

EMN INFORM

Identification of victims of trafficking in human beings in international protection and forced return procedures

1. INTRODUCTION

This EMN Inform summarises the main findings of the EMN Focussed Study on *Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures*. The Study represents a synthesis of findings presented in 24¹ National Reports following a common template and developed in collaboration with the European Commission, EMN National Contact Points and the EMN Service Provider. It concerns both applicants for international protection and 'failed' applicants in forced return procedures who have received a (final) negative decision, or have abandoned the procedure.

2. KEY POINTS TO NOTE

- ★ **EU legislation provides a holistic framework for the improved identification and protection of victims.** Directive 2011/36/EU obliges Member States who have opted into the Directive to set up systems for the early detection, identification and assistance to victims, and the recently adopted EU asylum acquis introduces obligations to identify and provide additional support to vulnerable applicants *including* victims of trafficking in human beings. Both sets of provisions strengthen the possibilities for victims to seek protection.
- ★ **Around half of all (Member) States have some data on victims detected when in international protection procedures,** but the data sources are inconsistent and incomplete making it difficult to give a comprehensive picture of the scope of the

problem at EU level. Nonetheless the fact that there is evidence of victims going unidentified may mean they are not granted the protection and/or assistance available to them under EU law.

- ★ In view of this, **proactive methods of detection in (Member) States can be considered good practice** and a number of (Member) States implement such methods as **screening of all applicants for international protection, training of case workers, and provision of information to facilitate self-reporting.**
- ★ Many (Member) States logically place **greater emphasis on detection in international protection procedures than in forced return procedures,** in order to detect victims at the earliest stage possible. However, recognising that the authorities competent to enforce return may also come into contact with victims, most (Member) States also provide these actors with relevant training on identification and detection.
- ★ **All (Member) States offer the possibility to refer identified victims onto service providers for support and some offer a choice of protection possibilities.** Where a victim of trafficking is seeking international protection, but is also identified as a victim of trafficking in human beings, there is no obligation on the victim to switch to procedures for a residence permit as a victim of trafficking in human beings. Indeed, some (Member) States have reported that victims prefer to remain in international protection procedures. This suggests that there is a need for the holistic protection possibilities being gradually introduced into (Member) States.

¹ Austria, Belgium, Czech Republic, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway.

3. BACKGROUND AND CONTEXT

Trafficking in human beings is recognised as “the slavery of our times”, a severe violation of fundamental rights – as outlined in Article 5(3) of the EU Charter on Fundamental Rights – and a serious form of crime. In order to prevent this crime and to help those who have fallen victim to it, the EU recognises the need to detect and identify persons who have been subjected to trafficking and to offer them access to assistance, support and protection. Given the clandestine nature of trafficking and the many factors which may deter a victim from reporting the crime, victims can and do go undetected. For this reason, the EU has called upon Member States to set up “systematic approach(es) to victim identification, protection and assistance” including promoting “regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings [...] aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings”.² Such officials include police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff.

4. SCALE AND SCOPE OF THE PROBLEM

More than half of all Member States (AT, BE, CZ, DE, ES, FI, FR, IE, LU, MT, PL, SE, SK, UK) and Norway demonstrate evidence that potential victims of trafficking in human beings have been detected in international protection procedures in the past five years. A further five Member States (EE, HU, LV, LT, SI) have detected no instances. Two Member States (FI, SK) have statistical evidence of potential victims detected in forced return procedures (although numbers are small). Relevant statistics are not available for the remaining Member States.

Most (Member) States (BE, CY, CZ, DE, EE, ES, FI, HU, IE, LV, LT, LU, MT, NL, SE, SK, UK, NO) have standardised practices in place for detecting, identifying and referring victims of trafficking in human beings when they are detected in international protection procedures. In many cases, these practices are outlined in guidelines (BE, DE, EE, FI, IE, LU, NO, UK), soft law (CZ, EE, ES, IE, LV, NL, SE, SK, NO) or even in legislation (HU). At least five (Member) States (BE, EE, FR, LU, IT) are currently preparing or updating (e.g. EE) their guidelines to support the identification of victims of trafficking in international protection procedures.

