

Gender-specific measures in anti-trafficking actions

Report



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More information can be found on EIGE's website (www.eige.europa.eu) under the 'Gender-based violence' section.

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FOREWORD

Violence against women and girls persists over time, seriously harming our societies. It is imperative that this unacceptable phenomenon ends. It goes against fundamental values of the European Union, including the respect for human dignity, freedom and equality. It leaves deep wounds in victims, in families and in society. In fact, it is so widespread and pervasive that it forms part of every individual's life, in Europe and beyond, whether they experience it themselves, in their families, or in their social networks. If not victims, we are all bystanders. We share the responsibility to take action and promote change.

Structural aspects of discrimination and unequal power relations between women and men have historically placed women and girls at a disadvantage. To this day, women and girls in Europe experience the manifestations of gender inequality in all aspects of their lives, including exposure to different forms of violence. It is clear that ending violence against women and achieving gender equality must go hand-in-hand and are key to each other's success.

Trafficking in human beings is one of the many facets of violence against women and girls. Trafficking for the purpose of sexual exploitation is the most reported form in the European Union with the majority of victims of this crime also being European Union nationals. Trafficking for sexual exploitation is rooted in gender inequalities, and it affects women disproportionately. The gender-specific roots and consequences of this crime cannot and must not be overlooked in the way trafficking for sexual exploitation is understood and addressed. The European Union is committed to tackling this heinous crime and violation of women and girls' fundamental rights through a number of policies and actions that are gender-specific.

Identifying, protecting and assisting victims of trafficking, a key European Union priority for the eradication of trafficking in human beings, remains a challenge for many Member States. The European Commission affirms its commitment to support the Member States in achieving this goal, through concrete guiding actions. In line with the recent commitment, through a Joint Statement to working together against trafficking in human beings, of 10 European Union agencies, and on the occasion of the EU Anti-Trafficking Day 2018, this report represents one of these actions.

The European Institute for Gender Equality, in cooperation with the European Commission provides practical and gender-specific guidance to Member States on how to implement the provisions of the European Union legislative act addressing trafficking in human beings, the Anti-Trafficking Directive. We expect that, through such initiatives, Member States, together with the European Institutions and agencies, can make significant progress in the protection of tens of thousands of women and girls who are victims of this crime in the European Union.

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INTRODUCTION



INTRODUCTION

Following the 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' (European Commission, 2017b), the European Institute for Gender Equality is publishing the present report, in cooperation with the European Commission.

In this report, a gender perspective is applied as an analytical framework to examine the provisions and obligations under the Anti-Trafficking Directive and the Victims' Rights Directive. The Anti-Trafficking Directive introduces common provisions, taking into account a gender perspective, to strengthen the prevention of this crime and the protection of the victims. The analysis seeks to identify strengths and opportunities for improvement in the protection and response to the needs of victims of trafficking for sexual exploitation.

The report provides guidance to Member States on gender-specific measures to better identify, help and support victims of trafficking in human beings. As set forth in the above mentioned communication, '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'. To this end, the Commission will continue to support practitioners and authorities in Member States. Building capacities and disseminating good practices for detecting victims, focusing on guaranteeing access and providing appropriate, gender and child-specific assistance and effective remedies, are vital aspects of all EU-level efforts.

Trafficking for sexual exploitation is firmly established in the European Union's international legal and policy instruments as a form of violence against women. However, providing effective access to assistance, support and protection to victims remains a challenge for most Member States (European Commission, 2016b). In the operationalisation of anti-trafficking efforts, trafficking for different purposes is often seen as an undivided phenomenon, overlooking specifics such as the gendered nature and scope of trafficking for sexual exploitation. National strategies to address trafficking for sexual exploitation are rarely an

integral part or aligned with a broader strategy on combating violence against women.

More specifically, the report seeks to establish if the Anti-Trafficking Directive, read in conjunction with the Victims' Rights Directive, contains an exhaustive understanding of women-specific risks and vulnerabilities to trafficking in human beings for sexual exploitation. It analyses the extent to which the directives have the potential to fully protect and assist women and girls who make up the bulk of victims of trafficking for sexual exploitation. The report also examines the level of harmonisation of the directives with other European Union and international instruments on trafficking in human beings, violence against women and gender equality.

The first two chapters present the rationale for a gender-specific approach to trafficking for sexual exploitation: in the first chapter, by presenting the research and theoretical context, and in the second chapter through the legal and policy framework that establish trafficking for sexual exploitation as a form of violence against women. In Chapters 3 to 5, this rationale is used to analyse the provisions of the Anti-Trafficking Directive and the Victims' Rights Directive, when complementary, in relation to the identification of victims, support and assistance, and access to justice. Given the reported decrease of age in victims of trafficking arriving in Europe, Chapter 6 gives a brief analysis of the provisions of the directives that aim to address the specific vulnerabilities that girl-child victims can experience.

To complement this work and provide practical guidance, EIGE has developed a set of gender and child-specific recommendations and indicators to support Member States in the implementation of the Anti-Trafficking Directive and the Victims' Rights Directive. They are presented in Chapters 7 and 8, respectively. With these tools, EIGE will assist Member States in the interpretation and operationalisation of the provisions that describe the identification, protection and support of women victims of trafficking for sexual exploitation and in addition, will provide Member States with guidance on how better to promote a gender-specific approach to address trafficking for sexual exploitation. Chapter 9 concludes the report with the main challenges identified and future steps.

1. TRAFFICKING FOR SEXUAL EXPLOITATION AS A FORM OF VIOLENCE AGAINST WOMEN



1. TRAFFICKING FOR SEXUAL EXPLOITATION AS A FORM OF VIOLENCE AGAINST WOMEN

Gender-based violence is defined as a form of violence that is directed against a woman because she is a woman and/or that affects women disproportionately (Council of Europe, 2011) and that seriously inhibits the ability of women and girls to enjoy their rights and freedoms on an equal basis with men. More specifically, violence against women means 'all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life' (Council of Europe, 2011).

Violence against women is one of the fundamental social, political and economic aspects by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. The unequal distribution of power between women and men in society allows for a structural discrimination of women in all aspects of life (EIGE, 2017). Such discrimination negatively affects women's access to opportunities, including education and training, thus increasing their likelihood to live in poverty and to be vulnerable to violence, including trafficking for sexual exploitation (Orme and Ross-Sheriff, 2015).

Violence against women is a critical obstacle to the achievement of substantive equality between women and men. To combat it, gender stereotypes must be tackled, as well as harmful traditional practices and discrimination against women.

The Anti-Trafficking Directive (Article 2) defines trafficking in human beings as: 'the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'. The Anti-Trafficking Directive also includes in its definition of trafficking in human beings forced marriage situations (recital 11), i.e. where a marriage is entered into without the free and full consent of one or both of the parties because of threats, deceit or coercion (European Union Agency for Fundamental Rights, 2014).

Trafficking for sexual exploitation is part of the continuum on experienced violence in the life of an individual victim of trafficking in human beings, and it constitutes a severe form of

violence against women (World Health Organisation, 2003, The Inter-Agency Coordination Group against Trafficking in Persons, 2017), being one of the most evident manifestations of gender inequalities. Most women and girls trafficked for sexual exploitation also report having experienced violence prior to their trafficking experience (European Parliamentary Research Service, 2016). In fact, after experiencing violence, a woman is more vulnerable to trafficking both because she is less self-confident and has lower self-esteem, and because she wants to escape her abusive environment (European Parliamentary Research Service, 2016).

Globally, women and girls comprise 71% of the total number of detected trafficking victims (United Nations Office on Drugs and Crime, 2016a). Forced marriage is a relatively less researched phenomenon and there is no solid statistical data available. However, Eurostat (2015) notes that in their category of 'other forms of exploitation' (into which forced marriage falls), at least 52% of the victims are female. Furthermore, according to Europol (2016), 70% of the identified victims and suspects of trafficking in human beings in the European Union are in fact EU nationals.

Regarding trafficking for the purposes of sexual exploitation, 96% of detected victims in the world are female (United Nations Office on Drugs and Crime, 2016a). In the European Union, it is the most prevalent form of trafficking in human beings, and 95% of registered victims of trafficking for sexual exploitation are women or girls (European Commission, 2016c). Most of them are EU nationals from central and eastern Europe (Europol, 2016).

Although measuring trafficking in human beings is a very complex task, various international and European institutions and organisations, including the European Commission (2016c), argue that there are solid grounds to expect that the actual numbers of victims of trafficking are substantially higher than the number of registered victims. Provisions on data collection tend to omit a gender perspective, and therefore monitoring efforts in relation to trafficking from a gendered perspective is a challenge (Liévana and Waisman, 2017).

The current humanitarian crisis, related to natural disasters and conflict in the Middle East and African countries, inter alia, has aggravated the risk of trafficking by causing a rapid increase in the number of refugees arriving to Europe, leaving girls and



unaccompanied minors particularly vulnerable. Child trafficking is reported as one of the steeply increasing trends in the Member States. Statistical data for 2013-2014 shows that of the 15 846 persons registered as victims of trafficking in the EU during that period, at least 2 375 were children (European Commission, 2016c).

In 2016, nearly 40 % of all refugees arriving to Europe were children, including unaccompanied minors (United Nations Data, 2017); many of these were identified as victims of trafficking in human beings (European Union Agency for Fundamental Rights, 2016). The United Nations General Assembly Report on the Girl-Child (2017a) emphasises that 'girls are particularly at risk, facing unsafe transportation modes, abuse at the hands of smugglers and traffickers, forced labour, rape and sexual exploitation'.

As noted by the European Commission, trafficking in human beings requires focusing on victims' needs to address prevention effectively, as prescribed in the Anti-Trafficking Directive. This means not only addressing the root causes that make people more vulnerable to trafficking — such as poverty, gender inequality, violence against women, ethnic discrimination, societal marginalisation and irregular migration — but also ensuring that those who profit from the crime and exploit the victims are brought to justice.

1.1. Victims' experiences

Consequences of the abuse

Women victims of trafficking for sexual exploitation experience similar patterns of exertion of control and violence as victims of other forms of violence against women. They experience abuse through threats and psychological control, sexual and physical violence, economic violence, deprivation of freedom, inter alia (European Institute for Crime Prevention and Control, affiliated with the United Nations, 2016). These lead to severe and sometimes life-threatening consequences.

Their health is deeply impacted by the exploitation they experience, on a psychological level (including self-harm, lack of self-esteem, shame, guilt, helplessness, memory loss, post-traumatic stress disorder, sleep disturbances, depression, isolation, alcohol abuse or abuse of other drugs, and many more), and on a physical and sexual level (for example, chronic pain, fatigue, deterioration of pre-existing conditions, reproductive or sexual health complications, among others) (Zimmerman, Hossain and Watts, 2011).

A study by the European Commission (2016f) found that many of the harms arising from trafficking for sexual exploitation are gender-specific, including vaginal injuries, increased risk of sexually transmitted diseases and HIV and unwanted pregnancies.

The rates of re-trafficking of those who manage to escape from a situation of exploitation are high, particularly for young people during the 2 years that follow their trafficking experience (Jobe, 2008, cited in Zimmerman et al., 2011), while the recovery from lasting damage is long and resource-intensive.

Barriers to disclosure and assistance seeking

Despite the severe consequences of being trafficked, victims often do not disclose their trafficking situation while undergoing the processes of identification, assistance and protection. The barriers for these include (inter alia):

- not identifying oneself as a victim of trafficking (Lutenbacher, Cohen and Mitzel, 2003);
- not being informed about available resources (Lutenbacher, Cohen and Mitzel, 2003);
- experiencing a physical and mental overload that impedes them from defending themselves and seeking help (Cuesta, 2009);
- lacking financial means or freedom of movement;
- being/feeling isolated;
- feeling disempowered or helpless;
- being emotionally dependent on the offender, as recruitment is often done by people known and trusted by the victim, such as friends or family (Fleisher et al., 2008, Surtees, 2008, Zimmerman et al., 2006, cited in Zimmerman et al., 2011).
- lacking language skills (Kaittila, 2017);
- fear — of retaliation from the perpetrator, of the authorities (e.g. that adverse consequences on account of their legal status may arise), of not being able to protect their children (e.g. Petersen, Morocco, Goldstein and Clark, 2005), inter alia;
- victim-blaming attitudes (Lutenbacher et al., 2003) and the stigma associated with sex work and with being a victim;
- lack of confidence in the penal system to protect them (Cuesta, 2009).

It is also common that victims of trafficking in human beings refuse assistance because the requirements and conditions presented to them by state officials do not guarantee the security of the victim's family members. Moreover, there are inherent uncertainties in many administrative practices, including residence permits and the inability of the authorities to provide more secure future perspectives, such as employment and economic stability. Women are frequently accompanied by children and there is a clear lack of family shelters, or other facilities, where these women could be accommodated together with their children and be supported and assisted as a family (Liévana and Waisman, 2017).

In order to understand the victims' decision-making process, one has also to examine their social status, which is often affected by marginalisation and exclusion, migration and border policies, as well as legal and economic uncertainties. In addition, they may have had previous negative experiences with law enforcement or the judicial system, such as experiencing victim-blaming attitudes.

Stereotyping and victim-blaming attitudes

Stereotyping ⁽¹⁾, especially by the criminal justice system, hampers victims' credibility, hindering their access to identification, protection, support and justice (Liévana and Waisman, 2017). Research shows that, for example, in the case of sexual assault, criminal justice professionals expect victims to act according to gender and victim stereotypes, in spite of being more aware of the dynamics of victimisation (Menaker and Cramer, 2012).

Given that perpetrators are often closely connected to the victim, there is a possibility that, prior to recruitment, there is an initial agreement on the part of the victim on entering the trafficking routes, even though she might not be aware of the reality she is going into and conditions she is going to face (Cuesta, 2009). This can lead to victim-blaming attitudes and discourses, and might even affect the victim's credibility, especially if she does not fit into an 'ideal victim' stereotype.

Stereotypical ideas of women as mothers also play a role in the experiences of victims for sexual exploitation, hindering the exercise of these women's right to family life and to be mothers. They are often not considered 'fit' to take care of children and, consequently, are deprived of custody of their children. For example, when women do not accept a reflection period (because they don't self-identify as trafficking victims or because they are afraid), children are often placed in childcare facilities or foster families by the authorities. Interpretation of the best interests of the child is often based on the stereotypical perception that a victim of trafficking for sexual exploitation cannot be a good mother, because she is seen as a 'prostitute'.

Victims who experience several forms of discrimination, as is often the case with victims of trafficking for sexual exploitation, face even stronger negative stereotypes, for example, migrant women at risk of deportation might face the preconception that they are pretending to be victims of trafficking to avoid sanctions or deportation.

