

Victim Support Europe contribution

PREVENTING AND COMBATING TRAFFICKING IN
HUMAN BEINGS - REVIEW OF EU RULES –
FEEDBACK



About Victim Support Europe

Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 69 member organisations, providing support and information to more than 2 million people affected by crime every year in 34 countries.

Founded in 1990, VSE has been working for 30 years for a Europe, and a world, where all victims have strong victims' rights and services, whether they report the crime or not. We work towards this mission through advocacy to improve European and International laws, through research and knowledge development and through capacity building at the national and local level.

Introduction

Over the last decades, much progress has been made on policies and rights for victims, on the international and European level. The adoption of a range of European Union (EU) legislation benefiting victims has contributed to these improvements, for example the 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 (hereinafter "the Anti-Trafficking Directive").

While recognising this progress, VSE welcomes the evaluation of the Anti-Trafficking Directive and the European Commission's proposal, understanding the need to continuously adapt the EU rules for fighting human trafficking and protection its victims.

In particular, VSE welcomes amendments from the Commission that seek to address new challenges - e.g. digitalisation of trafficking - and to develop a comprehensive response to trafficking and its victims. However, VSE regrets that only limited amendments were included on the protection and assistance to victims. We believe the EU Anti-Trafficking Directive should strengthen some of the rights and obligations ensured through the 2012 Victims' Rights Directive¹ to adapt them to the specific needs of victims of trafficking in human beings (THB).

In what follows, VSE raises in brief a number of issues and comments on the Commission's proposal for a revision of the EU Anti-Trafficking Directive, including topics that we believe should have been/be addressed through the revision.

¹ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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, available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

VSE Feedback

VSE regrets that the Commission did not integrate additional provisions and/or detailed existing provisions relating to the assistance and support of victims of THB (Article 11). Gaps in the provision of assistance and support offered to trafficked persons in Europe continue to be identified, - e.g. with generic and specialised victim support services still not existing in many EU countries or being insufficient, not accessible or not of a high quality, gaps in the provision of appropriate and safe accommodation and material assistance as well as necessary medical treatment including free psychological assistance. Below are examples of issues that VSE will seek to integrate in the proposal, in developing/detailing on how the support should be developed, accessed by and delivered to victims of trafficking.

- Coordination and National Referral Mechanisms (NRMs)

VSE welcomes the inclusion of the Member States' obligation to establish the NRM within the proposal (Article 11), as suggested in previous submissions. NRMs have been recognised as fundamental tools and models for enhancing the coordination of policies and cooperation of stakeholders to fight trafficking and protect its victims. Inconsistencies however remain in how NRMs are implemented across Member States, with either formal or informal systems existing² and with different levels of implementation.

While core elements are present in all NRMs in the EU at the moment (identification processes and short-term support and protection), the scope of other measures vary across countries. For example, not all NRMs cover the assessment of risks and needs of victims, long-term support and inclusion measures, capacity building and training, or specific approaches to vulnerable groups such as children³.

Understanding that NRMs will need to be adapted to each national context, VSE believes EU legislation should better define in its provisions what NRMs are and core elements constituting them. Such detailed provisions would support the development of consistent systems and practices across Member States, would participate to ensuring a same level of high-quality support and assistance is provided to victims under NRMs and would support and enhance the functioning of transnational cooperation.

NRMs' core elements can be defined based on existing practices and guidance from the OSCE Office for Democratic Institutions and Human Rights (ODIHR)⁴, with for example: prevention measures; risk and needs assessment of victims; short-term support and protection; long-term support and social inclusion; capacity-building and training; monitoring; child- and gender-specific approaches; collect

² 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>

³ 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>

⁴ OSCE Office for Democratic Institutions and Human Rights (ODIHR), NATIONAL REFERRAL MECHANISMS JOINING EFFORTS TO PROTECT THE RIGHTS OF TRAFFICKED PERSONS, A Practical Handbook – Second Edition, 2022, available online: <https://www.osce.org/odihr/NRM-handbook>

and promotion of knowledge about trafficking⁵; other issues relating to access to justice for victims, for example facilitating reporting in a manner adapted to victims' needs (e.g. diversifying channels for reporting, data firewalls⁶). These elements should be either set out as requirements/obligations under the proposal, or the latter should clarify that NRMs should address these issues.

In addition, any support and assistance provided to victims should be provided based on the needs of the victims. At the moment, the 2011 Anti-trafficking Directive states that these measures are provided 'for an appropriate period of time' after the conclusion of criminal proceedings. Such wording is rather vague and is not clear as whether the support is limited to the purpose of proceedings. This formulation should be deleted and replaced with wording that make clear that support and assistance measures are based on the needs of victims, regardless of whether they are linked to criminal proceedings or not.

