU.

⁽¹⁵⁾ European Commission (2018), Data collection on trafficking in human beings in the EU.

⁽¹⁶⁾ European Commission (2016), Study on the gender dimension of trafficking in human beings. See also, EI GE (2018), Gender-specific measures in anti-trafficking actions: Report, (<https://eige.europa.eu/publications/gender-specific-measures-anti-trafficking-actions-report>).

⁽¹⁷⁾ European Commission (2018), Data collection on trafficking in human beings in the EU. See also, the European Union Agency for Fundamental Rights (FRA) (2019), 10 ways to protect children deprived of parental care and combat child trafficking (<https://fra.europa.eu/en/news/2019/10-ways-protect-children-deprived-parental-care-and-combat-child-trafficking>); Children deprived of parental care found in an EU Member State other than their own. A guide to enhance child protection focusing on victims of trafficking, (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-children-deprived-of-parental-care_en.pdf).

Various individual, family-related, socioeconomic and structural factors exacerbate the vulnerability of children to THB ⁽¹⁸⁾.

While the data presented above show patterns consistent with those reported in previous periods ⁽¹⁹⁾, these numbers relate only to people who came into contact with authorities and other organisations. There are reasons to believe that many victims remain undetected ⁽²⁰⁾.

To address this serious crime and grave human-rights violation, the EU has in place a comprehensive legal and policy framework, under the horizontal mandate of the EU ATC ⁽²¹⁾, which is human-rights centred, victim-centred, gender specific and child sensitive. The EU Anti-trafficking Directive ⁽²²⁾ constitutes the core EU law on THB, and the framework is complemented by the EU strategy towards eradication of THB 2012-2016 (from this point onwards within this text: 'EU Strategy') ⁽²³⁾ and the 2017 Communication ⁽²⁴⁾. To improve coordination and coherence among EU institutions, agencies, Member States and international actors, and for developing existing and new EU policies to address THB, the European Commission appointed the EU ATC.

Key actions implemented under the EU legal and policy framework concerned high-risk groups for THB, in particular women and girls (comprising the majority of the victims and overwhelmingly trafficked for sexual exploitation), and children. Work was conducted in cooperation with relevant EU agencies in the context of the 2018 joint statement of commitment to working together to address THB ⁽²⁵⁾, aiming at supporting the work of relevant actors in the Member States, including with respect to the access to and the realisation of the rights of victims, in line with Priority B of the 2017 Communication. This work includes, among others: the European Institute for Gender Equality (EIGE), Gender-specific measures in EU anti-trafficking action: Report (2018), European Union Agency for Fundamental Rights (FRA), Guide on protecting child victims of trafficking found in a Member State other than their own (2019) and Handbook on guardianship systems for children deprived of parental care (2014) ⁽²⁶⁾.

Key findings

The 2017 Communication notes that inadequate access to information about victims' rights and ineffective referral mechanisms at national and transnational level, coupled with a failure to identify all those who fall victim to trafficking continue to prevent victims of THB from actually accessing the rights they are entitled to. Identifying victims efficiently and at an early stage is the first step towards making sure they are treated as rights holders, have access to their rights and can exercise them effectively, which includes receiving appropriate assistance and protection.

⁽¹⁸⁾ European Commission (2015), Study on high-risk groups for trafficking in human beings, DG Migration and Home Affairs, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_children_as_high_risk_groups_of_trafficking_in_human_beings_0.pdf).

⁽¹⁹⁾ COM(2018) 777 final, (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_com-2018-777-report_en.pdf). For previous data see e.g. Eurostat (2015), Statistical working paper: Trafficking in Human Beings, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf).

⁽²⁰⁾ COM(2018) 777 final.

⁽²¹⁾ https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

⁽²²⁾ Other relevant documents include e.g.: Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive); Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Directive 2011/92/EU), 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; Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, etc.

⁽²³⁾ COM(2012) 286 final, The EU strategy towards the eradication of trafficking in human beings 2012-2016, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf).

⁽²⁴⁾ Communication from the Commission to the European Parliament and the Council Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions, COM(2017) 728 final, (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/20171204_communication_reporting_on_follow-up_to_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf).