Through these social mechanisms, women victims of violence, including trafficking for sexual exploitation, end up experiencing structural secondary forms of violence. As a consequence, mistrust in the judicial system increases, leading victims to refuse assistance even when offered to them. The refusal to resort to the provided assistance can have an impact on the number of identified victims and the low number of investigations, prosecutions and convictions, as trafficking in human beings is first and foremost a hidden crime and the victim's testimony is often a precondition for the successful criminal procedure. This, in turn, can hamper prevention strategies, as the authorities are not aware of the trafficking situations and their scope.

(1) The most common stereotypes that victims face concern how she should behave and look, including absence of a sense of agency, submissive, visibly depressed and presenting symptoms of being disturbed (such as crying). Common stereotypes on how a woman should behave also include being sensitive, caring, passive and not sexualised.

1.2. Responses to trafficking

Similarities between the criminal justice responses to trafficking in human beings and other forms of violence against women, for example, sexual violence, are clearly expressed. The majority of sexual offences have been demonstrated to never come to the attention of the authorities and only a minority of the victims report them to the police. The number of investigations is considerably higher than that of the prosecutions and the number of convictions in turn smaller than the number of prosecutions (Kainulainen, 2017).

A review of the reporting patterns of trafficking in human beings shows a similar tendency. The number of cases reported decreases with each level of the criminal justice process: the number of investigations is generally higher than the number of prosecutions, which in turn is higher than the number of convictions. On average, 26 % of investigated cases have been reported to end in first-instance court convictions (United Nations Office on Drugs and Crime, 2016a). One reason for this is that difficult-to-prove means used by the offender to control the victim of trafficking are difficult to identify and prove in the criminal procedure (Kainulainen, 2017). Other reasons include the previously discussed victim-blaming attitudes, victims dropping out of the criminal proceedings, inter alia.

In addition, women comprise a relatively large share of convicted trafficking offenders, compared to most other crimes. Court cases and other qualitative data indicate that women are often used to recruit other women. There is evidence that, particularly in the field of trafficking for sexual exploitation, many former victims are, at some point, offered the opportunity to recruit new victims to reduce their debt to traffickers or to end their own exploitation (United Nations Office on Drugs and Crime, 2016a).

Trafficking for sexual exploitation has gained a place on the policy agenda. However, specifically concerning forced marriage, there is very little discussion of the perpetrators. The focus is on the victims and providing them with information and support. Regarding other forms of violence against women, the argument is being made that in order to eliminate violence against women, there needs to be a societal change in attitudes, stereotypes and norms. Conversely, in relation to forced marriage, for example, the focus seems to be on educating the victim about support and escape, educating social and education workers and, as required by the Istanbul Convention, criminalising those who carry it out (Allwood, 2017).

Benefits of using a gender perspective in the analysis

The legal definition of trafficking in human beings is complex; nonetheless, the definition seeks to capture the psychological dynamics of exploitation inherent in violence against women by including the more subtle aspects, in particular the 'abuse of a position of vulnerability' and 'the abuse of power', in the definition. Although these means have proved to be rather difficult to apply and interpret and the practitioners have different views on their scope (United Nations Office on Drugs and Crime, 2013), they facilitate understanding and processing of



the psychological dynamics of exploitation. The consent of the victim is irrelevant if any of the means are used.

It is crucial to differentiate victims of trafficking for sexual exploitation from victims of other forms of trafficking (such as forced labour), and to contextualise the former as victims of violence against women. This differentiation allows for a better understanding of how victims got into such situations, what is contributing to this situation and their needs (Cuesta, 2009).

A gender perspective may advance the identification of trafficking victims and application and interpretation of criminal law. Understanding the dynamics of violence against women, including the elements of power and control, the gradual impairment of the violent situation and the complexity of the aspects causing vulnerability to exploitation and violence, may assist the criminal justice practitioners to apply and interpret

the definition of human trafficking and achieve convictions. As the exploitation is traumatic and leads to severe physical and psychological consequences, medical reports, psychological evaluation of the trafficking victims and witness statements by psychiatrists and psychologists should be used in the criminal procedure as evidence (Ombudsman for Minorities, 2014).

The analytical examination of the policies, legislation and measures against trafficking in human beings from the perspective of violence against women will also help to comprehend and manage the gap between the numbers of estimated and identified trafficking victims and the low number of investigations, prosecutions and convictions. Assessing the implementation of anti-trafficking legislation and its impact from a gender perspective also enhances the tailoring of future policy and legislative measures against trafficking in human beings.

2. LEGAL AND POLICY FRAMEWORK



2. LEGAL AND POLICY FRAMEWORK

Under international and European Union law, trafficking of women for sexual exploitation is firmly established as a form of violence against women. This chapter presents a brief overview of the most relevant legislative instruments that address trafficking of women for sexual exploitation.

2.1. European Union Framework

The EU's anti-trafficking strategy identifies gender inequalities as being amongst the root causes of trafficking in human beings. The EU recognises in its policy and legal framework that trafficking in human beings is a gender-specific phenomenon and it calls on Member States to adopt gender-specific measures against trafficking in human beings.

The Anti-Trafficking Directive, adopted in 2011, stresses the need to adopt a gender-specific approach to trafficking in human beings and highlights that prevention, assistance and support measures must be gender-specific. The directive was accompanied by a European Union Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (European Commission, 2012), as a complementing policy framework. It played an important role in implementing the gender dimension of the directive, including its provisions on victims' protection and assistance. This included a number of important studies undertaken by the European Commission, including one on the gender dimension of trafficking in human beings (European Commission, 2016f) and a comprehensive document available in all EU languages, 'The EU rights of victims of trafficking in human beings' (European Commission, 2013).

The Victims' Rights Directive, being a horizontally applicable instrument, also lays down provisions which apply to victims of trafficking in human beings. It takes into account victims of trafficking as particularly vulnerable victims of violence against women and, therefore, they are covered by its provisions.

Additionally, Directive 2004/38/EU of the European Parliament and of the Council of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and Council Directive 2005/85/EC of 1 December 2005, on minimum standards of procedures for granting and withdrawing refugee status, are also relevant to gendered provisions of victims' assistance of the Anti-Trafficking Directive. 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, in line with a victim-centred approach, provides for criminal sanctions against employers of victims of trafficking who are not residing legally and who are third-country nationals. This is crucial from

the perspective of women who may be potential victims of trafficking for labour exploitation, while simultaneously being victims of sexual exploitation and/or forced marriage.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, specifies that, in relation to revocation of subsidiary protection status, the best interests of the child^(?) must be taken into account, as well as the needs of other vulnerable persons, such as victims of trafficking and victims of serious sexual, psychological and physical violence. Notably, this directive includes female genital mutilation, forced sterilisation and forced abortion (recital 30), as matters that ground a 'well-founded fear for persecution' (i.e. an essential element for the granting of international protection). However, it makes no explicit reference to either forced marriage or victims of trafficking. When listing 'acts of persecution', it does define acts of physical or mental violence to include acts of sexual violence, as well as 'acts of a gender- and child-specific nature' (Article 9(2)(f)).

A number of European Parliament resolutions have addressed trafficking in human beings from a gender perspective. In particular, the Parliament report on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), of 26 February 2014, reaffirms the links between trafficking and prostitution and stresses sexual exploitation as a form of violence against women. The report calls for broad, gender-specific measures to combat trafficking for sexual exploitation, including preventive, educational, protection and assistance measures for victims, as well as punitive measures for perpetrators.

The European Parliament resolution of 12 May 2016, on implementation of the Anti-Trafficking Directive (2015/2118(INI)) focuses on its implementation from a gender perspective. It strongly emphasises gendered vulnerabilities and stresses that the gender dimension of trafficking in human beings entails an obligation for Member States to address it as a form of violence against women and girls that must also be consistently monitored in the implementation of EU anti-trafficking legislation. The resolution also makes reference to trafficking for forced marriage (as well as 'sham marriage'), recognising it as a form of trafficking in human beings with both sexual and economic elements of exploitation, to which girls are particularly vulnerable.

The European Parliament has stated in its above mentioned resolution on trafficking from a gender perspective that 'a one

^(?) The European Asylum Support Office (2018) developed relevant tools (checklist and assessment form) to support the process of the determination of the best interests of the child.



size fits all' strategy is not efficient and that different forms of trafficking need to be addressed with specific and tailored policy measures, which take into account the specifics of different forms of exploitation. Efficient and productive measures in responding to one form of exploitation can prove to be inadequate and even harmful for another.

Moreover, the European Union action plan for the integration of third-country nationals and European agenda on migration (European Commission, 2016g) refers to the gender dimension of migration, and to the situation of migrants, particularly refugee women, noting that they face more serious challenges across all spheres of integration, including access to rights and protection. Both documents call for targeted, tailor-made initiatives to ensure equal access for these women to integration measures. Though neither document directly refers to the crime of trafficking, they are important for assessing the vulnerability of migrant and refugee women, including those who have migrated as a result of the push factors of poverty, destitution, social exclusion and isolation as well as the violence, discrimination and risks to life and limb that refugee women may have been subjected to before and/or during their migration to Europe.

In the Report on Equality Between Men and Women in the European Union (European Commission, 2017c), trafficking is addressed in Section 4, 'Combating gender-based violence and protecting and supporting victims' and objective 8 of the European Union gender action plan 2016-2020 (European Commission, 2015a) calls for 'strong gender sensitive legislation against trafficking of human beings as well as investing in governmental and non-governmental services to survivors, for their empowerment, well-being and full reintegration into society'. Similarly, the European Union Strategic engagement on gender equality 2016-2019 (European Commission, 2015b) in its Objective 3.4 ('Combating gender-based violence and protecting and supporting victims') asks for the continuous monitoring of the implementation of the Anti-Trafficking Directive by Member States, ensuring that gender-dimension is addressed.

Furthermore, the EU agencies have also formalised their commitment to work together in a coordinated, coherent and comprehensive way, through a joint statement. This statement was signed on the EU Anti-Trafficking day in 2011, by seven EU Justice and Home Affairs Agencies, including EIGE. As a result, the Agencies involved have since met regularly to achieve common priorities, exchange knowledge and strategies. The Agencies have also developed a number of materials, studies, and trainings on this topic (European Commission, 2016a). This commitment was renewed in 2018, through another Joint Statement, this time signed by 10 agencies, building on the synergies created in 2011 (European Commission, 2016a).

For the protection of girl-victims of trafficking, the framework on the rights of the child, including the rights of migrant and refugee children, who constitute the fastest growing group of identified trafficking victims in Europe is of particular significance. In this regard, Directive 2011/93/EU of the European Parliament and of the Council, of 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, is described as fully complimentary to the

Anti-Trafficking Directive, as it recognises that 'some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation'. However, the directive is gender-neutral and does not refer to any gender-specific vulnerabilities of potential victims and does not invoke the concept of girl-child as a category of victims of sexual exploitation.

In the context of children and migration, the European Union has made some progress in building the foundations for a gender-specific policy framework on child victims of trafficking, sexual violence and exploitation. However, in the context of the current migrant crisis, this progress seems insufficient in terms of meeting the needs of the girl-child. For example, the European Union Agenda for the Rights of the Child (European Commission, 2011) is notably gender neutral. Although this document notes that in the area of trafficking 'it is important that specific needs of children are fully taken into account', it does not refer to gendered aspects of trafficking, or to specific vulnerabilities of girl victims.

The revised European Union guidelines on the promotion and protection of the rights of the child (European Union External Action, 2016), acknowledge gender-specific vulnerabilities throughout the document, despite making no specific recommendations on how to meet the needs of the girl-child affected by violence against women and exploitation. The communication by the European Commission of 12 April 2017 on the protection of children in migration (European Commission, 2017a) explicitly recognises the need for urgent improvement of specialised services for refugee girls, and sex-disaggregated data collection on migrant children.

2.2. International Framework

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (United Nations, 1979), is considered an 'international bill for women's human rights that provides a gender-sensitive interpretation of human rights law and protects women from sex- and gender-based discrimination with regard to all the human rights contained in the Universal Declaration of Human Rights and other human rights instruments' (United Nations, 1948). CEDAW General Recommendation No 32 (United Nations, 2014b) recognises both trafficking in women and forced marriage as 'gender-related forms of persecution' constituting legitimate grounds for international protection in law and practice. It reiterates CEDAW's general position on a disaggregated approach to violence against women. General Recommendation No 35 (United Nations, 2017b) updates General Recommendation No 19 and specifically notes that all references to women include girls (Article 14).

Of particular importance in relation to the gender-specific provisions is the Istanbul Convention (Council of Europe, 2011), which is regarded as the most comprehensive European instrument concerning violence against women. It treats the problem of violence against women holistically and introduces a legally binding framework to eliminate it. Although the Istanbul Convention does not deal with trafficking for sexual exploitation per se, it does so indirectly through its provisions

concerning physical, psychological and sexual violence, which can be identified as constitutive elements of trafficking for sexual exploitation, specifically, in its means and purposes, and must be seen as part of the continuum of violence against women, where different forms of abuse of women may form a chain of elements eventually amounting to a case of trafficking. It is of note that Article 3 of the Istanbul Convention specifically states that the term 'woman' also includes girls under the age of 18, emphasising the importance of extending all of their respective provisions to girls and young women.

In relation to forced marriage, the Istanbul Convention recognises it as a serious form of violence against women. It makes provisions for the criminalisation of forced marriage as intentional conduct (Article 37) and mandates measures for the facilitated dissolution of such marriages (Article 32). It offers practical assistance to victims of this crime, through its provisions for an autonomous residence permit or via the restoration of residence rights lost as a result of the crime (Article 59). It should be noted that despite the fact that forced marriage is criminalised in less than 10 Member States, a coherent framework on forced marriage and trafficking is missing at European level.

The United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, otherwise known as the Palermo Protocol (United Nations, 2000a), together with the United Nations Convention against Transnational Organised Crime (United Nations, 2000b) and its interpretative notes can be considered as the most widely used international reference in the anti-trafficking framework currently in force. In the European Union, the Palermo Protocol applies to the territories in which the Treaty establishing the European Community (2002) is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof and the protocols annexed to it.

The Palermo Protocol reaffirms the recognition that trafficking cannot be dissociated from the exploitation of prostitution, stating that the consent of the victim to the intended exploitation is irrelevant, recognising that the victim of trafficking should not bear the burden of proof, and providing protection measures for victims. As an international legally binding instrument, the Protocol was designed to jumpstart national laws, promote cross-border judiciary and police cooperation and to harmonise regional legislation against trafficking in women of which the Anti-Trafficking Directive is a part.

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) establishes explicit links between sexual exploitation, prostitution and trafficking, and recognises the incompatibility of trafficking, sexual exploitation and prostitution with the fundamental principles of human dignity and equal treatment. It also acknowledges the status of victims exploited in prostitution explicitly prohibiting their penalisation, advocating instead, the punishment for those who 'procure, entice or lead' others into prostitution.