- Access to information, translation/interpretation

The rights to receive information from the first-contact authority, to understand and to be understood, and to access to translation/interpretation, are currently guaranteed by the 2012 Victims' Rights Directive and are fundamental to all victims. Due to the nature of the crime, victims of THB are however in increased need of access to those rights and services. A large portion of trafficked victims continues to be identified in a cross-border situation⁷, which heightened their barriers to accessing these rights and services due to e.g. the language barriers, the lack of knowledge of the national justice system and/or of authorities and available services. Any specialist legislation on victims of THB should therefore examine how access to information and related services can be enhanced for these victims and addressed through legislation measures.

- Legal aid

Currently, the right to legal aid is defined in the 2012 Victims' Rights Directive (Art. 13) and should be guaranteed to all victims of crime in the EU⁸. To overcome obstacles in accessing justice for trafficked persons, it should be clarified that free legal aid needs to be available and accessible to all presumed trafficked persons.

VSE also urges the European Commission to clarify that access to free legal aid shall not be restricted to criminal proceedings but covers all legal proceedings related to the person's victim status, including criminal, civil or labour procedures for the purpose of compensation⁹, as well as proceedings in relation to immigration status or asylum. Recent research in different Member States has showed that, in the case of compensation claims for sexual violence for instance, the accompaniment of the victim by a lawyer increases the awarded amount of compensation and suggest that such

⁵ 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>

⁶ More information on VSE recommendations for safe reporting, please see Victim Support Europe, Safe Justice for Victims of Crime, 2023, available online: <https://victim-support.eu/publications/safe-justice-for-victims-of-crime-discussion-paper/>

⁷ See for example, UNODC Global Report on Trafficking in Persons 2022

⁸ For more information on legal aid, please see Victim Support Europe, Safe Justice for Victims of Crime, 2023, available online: <https://victim-support.eu/publications/safe-justice-for-victims-of-crime-discussion-paper/>

⁹ Compensation for victims of human trafficking, J. Cusveller.

accompaniment may be able to reduce the risks of secondary victimisation, in particular when they are involved from early stages of the proceeding¹⁰.

- Training

Training is fundamental to address early identification of victims, the creation of safe environments for victims to report crime and the respectful treatment of victims. While Article 18.3 of the 2011 Anti-trafficking Directive encourages Member States to ‘promote regular training’, VSE believes provisions should seek to detail what these training should focus on as well as how/how often they should be organised, in order to help Member States designing their training programmes and to create a consistent approach across the EU. Specialist training should be complementary to a training provided under the 2012 Victims’ Rights Directive and should seek to address the specific needs of trafficked victims. It should focus on: understanding what trafficking is, the nature and impact of trauma on its victims, the means, risks and methods used by traffickers to recruit and exploit their victims (online and offline), recognising signs of victimisation for victims’ identification, soft skills on communicating with THB victims (both for all THB victims and specific vulnerable groups, such as children).

- Protection of victims and risk and needs assessments

Related to Article 12.3 of the 2011 Anti-Trafficking Directive, VSE believes a specific assessment for victims of trafficking could be put in place, similarly to existing specific tools for other vulnerable categories of victims of crime (e.g. risks assessments for victims of gender-based violence). Recent research conducted by VSE suggests that the most efficient systems include a combination of an initial assessment conducted by frontline officers, that seek to address immediate needs and risks of victims (e.g. material assistance, accommodation, protection), followed by an in-depth assessment addressing the needs and risks of victims in a medium-term, in particular during criminal proceedings, and often conducted by specialist units and in collaboration with victims’ services.

- Long-term support and social inclusion

Due to the nature and impact of the crime and exploitation, victims of THB are often in need of long-term support, including in finding durable solutions for social and economic inclusion. Provisions under Article 11 should seek to address these issues better and detail measures to be adopted by Member States to address education, training (eg life skills), accommodation, among others. Attention should also be paid to guaranteeing and facilitating access to long-term emotional and psychological support. This applies to accessing such support after the end of criminal proceedings, based on the needs of the victim as explained above (please see the last point under Coordination and National Referral Mechanisms (NRMs)).

- National rapporteurs or equivalent mechanisms

Across Member States, implementation of practices on National rapporteurs still vary. In some, practices include appointed Rapporteurs or equivalent mechanisms that are part of the same government administrations that the ones in charge of implementing anti-trafficking policies.

¹⁰ Fair and Appropriate? Compensation of victims of sexual violence in EU Member States: Greece, Italy, Latvia, the Netherlands and Spain, 2020, FAIRCOM Project.

Measuring, monitoring and reporting results are crucial to any cooperation system/framework¹¹. Key measures of success include the presence of independent bodies, who have a key role in oversight of the framework, i.e. it should remain independent from any political interference. The Anti-Trafficking Directive's provisions should establish this independence and provide clear indications as to what independence mean.

- Legal remedies

All EU legislation related to rights of victims of crime should ensure that victims have access to complaints mechanisms and to an effective remedy under national law in the event of a breach of their rights under the Directive. Similar provisions can be found in other EU legislation, e.g. EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

¹¹ Victim Support Europe, National Framework for Comprehensive Victim Support, 2022, available online: https://victim-support.eu/wp-content/files_mf/1673427018NationalFrameworkforComprehensiveVictimSupportcompressed.pdf