⁽²⁵⁾ (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_agencies_joint_statement_of_commitment_to_working_together_to_address_thb.pdf)

⁽²⁶⁾ All mentioned publications are available on the EU Anti-trafficking website: https://ec.europa.eu/anti-trafficking/node/1_en. An overview of summaries is included in EU Anti-trafficking Action 2017-2019: At a glance: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_anti-trafficking_action_2017-2019_at_a_glance.pdf.

The European Commission's second progress report (2018) indicates shortcomings in the functioning of NRMs, in particular the need to ensure: a multidisciplinary approach and involvement of civil society (as relevant), appropriate training and capacity building for all relevant engaged actors, equal implementation of the mechanism in the whole national territory, envisage specific protection measures for child victims, include a mechanism for reviewing negative decisions.

The overall findings of this study are as follows:

- confirm that referral mechanisms have been set up in the Member States, as indicated in the European Commission's second progress report (2018). All but one Member State have referral mechanisms in place at national level, to improve early identification, assistance and support to victims of trafficking. In two cases similar mechanisms are also available at the local level. The scope, functioning and level of formalisation vary. Several MS have adopted documents specifically on referral mechanisms, either formal/binding, or less or not formal.
- indicate that all Member States have in place measures, procedures aiming at improving identification (e.g. indicators, guidelines focused on specific high-risk groups, joint initiative of law enforcement, labour inspectors, migration services, etc.). Overall, formal identification of child victims normally involves additional actors, adjustment of procedures and, generally, application of the principle of the best interest of the child. In addition to law enforcement, police and border authorities, and civil society organisations (CSOs), others who play a role, although to a lesser extent, include: migration officers, labour inspectors and diplomatic services. With respect to EU victims trafficked within their own Member State (nearly one in four victims registered in the EU overall), there is a gap with respect to specific measures.

This study further indicates the following in relation to those involved:

- in most Member States, ministries of home affairs/interior play a significant role as coordinating institutions, including in technically guiding the implementation of NRMs.
- in a few cases, other ministries engaged are those dealing with social assistance, welfare and employment or foreign affairs. In half of the Member States, inter-ministerial committees are formally responsible for co-operation between different national authorities.
- specific institutions/authorities are tasked with the coordination of referral in all but three Member States, although to varying degrees. In all but five EU Member States, the appointed national rapporteurs or equivalent mechanisms are tasked with monitoring.
- all referral mechanisms reviewed adopt a multidisciplinary approach and include the cooperation of a wide range of actors. Law-enforcement authorities are always involved in the referral, often with specialised units, while state social services and CSOs are involved in the vast majority, and are at the core of providing assistance and support. Labour authorities as well as migration and asylum services are also normally involved in the referral.
- in several Member States, referral mechanisms include first responders, i.e. institutions making the initial referral of potential victims. In some Member States, there is no obligation to inform law-enforcement authorities or the ministries of interior/home affairs about referral to assistance and support, which creates challenges especially where there are particularly vulnerable victims.
- the information reviewed reveals challenges in the coordination of different actors, combined with those posed by the limited trust of the victims, both of which negatively affect effective referral.

In relation to assistance and support, this study concludes the following:

- all NRMs reviewed encompass identification processes and short-term support and protection measures for victims of THB in general.

- some Member States provide assistance and support unconditionally. In other cases, conditions for accessing support range from 'reasonable grounds' indication, cooperation with law-enforcement authorities, to formal identification. Application of these conditions may be different during and after the reflection period. In some cases, formal identification is a precondition for providing assistance and protection beyond emergency/immediate support, as well as for regularising the stay of non-EU nationals.
- assistance and support is generally provided by CSOs or both CSOs and state authorities. CSOs are often the main actors, with state institutions having a subsidiary role.
- all Member States provide safe accommodation, medical assistance, psychological support, translation and interpretation services, legal counselling and/or legal representation. Most Member States also provide material assistance, such as money allowances or food and other in-kind support.
- all Member States have in place some measures to prevent secondary victimisation. However, limited specific training and capacity building for law enforcement and the judiciary on such measures/procedures constrains the extent to which these are used in practice.
- in most Member States, lawyers provide legal advice and representation, with specialised services and specialised CSOs being the primary actors in some Member States. In this context, the key challenges emerge when victims cannot prove that they have insufficient financial resources or when there is a need for adequate information in a language that the victim understands.
- across the Member States, and especially where CSOs are directly/mainly involved, availability, accessibility and sustainability of funding pose significant challenges. As examples, with respect to: medical assistance other than emergency assistance and waiting period; specialised shelters and systematic measures that take into account the age, sex, consequences of the specific form of exploitation, and special needs of victims.
- across the Member States, challenges are posed by language barriers; limited resources, including human resources; limited specific training and capacity building for front-line staff and law enforcement; limited coordination among different actors or uneven implementation of the mechanism in the whole national territory (e.g. when services are concentrated in specific areas, such as large urban centres).
- in the vast majority of the Member States, referral mechanisms for victims of THB are generally not tailored around the main identified patterns of the phenomenon.
- in around half of the Member States the measures in place take into account the sex of the victims and the consequences of the specific form of exploitation they have been subjected to. While trafficking of women and girls for sexual exploitation remains the main form, in the vast majority of the Member States there are no public institutions and/or national actions plans specifically addressing this pattern.
- a few Member States have separate procedures or mechanisms for child victims. Risks and needs assessments are carried out in several Member States, focusing on physical and emotional security, as well as specific protection and assistance needs.