The Beijing Declaration and Platform for Action (United Nations, 1995) elaborates in detail the sex- and gender-based nature of discrimination against women and girls, including different forms of sexual violence, trafficking and exploitation. The declaration pays specific attention to forced and early marriage. It also provides a comprehensive roadmap for eradicating different forms of gender inequality and violence against women, including educational, capacity-building, funding and assistance measures.

Additionally, the sustainable development goals, which came into force in January 2016 in the frame of 2030 Agenda for Sustainable Development (United Nations, 2015), listed in Goal 5.2 asks the objective to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking, and sexual and other types of exploitation.

It might also be relevant to consider the framework that deals with topics such as migration, asylum and refugee laws that, in varied and indirect ways, also attempt to address gender-specific factors leading to trafficking, sexual exploitation and sexual violence. The United Nations Convention Relating to the Status of Refugees (Office of the United Nations High Commissioner for Refugees, 1951), and its Protocol relating to the Status of Refugees (Office of the United Nations High Commissioner for Refugees, 1967), among other international instruments, affirm the principle of *non-refoulement* ensuring that nobody is sent back to persecution, including the gender-based persecution that female victims of trafficking may be subjected to upon return.

In relation to forced marriage, the Universal Declaration of Human Rights (United Nations General Assembly, 1948) in Article 16 provides for equality within and upon dissolution of marriage, as well as for marriage to be entered into only upon consent of both parties. CEDAW attributes forced marriage to the range of gender-based violence that maintains women in subordinate roles and contributes to lower levels of education and work opportunities (General Recommendation Nos 19 and 21). The International Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (United Nations Human Rights Office of the High Commissioner, 1962) treats forced marriage as a violation of fundamental human rights (Article 1).

In addition to this, the crime of forced marriage has been recognised as amounting to sexual slavery in some instances. Thus, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (United Nations Human Rights Office of the High Commissioner, 1956) categorises forced marriage as a 'practice similar to slavery' (Section I, Article 1(c)). This understanding of forced marriage has been reiterated in recent years through international case-law, which has also recognised the aggravated harms inflicted upon the victim through forced conjugal association, leading to severe mental suffering and social stigma, and has recognised the relationship between the perpetrator and the victim of forced marriage as that of ownership⁽²⁾.

⁽²⁾ See *Prosecutor v Brima*, Case No SCSL-2004-16-A, Special Court for Sierra Leone 2008.



Essential protection, from the child perspective, is also provided by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as 'the Lanzarote Convention' (Council of Europe, 2007). This Convention mandates the criminalisation of various kinds of sexual offences against children, ensuring that contracting States adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators. It should be noted, however, that the Lanzarote Convention is also gender-neutral and does not acknowledge either sex- or gender-based vulnerabilities of the girl-child in

relation to sexual violence or exploitation and makes only very sporadic references to trafficking ⁽⁴⁾.

The Convention on the Rights of the Child (United Nations Human Rights Office of the High Commissioner, 1989) and its Optional Protocol on the sale of children, child prostitution and child pornography (United Nations Human Rights Office of the High Commissioner, 2000) recognises girl-children as a particularly vulnerable group that is 'disproportionately represented among the sexually exploited', as well as the fact that gender discrimination and harmful traditional practices (of which forced marriage is one) are among the root causes for sexual exploitation.

⁽⁴⁾ The Lanzarote Convention has been criticised for using problematic terms such as 'child prostitute', which, according to child-rights and women's rights organisations should not be applied to children in the context of their sexual exploitation in prostitution (Interagency Working Group on Sexual Exploitation of Children, 2016).

3. IDENTIFICATION OF VICTIMS



3. IDENTIFICATION OF VICTIMS

Identification is central to the ability of trafficking victims to benefit from the assistance, support and protection measures contained in Articles 11-17 of the Anti-Trafficking Directive.

Female victims of trafficking for sexual exploitation face specific barriers to the process of identification related to the nature of these crimes. According to the European Commission study on the gender dimension of trafficking in human beings (European Commission, 2016f), victims of trafficking for the purposes of sexual exploitation can be difficult to identify in mixed populations of women in prostitution, which include those that are independent as well as those that are coerced. Moreover, in some Member States prostitution is legal, which allows traffickers to use the legal framework to further exploit victims more easily (Europol, 2016).

Victims may also fall within the wider population of migrants and thus may be fearful of both traffickers and authorities (European Commission, 2016f). Such fears may not be irrational ones: victims of trafficking are sometimes treated as criminal offenders themselves in encounters with the authorities, despite the provisions of Article 8 of the Anti-Trafficking Directive, which entitles Member States ‘not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit’ as a consequence of their trafficking experience. Civil society reports that the principle of non-punishment is yet to be fully implemented across the EU (European Commission, 2016a).

For victims of forced marriage, factors including exploitation in a private home, the involvement of family members, and the possible threat of honour-based violence, make identification difficult, and can preclude victims from self-identifying. The above conditions make it less likely that victims will come to the notice of those who may be able to assist them and increase the likelihood that, when victims do come into contact with authorities, they are overlooked or not accurately identified as victims of forced marriage. Furthermore, Member States have reported an increase in cases of forced marriage and sham marriages in the context of trafficking in human beings (European Commission, 2016c). With the migration and refugee crisis in North Africa and the Middle East, Europol estimates that trends in sexual exploitation will increase, as well as forced and/or sham marriages, as a way to gain legitimate residence in the EU (Europol, 2016).

A press release issued in May 2018 by the European Commission also stresses that the EU is still facing a delicate situation in regard to migratory pressure. Increased arrivals along the east and the west Mediterranean routes have been observed (European Commission, 2018b), which reinforces the need to consider the risk of victimisation of migrants.

Additional barriers can arise for victims lacking legal status. Such victims are often dealt with by the authorities as immigration offenders/irregular migrants. In these circumstances, the lack of legal status can be used as a control mechanism by those who are exploiting them. Victims are more vulnerable without immigration status, and as a result much less likely to flee or to approach the authorities for help. The fact that such victims are unlawfully present in a Member State can give rise to a ‘culture of disbelief’ on the part of the State’s authorities, who sometimes assume that an individual is lying to secure an immigration advantage (e.g. a residence permit ⁽⁵⁾ or the right to reside as an asylum seeker (if the person also makes this kind of claim ⁽⁶⁾). Communication between victims and authorities can be further hampered by language barriers, which can inhibit the former’s ability to communicate the true nature of their situation.

Because of these and other issues in practice, the identification of victims of trafficking for sexual exploitation and forced marriage is difficult. In order to increase identification of such victims, different measures are necessary.

3.1. Implications of the definition of ‘victim’

A key issue for victim identification, is the understanding of ‘victim’, as contained in the directive.

The Anti-Trafficking Directive defines the offence of trafficking in Article 2. A victim, for the purposes of support and assistance measures, is someone for whom a competent authority finds ‘reasonable grounds’ to believe they have been subjected to a trafficking offence which, in turn, is defined in Article 11(4) as ‘the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’

It is relevant that the directive recognises subtle forms of control, such as abuse of power or abuse of a position of vulnerability, which can widen the scope of victims able to benefit from the assistance and protection provisions. There have been reported difficulties, however, in ensuring that all victims can

⁽⁵⁾ Pursuant to Council Directive 2004/81/EC of 29 April 2004.

⁽⁶⁾ When a person makes an asylum claim within a State signatory to the 1951 Convention Relating to the Status of Refugees (‘Refugee Convention’) — all European Union States are signatories — the person has the right to remain in the country until the final conclusion of that claim, including the full conclusion of all appeals.



access such assistance, owing to Member States adopting a restrictive understanding of trafficking and investigating trafficking offences under different criminal legislation (Eurojust, 2012).

In common with other forms of violence against women, the issue of consent arises in the process of being identified as a victim in the Anti-Trafficking Directive. Often, victims of trafficking must show that they did not consent to their movement and exploitation. This can be difficult for victims of trafficking for sexual exploitation, particularly those who are perceived to have willingly entered prostitution who, similarly to victims of rape and other forms of sexual violence, can face victim-blaming attitudes, including within the criminal justice system (European Parliament, 2016a).

The understanding of concepts such as coercion and deceit often fall into grey areas that might overlap with the notion of consent. While in some situations, the presence of vulnerability (understood as individual or contextual factors or conditions that facilitate situations of trafficking by increasing a person's or a group's susceptibility, for example, being a woman, a child, belonging to a minority group, lacking legal status, inter alia) is taken as evidence or proof that there was an abuse of vulnerability as part of defining a trafficking situation. In others cases, it can happen that the absence of such vulnerabilities from the beginning leads to the conclusion that the situation does not constitute trafficking (United Nations Office on Drugs and Crime, 2016a).

Nevertheless, it should be noted that consent is fabricated in a specific social, political and economic context that deeply impacts one's choices and space for action (Kelly, 2003). Demanding evidence of force, fraud, or coercion as grounds to establish that a certain situation constitutes trafficking means overlooking the larger characteristics of the context in which it happens, which can be highly coercive and can limit the victim's choice themselves (Zimmerman, 2005).

Case study (Case No B 1689-12, Court of Appeal for western Sweden 2012)

In this case, a 14 year-old Serbian national was recruited for the purpose of sexual exploitation, and was taken to Sweden under the false pretence of becoming the wife of one of the defendants, following an agreement and payment of EUR 1 000 to the victim's father. The victim was kept locked up and sexually exploited. Based on information gathered in the case and the witness' statement, it was possible to reach the conclusion that there had been a sexual relation between the girl and one of the defendants. However, the victim's testimony was not considered sufficiently credible and reliable for a conviction.

The different means identified above in the directive make any apparent consent given by the victim irrelevant. However, victims are often relabelled, for example, as prostitutes or illegal immigrants (Kingshott and Jones, 2016), especially if they do not behave according to stereotypical roles of women and victims (Menaker and Cramer, 2012).

These can bring difficulties to the implementation of the directive, which limits victims' access to assistance and protection. Thus, proper training in victim identification is crucial to avoid stereotyping and misinterpretation of several facets of trafficking for sexual exploitation.

The approach in the Anti-Trafficking Directive vis-à-vis recognition of victimisation further looks to ensure that any intersectional concerns, such as the nationality of a victim, should not prevent their identification. Recital 33 of the directive states that it respects the rights and principles enshrined in the European Union Charter on Fundamental Rights (2012), which prohibits discrimination on a number of grounds. The need to disconnect recognition of victimisation and the support of victims, from specific characteristics of the victim has similarly been recognised in the Istanbul Convention, which requires that Member States secure the rights of victims without discrimination on any grounds, including membership of a national minority, migrant or refugee status (Article 4).

There are additional, specific measures in the Anti-Trafficking Directive applicable to third-country nationals, who represent a significant proportion of victims who have been trafficked for the purpose of sexual exploitation. Article 11(3) of the Anti-Trafficking Directive recommends that Member States do not make the provision of support and assistance (and therefore identification) contingent on the cooperation of victims in criminal proceedings. This article is 'without prejudice' to 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. The latter requires that Member States identify and provide all victims of trafficking with a short-term residency permit (Article 6), while simultaneously allowing Member States to restrict medium-term permits and thus support and assistance for a longer duration to victims who are cooperating with authorities (Article 8). This, however, should not act as a barrier to the identification of victims; rather, linked to the duration of time for which they receive support.

Case study (*Rantsev v Cyprus and Russia*, No 25965/04, ECHR 2010)

In this case, the Cypriot police failed to identify or investigate a situation of trafficking, leading to the death of a young Russian woman. The Cypriot legal regime, at that time, permitted the entry of migrant women on temporary 'artiste' visas to work in cabaret clubs. Those entering on this visa were rendered dependent on their employer for their immigration status. At the time, it was known that many of those entering Cyprus on such visas were engaged in prostitution and faced harsh conditions and exploitation at the hands of their employers. The Cypriot police overlooked obvious indicators of trafficking when a woman was brought to the police station by her employer, who requested her deportation on the grounds that she had left her place of employment. The woman was not identified as a potential victim of trafficking. The complaint was dismissed and she left the police station with her employer. Not long afterwards, she was found dead, having fallen while attempting to escape from a fifth floor apartment. After investigation, Cypriot authorities attributed her death to an accidental fall and not as the result of a criminal act.

Difficulties can also emerge in identifying national minorities who have been victims of trafficking for forced marriage. In the case of *M. and Others v Italy and Bulgaria* (No 40020/03, ECHR 2012) the European Court of Human Rights was critical of the Italian police's handling of a case of forced marriage, which the Court accepted could have amounted to human trafficking (United Nations Office on Drugs and Crime, 2012). In finding a violation of Article 3 of the European Convention on Human Rights, the Court found that the Italian authorities had not instigated a thorough investigation on the basis that they had wrongly understood the situation as a traditional 'Roma marriage' (United Nations Office on Drugs and Crime, 2012). This case highlights the difficulties faced by women from certain backgrounds, such as those from the Roma community, when attempting to access justice as existing prejudices and stereotypes can act as an obstacle.

The question of who constitutes a victim is dealt with directly in the provisions of the Victims' Rights Directive. Article 2 defines a victim as 'a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was caused directly by a criminal offence'. In the context of women trafficked for the purpose of sexual exploitation, this broad approach to identification is very important, specifically when considered in conjunction with the more onerous understanding of victimhood contained in the Anti-Trafficking Directive.

Victims of trafficking for sexual exploitation often face negative and victim-blaming attitudes when attempting to establish victimisation (European Parliament, 2016a). This is not the case for other victims of crime, where there generally exists no formal

mechanism for establishing victimisation at this early stage. Yet, victims of trafficking are often also victims of other crimes, including physical and sexual violence. As such, this group may be more easily identified as 'victims' for the purposes of the Victims' Rights Directive, which may provide a faster route to a particular victim support measure. Importantly, the Victims' Rights Directive recognises the need for specific, targeted and integrated support for victims of gender-based violence (Article 9(3)(b)).

3.2. Evidentiary standard

In ensuring the early identification of victims, a low threshold vis-à-vis the evidentiary standard used for their identification is crucial. As soon as evidence exists to suggest a person has been trafficked, they should be identified as potential victims and should receive immediate assistance. Confirmation of their victim status should occur at a later stage. In order to support the application of a low evidentiary standard, it is crucial that competent authorities employ indicators during the identification process and that they receive appropriate training in the fields of gender equality and equal treatment, as highlighted by case Z.Z.Z. below.

Case study (*Z.Z.Z. v The Netherlands*, Communication No 15/2007 (CEDAW/C/42/D/15/2007))

In this case, a girl asylum seeker who had been trafficked to the Netherlands for the purpose of sexual exploitation was not informed of her right to assistance under Dutch law, nor identified as a victim of trafficking. This was in spite of the presence of trafficking indicators, including her having suffered violence and trauma in the Netherlands. Rather, she faced mistrust and disbelief from the authorities and was exposed to secondary harm. Although the case was deemed inadmissible on the grounds that the applicant had failed to exhaust domestic remedies, a dissenting opinion by three members of the CEDAW Committee recommended appropriate training for border guards on identification and appropriate treatment of victims.