Similarly, all Member States except for seven (AT, DE, EL, FR, IE, MT, PL) have standard practices in place to detect, identify and refer potential victims who are in forced return procedures onto actors responsible for

providing support. Indeed, three Member States (HU, IT, UK) and Norway have outlined these mechanisms in law, a further ten in soft law (CZ, EE, ES, LV, NL, SK) or guidelines (EE, FI, LV, LU, NL, UK, NO) to support officials in forced return procedures to detect potential victims. At least a further four (Member) States (AT, FR, LU, SI) are preparing guidelines to support such identification in forced return procedures.

5. DETECTION AND IDENTIFICATION

How are victims detected?

Recognising that applicants for international protection may have faced different forms of persecution and exploitation (including trafficking), half of the reporting (Member) States proactively ‘screen’ either all applicants (CY, CZ, DE, ES, FI, LV, MT, NL, SK, UK) or applicants with specific profiles – e.g. women from specific countries, men / women in prostitution, unaccompanied minors (BE, IT, NO) for indications of trafficking. Screening entails the targeted gathering of information to assess possible victimisation through a series of questions and/or the assessment of information about the applicant against specific indicators and it can be performed upon registration (ES, NL), during the processing of the application (DE, ES, LV, NL), during the applicant’s stay at the reception facility (by the facility’s staff – NL, SK). Some (Member) States (e.g. ES, FR, LT) report that the general vulnerability assessment (e.g. medical screening) carried out in many reception facilities also facilitates detection.

Where proactive screening is not undertaken during the international protection procedure, the assessment of facts and circumstances within international protection procedures may still provide an opportunity to detect possible victimisation, since information is gathered on the country of origin, information on persecution or harm, personal circumstances, etc. which might also be indicative of the applicant having been a victim of trafficking. However, this still relies on both the victims providing the right amount and type of evidence to facilitate detection and on the authorities being adequately trained to recognise reported exploitation as trafficking. To enhance victims’ capacity to self-report / self-identify, some (Member) States (e.g. BE, CZ, ES, FI, IE, PL, SK, SE, UK) disseminate information materials to applicants for international protection to raise awareness on the phenomenon of trafficking and the opportunities for assistance to facilitate self-identification and encourage self-reporting. The Republic, Estonia, Hungary, Italy, Netherlands, Poland, Sweden and the United Kingdom have established hotlines where potential victims of trafficking can obtain advice and self-report.

What happens next?

Following detection, the asylum authorities will either consult immediately with (one of) the authorities

² EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016

competent to either officially identify a victim (AT, CY, EE, EL, ES, IE, LT, LU, NL, PL) and/or provide assistance (IT, MT) without undertaking any further investigation, or will undertake a secondary assessment of suspected victimisation before consulting with other actors (e.g. BE, CZ, DE, FI, HU, SE, SK, UK, NO). In three Member States (FI, SK, UK) and Norway, the asylum authorities are competent to (officially) identify a victim, thus no consultation is necessary. One of the advantages of immediate referral is that the identification procedure will be undertaken by someone who is professionally trained in assessing the signs of trafficking. However, in cases where this official authority is exclusively a law enforcement body (as in CY, EE, HU, IE, LV, LT, LU, NL, PL), this can mean that the victim is obliged to 'cooperate' to some extent with the authorities and this may be traumatic for the applicant (e.g. s/he may mistrust the law enforcement officer, etc.). In (Member) States where NGOs or social services may identify victims (CZ, IT, LV), or where a specialist NRM is in place (UK), this stress may be somewhat reduced.

Do mechanisms for detection still apply even if an applicant is subject to 'Dublin' procedures?