With respect to transnational referral (within the EU and with non-EU countries), the study finds the following:

- overall, the Member States have in place a wide range of instruments for transnational cooperation that contribute to referral of victims of THB. Support to transnational cooperation is also provided by EU agencies, according to their mandates. Cooperation frameworks range from bilateral/regional/multilateral platforms, networks or other similar fora, to meetings of key actors, formal and/or ad hoc cooperation on provision of assistance and support, cooperation mechanisms that include relevant international organisations, especially in return procedures, etc.
- all the Member States provide some sort of assistance in cases of voluntary return to the country of origin. All Member States ensure reflection periods for non-EU nationals who are potential victims of THB, which vary from 30 to 120 days for adults, and up to 150 days for children. In most Member States, assisted voluntary

return of non-European Economic Area (EEA)²⁷ citizens is managed by or conducted in cooperation with the International Organisation for Migration (IOM). Most of the referral mechanisms reviewed integrate some sort of risk assessment in the procedures for assisted voluntary return. The availability of reintegration and support in the countries of origin vary depending both on the Member State of destination and the country of origin. Returns of EU/EEA citizens generally take place on a case-by-case basis, and assistance provided varies according to the victim's needs.

Better access to and realisation of the rights of the victims

The Commission systematically reiterates that victims must be treated as rights holders and that they must have access to appropriate, gender-specific and child-sensitive assistance and support.

Taking into account the extensive available information from relevant reports, studies and project results, the research carried out identifies specific areas where improvement is needed. These include the following:

1. **Effective early identification:** This is the key first step to appropriate referral of all victims, EU and non-EU nationals, including victims trafficked within their own Member State. For this to happen, appropriate, focused and targeted capacity-building measures for all relevant actors likely to come into contact with victims of THB must be ensured. Such measures include appropriate training and information on the main identified patterns of THB, including the main forms of exploitation, in order to facilitate early identification/detection of potential victims (including taking into account the 'reasonable grounds' indication).
2. **Equal focus on all victims and on all forms of exploitation:** No victim of THB must be left behind, with the need for equally and appropriately focusing on all forms of exploitation. This includes, crucially, ensuring appropriate and tailored assistance and support, taking into account the sex, age and consequences of the specific form of exploitation that victims have been subjected to.
3. **Close cooperation of all actors at all levels:** Multidisciplinary approaches and involvement of civil society in all relevant phases of referral must be enhanced; synergies and complementarities between different relevant systems/mechanisms in specific areas (such as child protection, asylum, violence against women, etc.) and referral mechanisms for victims of trafficking should be built; cooperation and information sharing at national and transnational level (within and outside the EU, between all relevant actors, including law enforcement and the judiciary, making full use of the support of relevant EU agencies) should be strengthened.
4. **Monitoring access to and the realisation of victims' rights:** Victims of THB are rights holders, and ensuring their rights remains the ultimate objective of all relevant actions. Appropriate mechanisms/processes must be put in place in order to monitor the impact and results of measures in all phases of referral, as well as across the national territory, including with respect to the possibility to review negative decisions.
5. **Availability, accessibility and sustainability of funding:** Access to appropriate assistance and protection relies on adequate budgeting at national level for assistance and support in all phases of referral and for all actors involved, including national authorities and civil society.

⁽²⁷⁾ EU plus Iceland, Liechtenstein and Norway.

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