The evidentiary standard required for the preliminary identification of trafficking victims found in the Anti-Trafficking Directive is a 'reasonable grounds indication'. The purpose of this approach is to enshrine a low threshold for the identification of victims. In principle, this approach protects women and girl victims from secondary victimisation, which can emerge where victims of violence against women meet disbelief on behalf of investigating authorities (Council of Europe, 2016). This includes during participation in any national procedures for establishing whether a person is a victim (EIGE, 2016). The preamble to the Victims' Rights Directive complements the Anti-Trafficking Directive by recommending that 'support should be provided through a variety of means, without excessive formalities'.



Nevertheless, the term 'reasonable grounds' leaves it open to interpretation from the competent authority, which could lead to delays to the identification of victims in practice. This discretion can create difficulties for certain categories of victims, such as third-country nationals, victims exploited in the commercial sex industry, or victims from national minorities, who can face disbelief and mistrust from authorities, as evidenced in the above cases.

In addition, to support authorities in making a 'reasonable grounds' determination, and thus reduce the scope of discretion of authorities during the identification process, it is generally recommended that indicators, specific to the form of exploitation under investigation, are used. Although recital 4 of the Anti-Trafficking Directive envisages the development of a common set of European indicators to support the identification of victims, the directive does not require that Member States use indicators during the identification process.

3.3. Competent authority

The explanatory report attached to the Council of Europe Convention on Action against Trafficking in Human Beings (2005) defines competent authority, in the context of the identification of victims, as the different authorities, which may have contact with victims, such as the police, labour inspectorate, and immigration authorities. In practice, the term generally refers to the authority responsible for formally identifying victims. The Anti-Trafficking Directive requires that Member States designate a competent authority responsible for the identification of victims of trafficking. However, it is the responsibility of Member States to determine the authority responsible for identifying victims. The choice will likely have an impact on who is recognised as a victim and the speed at which victims are identified and can access the assistance and support envisaged in the Anti-Trafficking Directive.

Case study (NIQB 15, The High Court of Justice in Northern Ireland, 2014)

In this case, a Nigerian national claimed to have been trafficked to Portugal under the false pretence of being employed there. After several attempts to flee and claim asylum in Spain and Ireland, immigration officers at Shannon airport told her that they would try to investigate her case. The Belfast City Mission helped her to get a solicitor and took her to the police to report human trafficking. However, the United Kingdom Border Agency issued a conclusive grounds decision determining that, on the balance of probabilities, the applicant had not been the victim of human trafficking.

It has been highlighted by Eurostat (2013) that the majority of Member States have nominated police authorities as the competent authority responsible for the identification of victims. The directive appears to envisage a role for other stakeholders, particularly those involved in the support of victims, in the identification process. Article 11(4) of the Anti-Trafficking Directive

requires that Member States establish appropriate mechanisms for the early identification and support of victims, in cooperation with support organisations. The involvement of independent women's rights non-governmental organisations is beneficial in the determination of reasonable grounds for victims of trafficking for sexual exploitation due to their gender-specific expertise. However, such involvement is not explicitly required by the terms of the Anti-Trafficking Directive.

Training provided to professionals

The training available to the identifying authority, seen as necessary in the text of the Trafficking Convention's explanatory report, and the extent that it takes gender aspects into account, will also have a good impact on the identification of victims. Taking into account the preference of Member States to designate police authorities as the competent authority (Eurostat, 2013), it is vital that police officials possess gender expertise and thus receive gender-specific training. This has been identified as particularly important in the identification of victims of trafficking for sexual exploitation (European Commission, 2016f). The need to provide such a training can be linked to a wider requirement found in Recommendation 19 of the CEDAW concerning measures to tackle violence against women, which requires that States provide gender-specific trainings to public officials and judicial and law enforcement officers (United Nations, 1979).

Article 18(3) of the Anti-Trafficking Directive contains a general requirement that Member States promote regular training for officials likely to come into contact with victims or potential victims, to enable them to identify and refer victims and potential victims. Recital 25 of the directive outlines the categories of officials who should receive training, including police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and healthcare personnel and consular staff. The Anti-Trafficking Directive, however, does not provide explicit details on the type of training to be provided to these officials and does not explicitly require the provision of gender-specific trainings.

There is a general requirement that Member States adopt a gender-specific approach, where appropriate, to the support and assistance of victims. This can be interpreted broadly, to include gender-specific training for those responsible for the identification of victims. Furthermore, recital 25 recommends that education programmes designed to prevent trafficking should adopt a gender perspective. While not a mandatory provision, this recommendation can also be extended to the training programmes for officials.

The Victims' Rights Directive contains important and more specific guidance on the type of training which should be available to national authorities. Article 25 requires that Member States ensure that those officials who will likely come into contact with victims, including judges, prosecutors and lawyers, receive general and specialist training, enabling them to recognise and respond to the needs of victims and further deal with victims in an impartial, non-discriminatory, respectful, and professional manner.

At the same time, Member States are encouraged to establish initiatives that provide those involved in victim support groups and restorative justice services with appropriate training. Recital 61 of the Victims' Rights Directive recommends that officials receive initial and ongoing training, and where relevant, such training should be gender-specific. This can be interpreted to be a necessary component of the specialist training that is required by Article 25 of the directive. Overall, however, the focus of Article 25 is on those involved in the criminal justice process. Consequently, the directive is limited vis-à-vis those who should receive the specialist/gender-specific training. Considering the very low criminal prosecution rates in trafficking generally, and particularly in trafficking for sexual exploitation, the impact of such gender-specific provisions of the Victims' Rights Directive — while helpful — are nonetheless limited as far as these victims are concerned.

The identification source can also be a medical professional, social worker or civil society organisation service provider coming into contact with women victims of violence. It may also be hotel and airline staff. In the case of victims of trafficking for forced marriage, marriage registrars, ethnic community or religious leaders, refugee camp relief workers, and embassy personnel could be the first point of identification. Not leaving an open door for the training of these kinds of relevant groups is a missed opportunity in the directive.

The fact that recital 61 of the Victims' Rights Directive opens with the caveat: '*where relevant*, such training should be gender-sensitive' [emphasis added], poses a risk, because the opening caveat arguably weakens the provision (which is in any event non-binding). The point of gender-specific training is to alert individuals to matters which might otherwise go unnoticed — thus, without training, gender issues may appear not to be 'relevant' and lead to their exclusion from a training programme. Rather, in the implementation of the directive, gender-specific training should be provided as standard, for anyone dealing with victims of crime, of any kind. Through a broad interpretation of the directive, it is possible for the words '*where relevant*' to be defined as standard procedure, mitigating the risk that the training will not be widely offered.

3.4. Identification interview

Interviewing actual or suspected victims of trafficking is not a straightforward matter. It cannot be assumed that victims will, given the opportunity, come forth on their experiences. Rather, deep-rooted reluctance to make disclosures should be considered the norm. For example, the fact that the interviewers most of the time work for law enforcement and have the power to act against the victim (for example, by deporting or detaining her) creates a heavy power imbalance that increases stress on the victim and the possibility of secondary victimisation (Liévana and Waisman, 2017). In these situations, victims might be hesitant to disclose their situation and to cooperate, out of fear and/or concern for the safety of their families, inter alia, which in turn reinforces existing stereotypes of being non-cooperative (Liévana and Waisman, 2017).

Victims of trafficking for sexual exploitation may be distressed by their abusive experience and experiencing post-traumatic stress disorder or other psychological disturbances. They may also be under threats or intimidation by the perpetrator, which may not only inhibit them from trusting the interviewer but also compromise her memory of the facts and her ability to testify (United Nations, 2009). It is very important that the authorities are aware of these risks in order to have a sensitive approach to the interview. Lack of understanding may lead to a confrontational questioning style or accusations of lying whenever their discourse seems incoherent, as well as asking unnecessary questions about the victims' private life.

It is critical to understand that the history of abuse leads victims often to have issues in trusting other people, especially authorities with which some may have had negative experiences in the past (United Nations, 2009). The fact that they are very often illegal in the country where they are being interviewed generates additional fears, as mentioned above.

Thus, victims of trafficking for sexual exploitation should be treated as vulnerable victims and special measures should be taken when interviewing them to avoid secondary victimisation. The way victims are treated during criminal proceedings is of major concern to civil society, which reports that victims experience secondary victimisation through intimidation and questioning during these proceedings (European Commission, 2016c).

To encourage disclosures, it is recommended that all interviews with victims are conducted in a gender-specific manner (OHCHR, UNHCR, Unicef, UNODC, UN Women and ILO, 2011). It is commonly reported that female victims prefer to make disclosures in an all-female environment (Refugee Women's Legal Group, 1996). As such, a gender choice of interviewer should be offered as a matter of course to all victims and during all interviews, so that sensitive disclosures are facilitated in the first instance.

Moreover, this choice should be offered to groups that may contain trafficking victims more generally, for example, to all irregular migrants encountered by State authorities and all asylum seekers. The central features of a gender-sensitive interview are that it is conducted by an interviewer of the chosen gender of the interviewee and minimises the risk of secondary harm to victims, for example by minimising the number of interviews that victims must undertake (World Health Organisation, 2003).

Keeping the victim informed at all times of what's going to happen, in a way that they can fully understand (i.e. in a language that she can communicate in and in a style that is intelligible for her, according to her education and cultural background, for example). It is also key to involve the victim in all decisions about further steps, proceeding only with her full consent. This should, however, not be confused with questioning about her consent in the exploitation situation as, according to the Anti-Trafficking Directive, this is irrelevant for the identification of the victim and such a question constitutes secondary victimisation.



Victims might not be used to be asked for her consent, which may lead to a sense of confusion or even anxiety. Similarly, victims may feel uncomfortable speaking openly about very intimate and painful matters that they have been instructed or learned to keep to themselves. It is crucial that the interviewer is trained to understand these reactions and act adequately, for example, establishing a good rapport with the victim, respecting her pace, being sensitive and respectful (United Nations, 2009). The interviewer shall also never ask unnecessary questions out of curiosity about the victim's past experience, or for any other reason. Strategies to put the victim at ease should be put in place, for example, giving her the possibility to write some words or sentences that she may not feel comfortable speaking about.

The location where the interview takes place shall also be a concern. The victim should be as comfortable as possible, in a clean and secure room where there is privacy and she feels safe. Breaks should be taken whenever necessary, respecting the victim's pace and needs. Repetition of questions or interviews should be strongly avoided. Assistance and support shall also be provided on the spot, for example, providing interpretation services and addressing major health needs.

By Article 12(5) of the Anti-Trafficking Directive, authorities are required to avoid the unnecessary repetition of interviews with victims. The wording of the directive restricts this protection to interviews during the criminal justice process (investigation, prosecution, or trial). Even though it is not clear to what extent this applies to the identification interview, given its necessary connection to the investigation it could be argued that the identification interview is subsumed by Article 12(5). There is an opportunity for Member States to take such an interpretation, which would provide added protection to victims.

It is essential to stress that the Anti-Trafficking Directive fails to make provision for a gendered choice of interviewer. Even if such an omission does not prevent a practice of offering victims this choice; the absence of such a provision decreases the level of protection. Article 20(b) of the Victims' Rights Directive requires that interviews with victims of sexual and gender-based violence are routinely carried out by an interviewer of the same sex, unless the victim wishes otherwise. This provision complements the Anti-Trafficking Directive and is key to the empowerment of victims. Furthermore, it is noteworthy that victims' choices are taken into account. This is also empowering victims of violence against women, as mandated, for example, in Article 18(3) of the Istanbul Convention. Moreover, it can account for the rare situations where a woman victim of violence may prefer an interviewer of the opposite gender.

Intersectional vulnerabilities must be considered, in cases where, for example, an interpreter intervenes. Neither of the directives deals with the gender of interpreters, however, it is vital for Member States, seeking to implement a gender choice of interviewer, that the gender of an interpreter (where applicable) is in line with that of the interviewer where a victim has indicated a preference. This equally applies to a sign-language interpreter for a victim with hearing difficulties. Any gender choice should be offered in a neutral way, i.e. on a form or by an intermediary, not the person who intends to carry out the interview. Women victims of trafficking

may be anxious to avoid giving offence to a male in a position of authority by being honest about their true gender preference.

3.5. National referral mechanism

Following the identification of victims, it is vital that victims are referred to appropriate services for support and assistance. This can be achieved by establishing, inter alia, a formalised national referral mechanism. The European Union progress report identifies a formal national referral mechanism as a key step in the early identification, support and assistance of victims.

Article 11(4) of the Anti-Trafficking Directive requires that Member States establish a mechanism for the early identification, support, and assistance of victims, based on cooperation with relevant support organisations. Thus, although the directive does not use the term national referral mechanism, Article 11(4) appears to require that Member States establish one. This reading of Article 11(4) is supported by the European Union 'Strategy towards the eradication of trafficking in human beings 2012-2016' (European Commission, 2012), which includes establishment of a national referral mechanism as a priority for Member States.

From the perspective of violence against women, Article 11(4) of the directive is very relevant. The need for a formal and coordinated referral structure for women victims of violence is similarly enshrined in Article 18 of the Istanbul Convention and is further contained in Recommendation (2002)5 of the Committee of Ministers to Member States on the protection of women against violence (Council of Europe, 2002).

The strength of a national referral mechanism will likely depend on those involved. In recognition of the role of civil society organisations with gender expertise in providing a gender-specific response to the issue of trafficking in human beings, these should be included, along with, for example, child protection services (European Commission, 2012), which are well placed to identify and assist girls trafficked for sexual exploitation. Through their formal involvement, civil society organisations could contribute towards early identification and ensuring equal access to services for women and girl victims of trafficking. Given that these groups will likely constitute relevant support organisations for many victims of trafficking, their involvement in the national referral mechanism would appear to be mandated by Article 11(4) of the Anti-Trafficking Directive.

It is known that many victims of violence against women will refuse to make contact with or be identified by the police, for a number of reasons, including fear, shame and social stigma. They are often more willing to have contact with other stakeholders, including civil society organisations, medical professionals, and social workers. The provision could ensure that victims are referred to the appropriate services immediately following identification, even if this is not done by the competent authority. To date, just under half of Member States remain without a formalised national referral mechanism, while the involvement of child protection services remains limited. At the same time, civil society, including non-governmental organisations, in Member States have called for more meaningful participation in existing mechanisms (European Commission, 2016).

4. SUPPORT AND ASSISTANCE



4. SUPPORT AND ASSISTANCE

Following on from the identification of women and girl victims of trafficking for sexual exploitation, it is crucial that Member States offer support and assistance to such victims, which are suited to their actual needs. In order to do so, this support must take into account the gender-specific harms inflicted on women trafficked for sexual exploitation.