If an applicant for international protection has previously applied for international protection in another (Member) State, and an application is judged to be the responsibility of that (Member) State in accordance with the Dublin III Regulation, the risk of a victim going undetected increases in some (Member) States. Only some (Member) States (CY, CZ, FI, HU, IE, NL, UK, NO) have mechanisms in place for the proactive detection of (potential) victims of trafficking in Dublin procedures, particularly as in (Member) States where the application of the Dublin procedure is assessed before the first interview, the opportunity for the authorities to screen the victim and/or otherwise detect possible victimisation is not available. Article 5 of the Dublin III Regulation introduces a new provision to conduct a personal interview with all applicants prior to deciding on the (Member) State responsible for processing the claim in all cases except where the applicant has already provided the information relevant to determine the Member State responsible by other means and except when the applicant has absconded. In most Member States a Dublin transfer no longer applies if a person is suspected to be a victim of trafficking either case to case (AT, CY, CZ, EL, EE, FI, MT, NL, PL) or at the discretion of the competent authority (BE, FR, SE, UK), or on specific grounds outlined in national law (CY, FI, SI, UK, NO). In such cases, the hosting Member State takes responsibility for processing the application. In remaining (Member) States, a transfer can only be stopped on grounds of being a victim of trafficking if a different administrative process is considered to apply – i.e. if a victim is granted a reflection period / residence permit for victims (BE, EE, FI, FR, IE, LU, NL, SE, UK, NO), if a (pre-trial) criminal investigation into the crime is initiated (DE, EE, FI, FR, IE, IT, LU,

NL, SE, UK, NO) or if official identification processes have been initiated (FR).

If a failed applicant who is a victim enters into forced return procedures does there remain an opportunity for detection and identification?

As compared to international protection procedures, third-country nationals in forced return procedures are much less likely to be proactively screened for indications of trafficking. In the case of Ireland and the United Kingdom, this is because it is expected that, since failed applicants will have already gone through previous stages of the applicant process, all necessary assessments in relation to the personal circumstances of the person that might have been relevant will have already been completed. The most common way in which victims are detected in forced return procedures is by actors who have been specifically trained - and/or who otherwise have expertise - in how to recognise signs of victimisation (e.g. as for section 4.1.2, specialist NGOs, health workers, legal advisors, etc. as well as the police). In some (Member) States (EE, FR, IE, NL, UK) this includes the authority responsible for enforcing return. Specialised NGOs also play an important role in detecting victims of trafficking in forced return procedures since they often have a focus on advocating for the rights of returnees and for monitoring the welfare of returnees. Such NGOs come into contact with victims through visits to detention facilities, through outreach work, or through their participation in the implementation of forced return (in some Member States some NGOs are permitted to act as independent observers of forced returns).

Authorities in forced return procedures seem to play a bigger role in official identification of victims than the authorities in international protection procedures. This is because authorities implementing forced return are usually necessarily law enforcement officers, and so they also have the power to investigate crime (including trafficking). Because of the implications of identifying (or not identifying) a victim in forced return procedures, a thorough assessment of suspected victimisation is undertaken before official identification in these procedures (as in CY, EE, IT, LV, NL, PL, SE, UK). In three (Member) States (FR, HU, NO) the authority responsible for return is competent to identify victims. In only five Member States (BE, EE, EL, MT, SK) are the authority(s) responsible for identification contacted immediately to conduct further investigation / secondary screening and no standard procedures exist in three others (IE, LT, SI).

What needs to be done to suspend the return order?

In all (Member) States there are mechanisms in place to suspend the return order at least until it is determined whether the victim is eligible for a residence permit / protection status as a victim of trafficking in human beings. A secondary assessment is taken in either by the criminal investigative authority / NRM (AT, CY, EE, FI, FR, LT, LV, SK, UK) or

by the authority competent to suspend a return order (BE, ES, FI, IE, IT, NL, PL, SE, SI, NO). In Ireland, the identified victim must first apply to the courts or the minister for a suspension of their return.