The provision of specialised services to victims of trafficking should be centred on the victims' needs, age and should be gender-specific, as well as specific to the form of trafficking the victim has experienced. These services are best provided by organisations that include users, victims and survivors of trafficking and gender experts in their decision-making and which have sustainable funding. In this context, civil society noted that gender and age-specific assistance and support remains a challenge, with inadequacies in provision of services in a gender-specific manner (European Commission, 2016a). In particular, the Staff working document (European Commission, 2016a) reports that while recognising improvements, civil society expresses concerns over a lack of reception and accommodation systems that are gender-specific.

Research on sexual violence, including on sexual exploitation, prostitution, and traditional harmful practices, such as forced and child marriage, highlight the similarities in the traumatic outcomes for victims, particularly on their physical, sexual and mental health. These include sexual and reproductive dysfunctions, severe and complex post-traumatic stress disorder, suicidal tendencies and attempts, clinical depression, psychosis, loss of confidence and a reduction in professional and educational attainment. Victims are reported to have persistent feelings of shame and disgust, loss of sleep and psychological disassociation (World Health Organisation, 2002), as well as symptoms identical to those exhibited by the victims of torture and war. In addition, it has been found that victims of trafficking often suffer from high rates of secondary victimisation (Andrijasevic, 2010; Mishra, 2013), while many of those fleeing such exploitation lack the economic means to survive. As such, effective intervention with victims requires a wide range of gender-specific support.

Maternity services play an important role in victim identification and in responding to specific health support and assistance needs, as research shows that one in four women become pregnant while trafficked (Bick, Howard, Oram and Zimmerman, 2017). Trafficking victims face additional risks throughout the pregnancy, as access to maternity care is controlled by the trafficker, but also the fear of facing legal consequences derived from her status (for example, lack of documentation), misinformation about existing services and their conditions (for example, thinking that using the services might entail high financial costs) delays or even stops women from seeking maternity care

(Bick et al., 2017). This poses serious risks for the health and well-being of the child (such as a higher risk of contracting HIV, congenital syphilis, fetal alcohol syndrome) as well as the mother, including preventable maternal morbidity and mortality (Willis, Welch and Onda, 2016). Therefore, it is of high importance that the health community works closely with responses to trafficking for sexual exploitation (Bick et al., 2017).

4.1. Equal treatment

Trafficking victims come from different backgrounds and are trafficked for a variety of purposes. In order to ensure that all victims can access services, it is crucial that this is based on, inter alia, the principle of equal treatment, a cornerstone principle of the European Union law generally. Thus, women who are trafficked for sexual exploitation should be able to access social support and services on an equal footing with other victims (European Commission, 2016f). This can remove the risk of 'illegal discrimination in accessing health, welfare and criminal justice services' (European Commission, 2016f). The Council of Europe Convention on Action against Trafficking in Human Beings, in Article 3, also states that protection of victims should not discriminate on 'any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, and association with a national minority, property, birth or other status.' (Council of Europe, 2005).

The Anti-Trafficking Directive explicitly invokes the European Union principles of equal treatment and equality between women and men in recital 33. Similarly, the Victims' Rights Directive contains references to the European Union principles and presents more concrete provisions regarding the non-discriminatory treatment of victims, especially during contact with the authorities, as well as regarding the training of relevant practitioners (for instance, recital 63, recital 66, recital 9 in conjunction with Article (1)). However, there is insufficient guidance, in either of the directives, as to how this can be achieved in practice. It is important to highlight that insufficient clarity or specificity concerning regularity of trainings and qualification requirements of practitioners could undermine its effectiveness in practice (EIGE, 2016). As such, it will depend to a great extent on how Member States uphold the European Union principles in their implementation of the directive.

4.2. Early access to support

Taking into account the harms associated with trafficking for sexual exploitation (European Commission, 2016f) and the overlap between this type of exploitation and forced marriage, it is incumbent that women trafficked for the above purposes receive assistance and support as soon as the competent



authorities have ‘a reasonable-grounds’ indication for believing that the person is a victim of trafficking in human beings.

Article 11(2) of the Anti-Trafficking Directive requires that States provide victims with early access to available support — as soon as competent authorities have reasonable grounds to believe they have encountered a victim. Read in conjunction with recital 18 — which similarly requires early assistance to victims — this is key to enable victims to access support. However, the implementation of such provisions raises some concerns. The European Commission (2016b) points out that only half of the Member States clearly require that assessment and support are provided as soon as ‘reasonable grounds’ are established.

Recital 37 of the Victims’ Rights Directive refers to support commencing as soon as the authorities become aware of a victim, which arguably represents a lower threshold compared to the ‘reasonable grounds’ mentioned above. According to the directive, an individual is a victim notwithstanding his/her ‘role’ in the national criminal justice system. This position is reaffirmed by the European Court of Human Rights in *J and others v Austria* (Application No 58216/12).

Case study (*J. and others v Austria*)

(Application No 58216/12), ECHR 2017)

In this case, the application was made by three women of the Philippines who were recruited and exploited in Dubai and for a shorter period in Austria, where they managed to escape. They turned to the police and made a statement, which triggered an investigation which was shortly discontinued. The applicants complained to the European Court of Human Rights (ECHR) that Austria had failed to investigate their allegations regarding the crime of trafficking committed against them. The ECHR distinguished between the positive obligation of a State to investigate allegations of human trafficking on the one hand and the identification and assistance of victims of human trafficking on the other, stating ‘(potential) victims need support even before the offence of human trafficking is formally established’.

The Victims’ Rights Directive recommends referral of victims to services, including referrals made by ‘other relevant entities’, which are vital for women victims of violence who might disclose to practitioners different from the competent authorities (EIGE, 2016). Article 8(3) of the directive requires access to specialist services in addition to the general services, in accordance with the specific needs of the victim and the degree of harm suffered. This is essential for victims of violence against women, where gender-specific needs often arise, for instance, related to dependent children that accompany the victim.

Referral to specialised services is also very important when victims do not want to get involved in the criminal system or to stop the relationship with the perpetrator (for example, when the perpetrator is also the father of her children), and seeks help for other reasons. Many trafficking victims do not even identify themselves as victims, which compromises help seeking

(European Institute for Crime Prevention and Control, affiliated with the United Nations, 2016). Thus, cooperation between authorities and organisations is crucial for victims to access national assistance programmes through different ways, for example, embassies, the health system and civil society organisations.

4.3. Duration of assistance

It is crucial that victims receive continuous support and assistance before, during and after any criminal proceedings. This is important for trafficking victims who have been sexually assaulted and have likely suffered severe physical and psychological harms, recovery from which may require significant investments (European Commission, 2016f). It is recognised that recovery from the gender-specific harms associated with trafficking for sexual exploitation often requires long-term support and assistance (European Commission, 2016f; World Health Organisation, 2002; Zimmerman et al., 2008). Any discontinuation of services could have a significantly negative impact on the victims and make them more vulnerable to re-trafficking.

Article 11(1) of the Anti-Trafficking Directive requires that Member States provide victims with continuous support and assistance, ‘before, during and for an appropriate period after’ the criminal proceedings. This obligation should be read with the expressed intention in the preamble, at recital 18, where it is stated that the extension of the assistance and protection ‘for a period of time after’ the criminal proceedings is necessary in cases where ‘medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim’s safety is at risk due to the victim’s statements in those criminal proceedings’.

Recital 20 further recommends that victims of trafficking, who have suffered abuse and degrading treatment should receive treatment proportionate to their needs, which may include longer-term assistance. Abuse and degrading treatment, in this regard, is recognised as including ‘sexual exploitation, sexual abuse, rape, slavery-like practices’. It is thus evident from the Preamble that violence against women provides a clear basis for the provision of more enduring assistance measures. Article 11(1) is of potential benefit, as it has no firm ending point (‘appropriate duration’); however, the actual duration victims can benefit from support measures is dependent on implementation by individual Member States.

There is a risk as regards undocumented third-country national victims, due to the minimal standards regarding their residence rights, as provided for by Council Directive 2004/81/EC, which enables the termination of such rights at the end of any criminal investigation or (if applicable) criminal proceedings. As such, the situation of female victims of trafficking who are third-country nationals should be taken into account by Member States, and any residence status provided should be extended, specifically where it is required to avoid premature discontinuation of assistance and support measures. The sudden removal of certain support at this point could lead to re-traumatisation of victims. Adopting such an approach is supported by the Anti-Trafficking

Directive, which does not consider the end of criminal proceedings to be an end-point for victim support.

The Victims' Rights Directive similarly requires that Member States provide support to victims for an appropriate period after the conclusion of criminal proceedings. The directive benefits victims legally residing in the EU who are facilitated by the terms of the directive to make a complaint about a crime and receive assistance in their country of residence as opposed to the country in which the crime took place (Article 17(2)).

4.4. Conditional support

The question of the starting point, as well as the duration of the assistance and support offered to victims is linked to the requirement to make such measures independent of the investigation of the trafficking crimes committed against the victims. Given the utmost importance of assistance and support for all victims of trafficking, it is essential that these are provided irrespective of a victim's cooperation with the authorities/police. There are a number of grounds which can inhibit victims trafficked for the purpose of sexual exploitation from cooperating with the authorities, including trauma, fear of State authorities and fear of traffickers (European Commission, 2016f). EIGE (2016) also notes that victims of gender-based violence often do not make complaints because of fear, shame or stigma. Reluctance of female trafficking victims to engage with the authorities is mirrored across the wider continuum of violence against women: this trend must be taken into account by Member States whose national systems make victim support conditional on engaging with criminal justice systems.

Article 11(3) of the Anti-Trafficking Directive, in line with recital 18, requires that assistance and support to victims should not be conditional on a victim's willingness to cooperate in criminal investigations, prosecution or trial. Similarly, Article 9 clearly separates investigation from a complaint by the victim. This apparent strength of the directive, is somewhat reduced by the provision that this requirement is 'without prejudice' to Council Directive 2004/81/EC, dealing with residence permits for victims of trafficking. While the recovery and reflection permit is provided to all victims who are identified by competent authorities, residence beyond this, by Article 8, is explicitly linked to the victim's assistance in criminal investigation and/or proceedings. The Anti-Trafficking Directive echoes this position (recital 18). As a result, third-country nationals face an additional obstacle to access unconditional assistance beyond the short term. It is positive that European Union citizen victims are not bound by the condition for cooperation, particularly as the majority of registered trafficking victims in the EU are in fact EU nationals. In contrast, the gap for third-country nationals raises a concern.

A recent European Commission report found that provisions for the 'assistance and support of victims and presumed victims irrespective of their cooperation with criminal prosecutions' are not established in many Member States (European Commission, 2016e). Similarly, the European Commission report on the transposition of the Anti-Trafficking Directive (European Commission, 2016b), concludes that Member States have adopted

inconclusive and ambiguous provisions for support irrespective of the willingness of the victim to cooperate. Both reports indicate that there is room for improvement in ensuring provision of assistance and support, irrespective of victims' cooperation in criminal justice processes. Article 8(5) of the Victims' Rights Directive states that access to assistance must not be linked to a formal complaint, in line with Article 18(4) of the Istanbul Convention which states that provision of services must be ensured regardless of the victim's willingness to press charges or testify. This is relevant in terms of protection of women victims of violence.

4.5. Consent in obtaining services

The issue of consent and choice is generally considered core to the work of anti-trafficking organisations providing services to trafficking victims. When overlooked, it can reinforce gender inequalities by perpetuating a form of discrimination against women by removing their ability and right to choose (Bindel et al., 2012).

The stipulation in Article 11(5) of the Anti-Trafficking Directive, that the assistance and support measures be provided in a 'consensual and informed basis', is a valuable one since the victim's ability to choose has been severely undermined as part of their victimisation. It is underscored by recital 21, which points out the need for victims of trafficking to be informed of available protection and to accept them on a consensual basis rather than view assistance as an imposition. Efforts to obtain women's informed agreement could aid their regaining of control. This emphasis on consent is key from the perspective of violence against women. Efforts to seek informed consent should be aided by the involvement of victims, either in direct information provision or in design and development of information materials outlining available assistance and support (European Commission, 2016e).

4.6. Needs assessment

Measures for the assistance, support and rehabilitation of victims need to be adapted to different categories of trafficking victims and their experiences. This involves tailoring, inter alia, housing, information and advocacy services and medical services available to the specific needs of such victims. It is noteworthy that as it is a form of violence against women, gender-specific needs emerge and need to be addressed in order to better protect victims. Those needs can only be properly identified through an individual assessment.

Recital 18 of the Anti-Trafficking Directive recommends that provision of support and assistance to victims should follow an individual needs assessment that takes into account their experience, cultural context and individual characteristics. Recital 18 is not followed by a binding obligation which can compromise implementation. Women trafficked for the purpose of sexual exploitation suffer particular (and severe) types of harm and trauma, thus, the importance of individual assessment in these cases cannot be over-stated. Assessment of the individual needs of women trafficked for sexual exploitation can be



challenging and an understanding of their cultural background is essential as this crime may be linked to a traditional practice. Europol (2016) estimates that the migration crisis in North Africa and the Middle East will contribute to increasing current trends in sexual exploitation. In this context, further research into trafficking for sexual exploitation, especially forced and sham marriages, is vital for the accurate identification of the needs of victims.

The only type of assessment required by the Anti-Trafficking Directive that is applicable to all victims is in relation to their protection needs during criminal proceedings. The same happens with regards to the Victims' Rights Directive. The emphasis on criminal proceedings is unhelpful, given only a small fraction of victims' cases are brought to trial.

4.7. Special needs

There are specific characteristics which can create additional or special needs for victims of trafficking, including women trafficked for sexual exploitation. Trafficking, which involves sexual exploitation, is a particularly severe form of violence against women, with traumatic consequences for victims, and the Anti-Trafficking Directive itself recognises sexual violence as a 'particularly grave offence' (recital 12).

The special needs of certain categories of trafficking victims are recognised in Article 11(7), which lists factors such as pregnancy, health, disability, mental or psychological disorder or serious psychological, physical or sexual violence. This provision is of particular importance in the case of women trafficked for the purpose of sexual exploitation, who are at increased risk of suffering from ill health, including psychological disorders, as a result of the gendered harm and violence they have suffered. There is also an increased risk of pregnancy amongst this category. There is, however, little guidance on any practical measures that Member States must take.

Specialised services and professionals are of the highest importance, not only to be able to identify specific needs relating to the traumatic experience of being trafficked, but also to address them in an adequate and sensitive way. For example, a German reception centre has reported that young women arriving from the Libyan route showed anorexia-related problems, derived from oral sex abuse. On account of their trauma, their throats would reject food (Women's Link Worldwide, 2018). Without properly trained staff, these girls would not receive adequate treatment, connecting the symptoms to their traumatic experiences.

The added value of the Victims' Rights Directive is the guidance provided for cases of victims with special needs. Recital 17 identifies 'victims of gender-based violence' as having special support needs. Recital 37 stipulates that 'victims who have suffered considerable harm due to the severity of the crime could require specialist support services'. Recital 38 offers a more comprehensive list of the circumstances that invoke specialist support, including gender-based violence and repeated violence in close relationships: both of which concern victims of trafficking for

sexual exploitation. According to EIGE (2016), this recital draws the attention of the authorities to the special needs of women victims of violence. The types of special assistance outlined in recital 38 include 'shelter and safe accommodation, immediate medical support, forensic exams in cases involving sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children involved'. However, this list of services is omitted in Article 9 (Support from victim support services) itself, which is a shortcoming of the directive since recitals do not have a binding character (EIGE, 2016).

4.8. Service providers

At the centre of each of the above measures are service providers, who are responsible for supporting and assisting victims. Providing comprehensive support to victims of trafficking in human beings is challenging. Their needs are complex and require a number and range of support services, such as interpretation services, physical and psychological health support, accommodation, clothing, food, inter alia, such as support in their return process (United Nations, 2009). Member States are still struggling with providing these kinds of services in a gender- and age-specific manner (European Commission, 2016c).

Service providers are crucial to the recovery of the victim. They enable victims access to information on their rights and help them weigh up their options, while getting assistance in several areas of their life to recover (Jorge-Birol, 2008). When their needs are addressed, they are better able to make informed and conscious decisions. The empowerment they get from being supported in all their needs and recovering their self-esteem and a feeling of safety is not only key to helping them rebuild their lives, but also to the success of the criminal proceedings (Jorge-Birol, 2008).

The provision of appropriate care and support allows for the dissipation of many of the reasons that may lead to the reluctance of victims to cooperate with the criminal justice system, such as fear of retaliation from the trafficker, mistrust in the system, fear of consequences on account of their legal status, inter alia (OHCHR, UNHCR, Unicef, UNODC, UN Women and ILO, 2011). An adequate assistance that is provided without delay and that is not limited to the period while criminal proceedings are taking place, also diminishes the risk of re-victimisation and re-trafficking (OHCHR, UNHCR, Unicef, UNODC, UN Women and ILO, 2011).

Those providing services to trafficked women (e.g. information, referral, medical, counselling, legal representation), should also possess the necessary gender expertise. It has been recognised that specialist non-governmental services with such expertise are best suited for service provision to the victims in focus and should be funded for this purpose (European Commission, 2016f). The involvement of non-governmental organisations is a legal obligation according to Article 12 of the Council of Europe Trafficking Convention. Given the high level of mistrust amongst victims of trafficking, the involvement of victim survivors in the provision of services has been suggested as an

additional means of delivering gender-specific services to trafficking victims (European Commission, 2016f).

In spite of observed improvements in the quality of service provision to victims of trafficking in human beings, assessing the quality and impact of such services remains a challenge for Member States. Civil society organisations report that gender-specific measures are still insufficient and, sometimes, inadequate (European Commission, 2016a).

One of the main concerns expressed by civil society in terms of service provision is the risk of re-victimisation that can arise from the conditions that the victims face. For example, they report a lack of privacy and the placing of victims in mixed gender facilities (European Commission, 2016a). Although Member States report improvements in the quality of the services provided, the assessment of such services themselves is an issue for most Member States (European Commission, 2016a).

Recital 18 requires that 'Member States should provide for resources to support victim assistance, support and protection'. Complemented with the recent European Commission study's conclusions regarding assistance (European Commission, 2016f), this recital could represent an opportunity. However, the Anti-Trafficking Directive does not outline any specific characteristics of support services that would ensure that they meet the gender specific needs of victims.

The Victims' Rights Directive establishes necessary features of the support system. In the first place, Article 8(1) requires that support is free of charge and confidential. This is in line with the guidelines of the Recommendation (2002)5 of the Committee of Ministers of the Council of Europe (2002). Recital 37 of the Victims' Rights Directive provides a useful practical requirement regarding the geographical spread of services, which is complementary to the Anti-Trafficking Directive and could prove important for victims of trafficking for sexual exploitation. The fact that the directive does not include this in a binding article is a missed opportunity (EIGE, 2016). The high specialisation which is required for provision of quality services to victims of violence against women must be taken into account in order to avoid random dispersing of victims, especially to areas where specialist providers are not available. Furthermore, the directive omits to mandate that support be accessible to victims with disabilities, as required by key international treaties concerning violence against women (e.g. Beijing Platform for Action, 1995) (EIGE, 2016).

4.9. Integrated support

In the context of violence against women, the integration of the different support and assistance measures contained in Article 11(5) of the directive has been recognised as good practice. The Istanbul Convention (Article 18(3)), recommends integration of services for all victims of gender-based violence where support measures 'allow, where appropriate, for a range of protection and support services to be located on the same premises'. Adopting an integrated and holistic approach has also been recognised as good practice in the specific context of victims of

trafficking for sexual exploitation (European Union Agency for Fundamental Rights, 2014; European Commission, 2016f).

The fact that the Anti-Trafficking Directive does not mention integration of services is a shortcoming, although there is a reference to a range of services potentially required by victims. There is a risk that Member States will consider that providing victims with disparate (rather than integrated) supports will suffice to meet the needs of victims.

To some extent, the Victims' Rights Directive mitigates this risk through its explicit requirements for the integration of services. Article 9(3)(b) mandates that the support available should include 'targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling'. Further guidance is given in recital 62 of the preamble. EIGE (2016) considers that the directive's recommendations are not explicit enough and do not match the standards of relevant international agreements (Istanbul Convention and Recommendations of the Committee of Ministers (Council of Europe, 2002), which for victims of violence against women is insufficient.

Thus, the Victims' Rights Directive complements the Anti-Trafficking Directive on this matter and the two texts should be read in conjunction. For successful implementation, full attention to relevant international agreements is also required, such as those contained in the Istanbul Convention and the Council of Europe Committee of Ministers Recommendations.

4.10. Accommodation

In the majority of cases, trafficking victims have no place to stay once they have escaped their traffickers and require immediate access to safe and secure accommodation (Mair and Warren, 2012; Akidwa, 2010; Immigrant Council of Ireland, 2014). The absence of this vital support can force victims to remain with their traffickers as leaving might increase their levels of danger and vulnerability (United Nations Office on Drugs and Crime, 2003). Through the availability of safe and appropriate housing, victims obtain a space to detach from and escape the influence of their traffickers, which is central to their recovery. In the context of victims of trafficking for sexual exploitation, gender-segregated accommodation is good practice (Larasi and Tweedale, 2014; European Commission, 2016f). Single-gender accommodation can promote a feeling of safety and prevent re-traumatisation as well as reduce the possibility of further sexual violence by men (European Commission, 2016).

Wherever possible, shelters providing accommodation to trafficking victims should be run and administered by specialist women's non-governmental organisations, who proved to be most responsive to the needs of women victims of trafficking (European Commission, 2016f). The involvement of survivors in these services has similarly been mooted as a means of enhancing the service. As previously discussed, there should be an integrated approach to accommodating trafficking victims, in which other support should be available to victims in the same



premises where they are accommodated. Accommodation provision must take into account intersectional vulnerabilities, such as disability or the needs of mothers with children, for example accompanying children and children born in the context of trafficking.

An example of how a State's accommodation provision for victims of crime can fail to meet an individual's specific needs is provided by the case of *A.T. v Hungary*, a complaint which came before the CEDAW Committee.

Case study (*A.S. v Hungary*, Communication No 4/2004, CEDAW/C/36/D/4/2004)

In this case, a female victim of domestic violence with children was unable to access a shelter, as none of the shelters in the country was equipped to meet the needs of her disabled child. As such, despite Hungary ostensibly having met its requirement to provide domestic violence victims with shelters, they were found to have violated this particular victim's rights under the Convention (more specifically, Articles 5 and 16(a) of CEDAW).

The Anti-Trafficking Directive provides for safe and appropriate accommodation in Article 11(5), as a binding obligation. In addition, recital 3 calls for gender-specific assistance and support measures in relatively strong terms, providing a further opportunity for effective support for women victims.

Moreover, Member States are required to provide accommodation to trafficking victims under Article 9(3) of the Victims' Rights Directive 'due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation'. Further guidance on gender-specific accommodation can be found in the preamble. Recital 17 makes reference to special support being required by victims of violence against women and their children who 'often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence'. This presents an opportunity for the tailoring of accommodation to victims' special needs, albeit the provision is non-binding.

Although the housing provisions read as gender-neutral in the Victims' Rights Directive, in fact they will impact more on women for two reasons. Firstly, women are more likely to be victims of the types of crime that require these kinds of integrated and residential services (e.g. victims of trafficking for sexual exploitation⁽⁷⁾). Secondly, women as a group are more likely to be in need of these particular services than men, due to the financial disempowerment of victims which is part-and-parcel of the crimes of trafficking for sexual exploitation, as well as the complex socioeconomic reasons that make women financially disadvantaged in general terms, inter alia.

Overall, it is a strength of both directives that accommodation provision is mandatory. However, though the wording of the respective preambles create an impetus for Member States to integrate a gender perspective into their approach to accommodation, the texts omit explicit considerations vis-à-vis gender-specific accommodation.

Neither directive provides specific guidance on accommodation but there is scope for Member States to take account of the recent research as good practice direction. The European Commission study on the gender dimension of trafficking in human beings finds that 'the confidentiality and safety of gender-specific, civil society accommodation is reported as crucial' for victims recovering from sexual exploitation, and this service is best provided by women-only refuges for women and their children (European Commission, 2016f).

Valuable guiding principles with regards to the provision of accommodation can be derived from the Istanbul Convention, which lists the security (including technical security) and ease of access alongside the need for establishing of shelters in sufficient numbers as necessary features of this essential support (Article 2, Explanatory Report 133, 134, 135). Similarly, CEDAW General Recommendation 35 views adequate shelter for women and their children as an integral part of specialist women support services (United Nations, 1979). The integration of other complementary services on the same premises as well as the involvement of survivors in the delivery of assistance dramatically enhances the quality of accommodation, according to the same report.

The implementation must address the risk that certain groups of women will not be provided with support by Member States, for example women living in isolated rural areas, women with children, disabled victims, or mothers of a disabled child.

4.11. Material assistance

Considering the longer recovery time after exploitation involving sexual violence and the typically lower socioeconomic status among women trafficked for sexual exploitation, such victims may be entirely reliant on state support for their personal needs. The Organisation for Security and Cooperation in Europe (2004) points out that due to the different needs of each trafficking victim, 'unforeseen or emergency expenses may arise' and therefore it would be prudent to budget for 'additional flexible funds for unforeseen costs'. Both the United Nations Office on Drug and Crimes (2008) and Organisation for Security and Cooperation in Europe (2004) emphasise the advantage of direct financial assistance, which include the opportunity to regain control over daily decision-making and the strengthening of the personal finance management skills.

Concerning the duration of assistance, the European Commission (2016f) found that victims of trafficking for sexual exploitation require longer recovery time in comparison to other forms of trafficking; importantly, the period is likely to exceed the standard 'recovery and reflection' period of 30 days (Article 13(1) of the Council of Europe Trafficking Convention). The longer

(7) Women and girls make up about 95 % of documented cases of trafficking for sexual exploitation in the European Union (Eurostat, 2015).

time and investment needed for their recovery and reintegration after their escape from a situation of exploitation makes material assistance a vital support for victims of trafficking for sexual exploitation.

In view of the likely need for support over a longer period, the European Commission (2016f) has highlighted the role of specialist services that can provide a gender-specific shelter with integrated support, something that is more than 'simply a hostel or bed in a dormitory' as well as financial assistance that allows women to 'develop aspirations, move on and rebuild their lives', emphasising that the material assistance must be provided regardless of whether or not victims have recourse to other public funds (European Commission, 2016f).

Article 11(5) of the Anti-Trafficking Directive mandates support measures including 'material assistance' to victims, in order to achieve 'at least standards of living capable of ensuring victims' subsistence'. Unfortunately, there is no additional guidance in the directive on the precise definition of the term 'material assistance', though it is likely to be interpreted as including some degree of financial support. The material assistance measure could be particularly vital to victims with special needs that derive from psychological, physical and sexual violence (Article 11(7)), such as victims of trafficking for sexual exploitation. Third-country national victims, particularly those lacking a lawful residential status, face a risk of insufficient duration of material assistance, which may increase the danger of these victims being re-trafficked or otherwise exploited. In some cases, the implementation of the directive may require that habitual residence conditions are waived for European Union citizen victims, in recognition of the fact that some victims with special needs may not be in a position to automatically meet this condition or join the labour market.

If material assistance is unavailable or of insufficient duration, or if it creates further dependence and does not promote a sense of dignity and personal choice, this could negatively impact on victims' recovery. Therefore, special attention needs to be paid to the implementation of the requirement for material assistance to ensure that it is conducive to recovery of victims who are vulnerable to secondary victimisation. These measures should also target specifically the prevention of re-victimisation and/or re-trafficking. Specialist organisations providing integrated support through gender-specific shelters are best equipped to assess the needs of such victims. Flexibility is required regarding the nature and the duration of the material assistance. Sufficient funding must be provided to ensure good practice is observed.

4.12. Medical and psychological needs

As stated before, the European Commission's study on the gender dimension of trafficking concludes that the harms of trafficking are distinctly specific to gender and generate gender-specific needs among victims. These harms are closely linked to sexual exploitation (Zimmerman et al., 2008; World

Health Organisation, 2002; European Commission, 2016f). The study on gender dimension defines trafficking for sexual exploitation as a gendered, severe and sustained form of violence against women, which causes physical, reproductive, mental, secondary victimisation related that are often different and more severe than those in domestic violence. This is linked to a greater risk of multiple rapes by men, hyper-violence causing vaginal injuries and blood loss leading to high rate of sexually transmitted infections including HIV (Zimmerman et al., 2008).

Gender-specific harms also include spontaneous and multiple pregnancies, forced and unsafe abortions, long-term chronic vaginal and pelvic pain, neck and mouth injury from forced oral sex, hepatitis C infections, severe diarrhoea, fatigue and malnutrition (European Commission, 2016f).

The psychological harms of coercion, violence and isolation are described in the European Commission study as severe and enduring. Such harms include multiplied rates of post-traumatic stress disorder, depression, eating disorders, attempted and completed suicides (Courtis and Gold, 2009; Herman, 1992). Exploitation within families could also result in similar harms (e.g. women with disabilities trafficked for forced marriage) (Shah, Balderston and Woodin, 2015).

Article 11(5) of the Anti-Trafficking Directive mandates that assistance and support shall include 'necessary medical treatment including psychological assistance'. The inclusion of psychological assistance is an important step, from a gender perspective, as victims of violence against women have distinctly higher needs for this type of assistance. The added element of consent of the victim is in line with good practice and empowerment strategies. Read in conjunction with Article 11(7) concerning the special needs of victims, the above obligation requires that Member States take into account the characteristics and experience of victims in determining the medical and psychological assistance necessary.