If a third-country national subjected to forced return self-reports, and the authorities responsible for return assess their declaration as false, an official appeal can be launched against the negative decision in the courts (e.g. through judicial review) in a few (Member) States (AT, ES, HU, IE, LT, NL, UK). However, this can be problematic for victims who will have to go through a long and sometimes difficult procedure. This underlines the importance of facilitating detection through adequate training of those coming into contact with potential victims in international protection procedures before they are issued a return order.

What kinds of training are provided to authorities responsible for international protection and forced return?

Most Member States provide some form of specialised training to support asylum authorities to detect victims of trafficking in international protection procedures (e.g. training in indicators of trafficking or profiling techniques) and in ten Member States this training is provided mandatorily. However, there is still room to introduce training to these authorities on a more regular and frequent basis in most (Member) States. Member States who provide training in how to interview vulnerable persons may also indirectly facilitate detection by creating an environment in which victims are more able to self-report. Indeed, in reception centres, staff are often trained in communication methods, relationship-building and counselling to potential victims.

Training to actors involved in forced return procedures is mandatory in only two (Member) States. However, this appears to be an emerging process since several Member States (FR, HU, NL, LU, PL) are planning to introduce it in the coming years.

All national authorities responsible for preventing trafficking of human beings play an important role in encouraging and implementing training to asylum and return authorities. In several (Member) States, NGOs or international organisations are partners in the training programmes, and EASO plays an important role in providing training in many (Member) States. The involvement of EU Agencies and international organisations helps also to harmonise the approach in line with international standards.

6. REFERRAL

What systems of referral are in place?

In the majority of (Member) States (AT, BE, CY, ES, FI, FR, ES, HU, IE, IT, LV, LU, MT, PL, SE, SI, SK, UK, NO), assistance specific to the needs of victims of trafficking in human beings can be provided while the (potential) victim of trafficking in human beings is still

in the international protection procedure, without referral to other procedures for protection / residence. This statutory assistance is provided either through tailored assistance in reception centres (e.g. specialist counselling), through specific state programmes for victims of trafficking in human beings or vulnerable persons, by state-funded non-governmental organisations or through the state welfare system (e.g. in the form of additional (targeted) benefits). The pre-conditions on access to this support vary between (Member) States and in some cases the pre-conditions (e.g. where they involve cooperation with the authorities) can deter victims from seeking assistance. In these situations, NGOs may play a role in informing the victim and supporting them through the process. Other (Member) States report that there is also a need to standardise practices in how to refer potential victims of trafficking in human beings onto such support systems, and that this could be done through greater awareness-raising with the authorities.

Some Member States (CY, EE, ES, FI, FR, HU, IT, LV, LT, LU, MT, PL, SE, UK) provide the possibility to applicants to simultaneously apply for international protection and to be granted a residence permit under Directive 2004/81/EC or permissions of stay under equivalent national measures. In all of these (Member) States, an official identification procedure is required for the victim to be granted the reflection period, even if they remain in international protection procedures (except in FI and SE). Evidence suggests, however, that most victims choose to stay in the process for international protection until a final decision on that application has been reached. Indeed, in at least two Member States (NL, PL), the procedure under Directive 2004/81/EC is temporarily suspended until a decision on the international protection application is issued first.

In eight (Member) States (AT, BE, EL, IE, NL, SI, SK, NO) it is not possible for applicants to remain in international protection procedures whilst accessing rights and services provided by Directive 2004/81/EC or equivalent national procedures.

If, following withdrawal, the victim is not granted a residence permit under Directive 2004/81/EC or equivalent national procedures, s/he can re-open the asylum procedure in some of these Member States (AT, BE, EL, IE, SI), although the victim is obliged to provide new evidence to support the claim and (in IE) to request permission from the Minister or (in SI) to prove that the statement of withdrawal was given under coercion or duress.

7. FURTHER INFORMATION

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from HOME-EMN@ec.europa.eu.

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