Member States should ensure that medical services available to trafficking victims are tailored to their needs, as established by the individual needs assessment, that they are provided early and for a sufficient duration of time. These are significant opportunities for effective implementation. The limited access to services beyond the recovery and reflection period provided by Council Directive 2004/81/EC, impacts on the access of third-country national victims to medical assistance. This is especially significant where the harms are lasting, which they often are in cases of severe sexual violence.

For instance, the European Parliament Committee on Women's Rights and Gender Equality (2016b) calls on Member States to extend the recovery and reflection permit beyond the required minimum of 30 days (Council of Europe, 2005, Article 13) for victims of trafficking for the purposes of sexual exploitation, 'given the significant and sustained harm caused by this form of violence'. It is key that this is monitored during implementation by focusing on more favourable provisions of the directive, which separates assistance from criminal proceedings with entailing residence permits (e.g. temporary residence permit).



It is vital to ensure that access to medical and psychological assistance for victims is equally available to all victims including EU nationals, who, based on other provisions of EU and national law, may need to satisfy certain conditions relating to the length of their residence in a Member State and tax contributions. This is not mentioned in the directive. Thus, Member States should remain responsive to the needs of victims in such circumstances and where necessary, establish a waiver for female victims from any such conditions.

In respect of psychological care, Article 9(3)(b) of the Victims' Rights Directive mandates the provision of 'trauma support and counselling' for all victims of gender-based violence, sexual violence or violence in close relationships — this is key from the perspective of female victims of trafficking for sexual exploitation who are likely to have a high take-up of this service.

4.13. Interpretation and translation services

A significant proportion of those trafficked in the EU originate from outside the Member State in which they are exploited. These victims often face a language barrier which can inhibit their ability to communicate with authorities and to access services. Consequently, it is essential that translation and interpretation services are available to victims. The Istanbul Convention mandates the provision of independent and properly qualified interpreters (Article 56(1)(h)).

Article 11(5) of the Anti-Trafficking Directive requires that Member States provide victims with translation and interpretation services 'where appropriate', as part of the measures for assistance and support. However, it does not expand on the circumstances where this support should be seen as appropriate.

Although there is no specific provision in the directive which concerns the gender of the interpreter, the gender-specific assistance and support requirement could be extended to the interpretation service and thus represents an opportunity. There are no provisions for gender-sensitive trainings in the directive as mentioned elsewhere, which could compromise the quality of the service.

The provisions of the Victims' Rights Directive are complementary, however they apply solely in the context of criminal proceedings and as such are more limited. On the other hand, they offer more detail as to the access to such services and the circumstances in which they should be available (Article 7). Interpretation must be provided upon request, free of charge during any interviews or questioning in the criminal proceedings. The refusal to provide an interpretation service can be challenged by the victim, as per recital 35. EIGE (2016) stresses the importance of a quality interpretation service to victims of gender-based violence with a view to accurately recording the facts of such cases. It considers the omission of interpreters in the list of professionals who need gender-sensitive training in recital 61, to be a shortcoming of the directive, while pointing out that insufficient regard to training is also observed in the Istanbul Convention, even though it similarly mandates the use of qualified interpreters.

5. ACCESS TO JUSTICE



5. ACCESS TO JUSTICE

Access to justice herein refers to victims' ability to claim legal rights through legal assistance, to participate in criminal investigations and proceedings against their trafficker(s), and to access compensation.

Although this section concerns victims' rights to access justice, it must also be noted that they are sometimes doubly-victimised by being wrongly prosecuted by State authorities for 'crimes' that they were forced to commit by those controlling them. Non-EU nationals in particular, are often treated as illegal migrants instead of being recognised as a victim of trafficking. Some even receive prison sentences as a result of being moved across borders by those exploiting them. That trafficking victims face risks of injustices of this kind must be borne in mind by those seeking to enhance their access to justice. Furthermore, it must be taken into consideration that the victims' interest might conflict with the criminal systems' interest, and pose more danger to the victim, regardless of the application of protective measures (Cuesta, 2009).

Case study (*R. v O.*, No 40020/03, ECHR 2012)

The case of 'O' in the United Kingdom is a particularly egregious example of a victim of trafficking being prosecuted rather than assisted. A 16-year old Nigerian girl was encountered by UK officials departing their territory bound for France. She was arrested, detained and charged with a crime: an immigration offence. At Court, the girl's own defence lawyer stated that a prison sentence was 'mandatory' — and one was duly imposed upon her by the judge: 8 months imprisonment. The sentence was quashed by the UK Court of Appeal who expressed concern at the fact that the police, immigration lawyers, a defence lawyer and the judge in the Crown Court had all neglected to treat the victim as a child victim of trafficking, who should not have been prosecuted (let alone convicted). The background facts were that the appellant had been trafficked to the UK from Nigeria, raped repeatedly on arrival, and told she had to work as a prostitute to pay off a EUR 60 000 debt. The appeal court described a report into her experience as 'horrifying reading' and lambasted the criminal system for multiple failings in this case, stating its hope that 'such a shameful set of circumstances never occurs again.'

A further point which deserves emphasis at the outset of any exploration of women's access to justice is the degree to which women experience difficulties generally in the criminal justice system. It should be borne in mind that this is an area in which offenders are seldom successfully prosecuted. There is a high attrition rate for crimes of violence against women. In general,

domestic violence, rape and other sexual offences feature low reporting rates ⁽⁸⁾, followed by low prosecution rates and — if they do reach trial — low conviction rates.

There are many reasons behind the low conviction rates. One is that, at every stage of the process, intimidated or vulnerable victims decide to drop out. This is attributed to an inability to cope with the inherent trauma of the process, intimidation, harassment or fear of the offender, or simply the woman feeling (or being) disbelieved — crimes of violence against women often lack independent witnesses who can help corroborate the woman's account. Stereotyping plays a large role as another major reason that leads to low conviction rates, as well as institutional factors that might play against women with regard to their credibility. For example, migrant women victims often face the barrier of the preconceived idea that she could be fabricating facts in order to avoid deportation (Liévana and Waisman, 2017). Non-EU nationals may have additional fears, for example, a belief in witchcraft or 'juju' is prevalent amongst Nigerian trafficking victims (Guardian, 2 September 2017), as well as a fear of indirect victimisation — their family members at home being targeted by vengeful traffickers (Liévana and Waisman, 2017). Lastly, they face additional obstacles such as lack of social networks or language barriers (European Parliament, 2016).

5.1. Legal assistance

Access to legal assistance is crucial to enable victims to access justice. It can provide victims with vital information about the scope of their rights, help them to secure appropriate legal support during criminal proceedings (e.g. special measures), and facilitate claims for compensation for their ordeal. The latter legal right, in particular, may play a vital role in a victim's recovery and reintegration.

Different groups of female victims present with different needs related to their individual characteristics, such as age (child or elderly), disability (physical and mental) and nationality. For example, nationals of non-EU countries often present with additional needs for legal assistance regarding their immigration status. Such individuals will often be in a precarious position as regards their residence in the State in which they have been encountered. They will often require immediate assistance to regularise their status and, in some cases, to avoid wrongful prosecution for immigration law transgressions (as per the case study highlighted above). There may also be a language barrier: victims in this group may be less able to articulate their needs and may struggle to explore, understand and access their full range of legal rights without support.

⁽⁸⁾ For a European study on attrition rates in rape cases, see Lovett and Kelly (2009).



In order to be effective, it is important that legal assistance is based on an early legal intervention model: that is available to victims immediately after their initial contact with the authorities. It should be provided by a person with appropriate training and expertise, including gender expertise. Moreover, given the complex needs of women victims of trafficking, as well as the fact that the harm they have suffered can seriously undermine their capacity to assert their rights, it is recommended that such assistance should go beyond mere information and advice, to include legal representation, based on their needs. In relation to the profile of those providing legal assistance to victims of trafficking, the European Commission has recommended that it comes from independent (as opposed to State) sources (European Commission, 2016f). The very low number of women victims who accept a reflection period mirrors the downfalls of the procedures and misinformation on their rights (Liévana and Waisman, 2017).

It is possible to divide 'legal assistance' into three parts: information on legal rights ('legal information'), advice or counselling on legal rights ('legal advice') and full legal support including representation in court ('legal representation').

Article 11 of the Anti-Trafficking Directive mandates the provision of assistance and support. More specifically, Article 11(5) provides that 'information' be part of the package of measures provided. This is a wide term, open to interpretation. It presents an opportunity for Member States to provide 'legal information' as part of the information provision to victims and in so doing, to take due account of the needs of particular groups for different types of specialist legal support (e.g. non-EU nationals).

Article 11(6) provides further clarification of what this 'information' should encompass. It specifies that it must include, at a minimum, information on two important immigration rights: the right to claim international protection/asylum and the right to claim a residence permit, as a victim of trafficking, pursuant to Council Directive 2004/81/EC. This is relevant with regards to the subset of victims who are non-EU nationals and who may require this advice. The specific inclusion of these particular topics of information in Article 11(6) presents an opportunity for a broad interpretation of 'information; to include the provision of legal information more generally. Women victims of trafficking, in particular those subjected to a forced marriage, may require specialist legal support regarding their civil law rights, for example family law matters such as divorce, child custody and so forth. However, the Anti-Trafficking Directive is silent on this matter.

Advice on one's legal rights is the next step after information provision. Article 12(2) of the Anti-Trafficking Directive mandates that Member States ensure that all victims of trafficking have access to 'legal counselling', in line with the sentiment expressed in the preamble in recital 19. The provision, however, stops short of mandating full legal representation. Representation is provided for only 'in accordance with the role of victims in the relevant justice system ... including for the purpose of claiming compensation'. This is helpful where victims have a clear role in the justice system (for example, in some Member States, victims can be represented by an advocate in the

criminal proceedings). In Member States where the victim does not have a role in criminal proceedings, the risk is that those States will provide no legal representation at all, by interpreting the mention of compensation in this provision to be linked to the criminal matter (as the word 'including' could be taken to imply).

This raises a concern, because advice on one's rights, without the means to actually exercise those rights, is meaningless — particularly in the case of victims of violence against women, who may be economically disadvantaged and unable to afford a private lawyer. Non-national victims, in particular, may lack the ability to represent themselves within a foreign legal system, in an unfamiliar language. It is a shortcoming of the directive that legal representation is not provided for comprehensively, in the case of all legal avenues that victims of trafficking may require to pursue: which could include criminal law, family law, immigration/refugee law, community care law (for example in the case of a child whose age is disputed) and others. Member States are of course free to make more generous provisions in their national rules.

Importantly, Article 12(2) provides that both the legal advice and (where applicable) the legal representation must be free of charge (as long as the victim does not have sufficient financial resources). The provision leaves the way open for means-testing, which represents a risk for victims. National rules in this regard may create difficulties for women who are victims of sexual exploitation involving an intimate partner. In such circumstances, it is crucial that any means testing done for the purpose of claiming this assistance only takes into account the means of the victim herself (International Commission of Jurists, 2016). Given the clear intention of the provision for free legal assistance, Member States should not create undue barriers in the implementation. Member States are bound by other international agreements which contain obligations to provide free (or at least affordable) legal services for women victims of violence, for example, the Beijing Platform for Action and Istanbul Convention.

With respect to the timing of the legal assistance, the Directive requires the provision of information (including the legal information on immigration matters outlined in Article 11(6)) immediately following a 'reasonable grounds' indication by a competent authority (Article 11(2)). Concerning the right to legal representation, this must be provided 'without delay'; this wording lends a relevant degree of urgency to the text.

Where possible, legal advice should be provided by individuals or services that possess gender expertise and a comprehensive view of violence against women and its victims. Victims should also have a free choice to request the gender of their lawyer/legal advisor, as this may facilitate fuller disclosures. Article 26 of the Victims' Rights Directive recommends general and specialist training for lawyers on dealing with victims. This complements the provisions of the Anti-Trafficking Directive by providing a basis for Member States to provide specialist, gender-sensitive training to those in the legal profession who may be involved in the assistance of victims.

5.2. Protection of victims during criminal investigation and proceedings

In any criminal investigation or proceedings, victims are exposed to various risks. These include the risk of secondary victimisation (i.e. when the process is 'victim-blaming', insensitive, and re-traumatises victims), the risk of re-victimisation (being targeted for crime again) and the risk of retaliation and intimidation by the offender. These risks are particularly heightened in cases of violence against women. The personal link between a woman and her offender — for example, the husband or close family members — gives rise to a clear risk that the offender may further harass the victim in an effort to intimidate her.

As a result of these risks, cases involving trafficking for sexual exploitation require careful handling during the criminal justice process. The risks may be mitigated by, amongst other things, the provision of 'special procedures' in the criminal justice process, heightened attention by the police to the safety and security of the victims, prosecution of offenders for intimidation and, in extreme cases, placing victims in witness protection programmes. Provision for specific protective measures for victims is included in both directives. It should be noted that the Istanbul Convention contains a strong emphasis on victim safety and forms an important part of the legal framework in this regard.

The Anti-Trafficking Directive refers to the risks to victims in its preamble: recital 20 acknowledges the need to mitigate the risk of secondary victimisation for trafficking victims in the criminal justice system and recital 19 acknowledges the need to protect victims from retaliation and re-trafficking.

Recital 57 of the Victims' Rights Directive highlights the vulnerable position of certain groups, stating that victims of trafficking, sexual violence, violence in close relationships, and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. It states that there should be a 'strong presumption' that those victims will benefit from special protection measures. This provision brings a helpful emphasis to the special needs of victims of trafficking for sexual exploitation. A similar point is made in recital 17 of the same directive, which states that 'women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence'. Recital 53 recommends the carrying out of proceedings in a coordinated and respectful manner to prevent secondary victimisation. Both directives go on to include substantive provisions that contain measures to protect victims.

5.3. Special measures

'Special measures' are modifications of usual criminal investigation or court practice designed to help vulnerable and intimidated victims give their best evidence and help to relieve some of the stress associated with giving their account of the ordeal they suffered. These measures can prevent or reduce secondary victimisation in the criminal justice system.

Article 12(4) of the Anti-Trafficking Directive states that Member States should 'ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation'. Article 12(4) lists four specific things that Member States should avoid, where possible, when dealing with trafficking victims: (i) unnecessary repetition of interviews of the victim; (ii) visual contact between victims and defendants; (iii) giving of evidence in open court; and (iv) unnecessary questioning concerning the victim's private life. Having these four measures listed in a substantive provision, as well as an express statement as to the underlying rationale, is a strength of the directive.

Recital 20 of the Anti-Trafficking Directive encourages the use of video recordings of interviews. This, however, is recommended in the preambles and thus does not constitute a binding obligation. Despite Member States being free to expand this particular protection to all victims of trafficking, either directive mandates it for adults, which poses a risk for women victims of violence.

Article 12(3) of the Anti-Trafficking Directive refers to a victims' right to enter witness protection programmes. Although this is an extreme measure, in some cases women victims of violence may require this kind of measure as the only means to ensure their safety from retaliation. The express mention of these kinds of programmes is thus welcome, from the perspective of these groups.

Recital 20 recommends that special measures be applied following the individual risk assessment mandated by Article 12(3), which should take account of 'circumstances such as their age, whether they are pregnant, their health, a disability they may have and other personal circumstances, as well as the physical and psychological consequences of the criminal activity to which the victim was subjected'. It is helpful that an awareness of gender-specific needs is highlighted in the preamble in this way.

The Victims' Rights Directive contains extensive provisions regarding the protection of victims in Chapter 4. The rationale for these provisions is outlined in Article 18, which refers to the need to avoid secondary and repeat victimisation and to ensure the physical protection of victims. The rationale is gender-neutral and does not mention gender-specific needs. However, as women victims of violence are likely to be more in need of these kinds of measures, the strong emphasis on them is welcome.

Chapter 4 imposes some clear, practical obligations. For example, Member States are required to ensure that all new court premises are designed with separate waiting areas for victims by Article 19(2), in order to limit contact between victims and



offenders. In case pre-existing court buildings cannot be adapted that way, Article 19(1) provides that Member States shall establish the necessary conditions to enable avoidance of such contact.

To avoid secondary victimisation, Article 20(b) of the Victims' Rights Directive requires that 'the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation'. To support this, the directive recommends in recital 53 that interviews with victims are recorded and, where possible, tapes from those interviews used in court proceedings. It further provides in Article 24(1)(a) that authorities may record interviews with child victims to use during criminal proceedings. As previously discussed in the context of the identification interview, the directive provides victims of violence against women with the ability to choose the gender of their interviewer. Care must be taken during implementation to ensure that the choice also extends to any interpreter present, and that victims are facilitated to make the choice as best as possible.

Chapter 4 further mandates that a victim (assessed as in need of special measures) can have their legal representative and a person of their choice present during criminal investigations (Article 20(c)), provides for the option of hearings in private (Article 23(3)(b)) and mandates that all interviews must be conducted by trained professionals (Article 23(2)(b)). Article 22 mandates an individualised assessment of all victims to assess whether they may benefit from special measures. This blanket gender-neutral provision serves to meet the needs of female victims of trafficking, in particular, as the assessment enables their needs to be taken into account and appropriate special measures applied.

By Article 23(1), Member States must provide the special measures listed in Chapter 4 where the individualised assessment shows they are necessary (unless impossible due to practical constraints or an urgent need to interview the victim). The directive's strong emphasis on the importance of these measures allows for little 'wiggle room' for Member States to fail to implement this chapter.

5.4. Compensation

Women are in many countries disadvantaged when it comes to accessing education and employment opportunities. As a result, they are more likely to be preyed upon by traffickers, including those who use false promises of employment as a ruse. A background of socioeconomic disadvantage makes it less likely that a victim who has recently escaped a trafficking situation will be able to support herself. A compensation payment can provide vital cushioning for a woman to enable her to support herself, prevent her falling back into exploitation as a result of economic duress, or otherwise.

States must provide victims of trafficking for sexual exploitation with the possibility of claiming compensation. This right derives from international legal instruments, for example, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Article 6(6)), or the

United Nations Convention against Transnational Organized Crime (Article 25(2)).

Equal treatment should be at the core of victims' capacity to claim compensation. Taking into account the variations in residency status of different categories of victims, it should be possible for victims lacking legal immigration status to remain in a territory and receive residency rights for the duration of a claim (Inter-Agency Coordination Group against Trafficking in Persons, 2016). A victim of trafficking will generally only be able to pursue a civil claim if he or she can secure legal representation (United Nations Office on Drugs and Crime, 2016b). In the EU, access to compensation remains problematic and 'State compensation and compensation from the perpetrator were identified as two of the 10 main gaps in the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings' (European Commission, 2016a).

The Anti-Trafficking Directive provides, by Article 17, that victims have access to existing schemes of compensation to victims of violent crimes. It essentially seeks to ensure equal treatment for victims of trafficking. Particular issues may arise, however, where trafficking victims attempt to access such schemes. For example, where there are requirements that a victim is of 'good character' or that she must have reported the crime against her within a certain time frame (Inter-Agency Coordination Group against Trafficking in Persons, 2016). The former may create difficulties where a victim has been arrested for immigration or prostitution-related matters, while the latter may adversely affect those victims unable to report the crime against them within a designated time frame, possibly owing to the harm they have suffered or the nature of their relationship with their trafficker. It is important that any such barriers to victims being able to access compensation schemes are removed. The Anti-Trafficking Directive does not address barriers of this kind, leaving it up for States during implementation.

Civil society organisations report that even though the right to compensation is present in Member States' legislations, it is yet to be fully implemented in practice, suggesting that more close monitoring of actions taken in this regard (European Commission, 2016a). However, the situation has been improving, particularly for victims of trafficking in human beings, as an increase of the amount of state compensation provided to these victims has been reported (European Commission, 2016a).

Article 16(1) of the Victims' Rights Directive mandates that Member States 'shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time' Article 16(2) states that Member States shall 'promote measures to encourage offenders to provide adequate compensation'. The first provision aims to ensure that compensation for victims is provided as part of the normal process of criminal proceedings (unless there is provision for compensation elsewhere in the national law framework). The provision further provides that a decision is required within a reasonable time. The second provision aims to require Member States to promote measures that encourage offenders (as distinct from the State) to provide compensation to victims.

The right in Article 16(1) is not a substantive right to claim compensation, in contrast to the substantive right contained in the Anti-Trafficking Directive. This provision merely provides a procedural right to a decision within a reasonable time. The provision is unhelpful, therefore, unless the right to make such a claim against the offender is enshrined in national law. While this could be read as a purely procedural right, it does have a substantive element, whereby it assumes that there must be a means of a victim claiming compensation in either the criminal law or other (i.e. civil) legal proceedings. The matter is covered by the Council Directive 2004/80/EC, of 29 April 2004, relating to compensation to crime victims, which provides, *inter alia*, that Member States must have compensation funds for victims, across all areas of crime ⁽⁹⁾.

Article 16 should also be read with recital 49, which states: 'The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed'. In the case of women who have been trafficked, upon their escape from the situation of exploitation, they may return to their country of origin (or a third country). This provision (albeit only in the preamble) encourages Member States to permit compensations claims to be made/progressed from abroad. The provision adds nothing to the already binding obligation in this regard in Directive 2004/80/EC (Article 1).

The second part of Article 16, subsection (2), uses less assertive language: Member States 'shall promote measures to encourage offenders to provide adequate compensation to victims'. The mandatory term 'shall' is undercut by the fact that a Member State only has to 'promote measures to encourage' action. The fact that there is some impetus to ensure that offenders are financially liable to their victims is welcome, and represents an opportunity. Making offenders liable in this way may have a deterrent effect (Inter-Agency Coordination Group against Trafficking in Persons, 2016).

A shortcoming in the compensation provisions of both directives is their failure to specify the ambit of what types of harms could/should be covered by compensation. In particular whether, and to what extent, psychological harm is included. This matter is left for Member States to determine. When it comes to women victims of trafficking for sexual exploitation, in many cases they experience harms that are not material, in the sense that they are difficult to quantify — there is no tangible, objective measurement of harm. While this is the case for many violent crimes, the psychological damage for trafficking victims, in particular, is in many cases extensive and long-lasting. In order to ensure that this can offer the required protection to victims, it is important that national rules take account of the different types of harms which victims of violence against women encounter and do not place restrictions on those who can access such funds.

⁽⁹⁾ This directive is not within the scope of this study, however it is worth noting that the directive is gender neutral and makes no reference to women, gender or gender-based violence.

6. PROVISIONS REGARDING GIRL VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION



6. PROVISIONS REGARDING GIRL VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION

6.1. Identification of girl victims

Taking into account the special vulnerability of girl victims, and the relationship between the identification process and the provision of tailored support and assistance, it is crucial that girl victims can be identified swiftly. Consequently, where there is any doubt over the age of a victim and whether they are a child, there should be a presumption in favour of defining/identifying them as a child. The importance of this presumption cannot be overstated. Without it, a child risks being treated as an adult irregular migrant, with all the consequences that flow from this: for example, risk of detention in many European States, risk of homelessness and destitution in others.

Girl victims are also unlikely to have identity documents, making age assessment a matter of guesswork by social workers, as it cannot be medically ascertained with any great degree of accuracy and it should be the last resort for verification (European Parliament, 2013). Girl victims of trafficking for sexual exploitation, in particular, may present themselves as older than they in fact are, due to having been sexualised at an inappropriately young age. As such, they are often initially mistaken for adults by the authorities (Franklin and Doyle, 2013) and denied access to the additional assistance and protection measures to which they are entitled.

Girl victims of trafficking may also misrepresent their age as older, having been told to do so by the person controlling them (World Health Organisation, 2003). It is vital that authorities acknowledge a doubtful claim of adulthood as a warning sign that they might be in the presence of a victim of trafficking in human beings and that they are prepared to address it, for example, by referring promptly the situation to relevant national services (European Asylum Support Office, 2018).

Financial considerations may also be at play — it is often costlier for a State to accommodate a child than an adult, and as such, officials working within budgetary constraints have an incentive to assess a child as an adult (or as an older child, who will leave their care sooner). As a result, age disputes are not uncommon in cases of child trafficking victims; these can be damaging and lead to secondary victimisation. Children find disputes about their age or immigration status particularly stressful; a ‘culture of disbelief’ in this regard can silence a child (Pearce, Hynes and Bovarnik, 2009).

Article 13(2) of the Anti-Trafficking Directive requires that where there are doubts over the age of a victim of trafficking, and there are reasons to suggest that the victim is a child (defined in Article 2 of the directive as someone under the age of 18) it should be presumed that they are a child victim for the purpose of receiving immediate support. This presumption is crucial as it provides an opportunity for girl victims of trafficking to be swiftly identified and receive age-appropriate assistance and protection. It can further protect girl victims from secondary victimisation.

The actual protection offered by the presumption will, however, depend on how it is implemented in practice. The European Commission report (European Commission, 2016e) on Member States’ transposition of the directive highlights difficulties surrounding its implementation, relating to the procedures for assessing the age of victims in uncertain cases and the actual application of the above presumption. In this regard, the directive does not contain guidance on who should be responsible for determining whether there are reasons to believe a victim is a child and how this should be determined in practice.

Moreover, the wording used exposes victims to the possibility that competent authorities will not apply it: the presumption only applies where there are ‘reasons to believe’ the person is a child. Officials thus have discretion to argue, for example, that they have reason to believe the opposite and to deny a child protection by inappropriately failing to apply the age presumption. Experience shows that States do fail to apply presumptions of this kind (European Asylum Support Office, 2015), most likely due to the combination of strong financial disincentives and cultures of disbelief engendered by, inter alia, the fact that trafficked children often present with classic ‘credibility issues’, e.g. unclear or incoherent narratives of their past, failures to disclose the truth about their true situation at an early stage, false identity documentation. Child victims are unlikely to give direct disclosures, and their accounts may be confused and sometimes contradictory — often because they are traumatised, scared of telling the truth or have been coached into telling a story (Setter, 2014). As such, it is vital to apply the presumption in cases where there is any indication that a victim may be a child (European Asylum Support Office, 2018).

While children who state that they are under 18 years old often face disbelief and the situation investigated, problems arise also if an undocumented young girl states that she is an adult.



This can happen for many reasons, from not wanting to be separated from accompanying adults to being instructed by the traffickers to say so, *inter alia* (European Asylum Support Office, 2018). If the girl has an older appearance as discussed above, this assertion is not investigated and the child does not receive appropriate treatment and measures, in the sense that her situation will be dealt with as if she was an adult. After the victim is identified as being a child, the question of consent is entirely irrelevant for identification purposes: it is presumed in the text of the directive that children cannot consent to their exploitation. Recital 11 of the Anti-Trafficking Directive states ‘when a child is concerned, no possible consent should ever be considered valid’.

Still concerning identification and in relation to the specific protection of girl victims, it would be of utmost importance that national referral mechanisms include child protection services (European Commission, 2012), which are well placed to identify and assist girls trafficked for sexual exploitation. Through their formal involvement, civil society organisations could contribute towards early identification and ensuring equal access to services for girl victims of trafficking. Given that these groups will likely constitute relevant support organisations for many victims of trafficking, their involvement in the national referral mechanism would appear to be mandated by Article 11(4) of the Anti-Trafficking Directive. To date, the involvement of child protection services remains limited in Member States.

When children are unidentified, they face the risk of being deported or released undocumented, despite the risk of re-trafficking. There are no specific shelters for child victims in some countries as there are for women; as a result of the lack of specialised care the few children identified can be referred to general children’s homes, which they often flee within days of arriving, or sent to shelters for adult victims, where they do not receive proper child-oriented assistance and protection (Fernandez and Waisman, 2018).

Another aspect that often lacks attention is the identification of children who are not direct victims of trafficking, but who accompany their mothers, the victims, or who are born in the context of trafficking. While the Anti-Trafficking Directive focuses only on direct victims of trafficking, indirect victims are included in the provisions of the Victims’ Rights Directive. However, it should be taken into consideration that children accompanying mothers who are victims of trafficking are often disregarded in terms of their special needs and identification as secondary victims.

6.2. Support and assistance

In order to ensure an adequate response for girl victims of trafficking, it is important that their best interests are placed at the core of any assistance measures. The Anti-Trafficking Directive requires that Member States take into account the best interests of the child when providing them with assistance and support. Article 13(1) states ‘in the application of this directive the child’s best interests shall be a primary consideration’, echoing recital 22 of the directive.

The directive takes its understanding of a child’s best interest from the Convention of the Rights of the Child, the provisions of which could inform Member States’ implementation of the directive *vis-à-vis* support and assistance measures for girl victims of trafficking. Only through an individual assessment of girl victims of trafficking can their best interests be properly established, taking account of the child’s views, as provided by Article 14(1), which mandates that child victims must undergo an individual assessment *vis-à-vis* the type of support and assistance they require.

It is of relevance to note that assessing the best interests of a child is always a controversial process, which can be affected by several factors, namely stereotyping attitudes by those who conduct the assessment towards adult victims (e.g. the mother of the child). For example, it is common that child protection services consider women victims of trafficking for sexual exploitation as less apt, or presenting added risk factors towards caring and ensuring the safety of the child, which in turn leads to disproportionate decisions that further victimise both woman victim and child. Another example of how stereotyping might interfere in the process of determining the best interests of the child is the stigmatisation of different cultural backgrounds concerning motherhood and education of a child.

For example, organisations working in the field to help victims’ integration have reported that Nigerian victims of trafficking for sexual exploitation are often confronted with the stereotype that they are ‘bad mothers’ on account of having cultural references of motherhood that differ from the European model (Women’s Link Worldwide, 2018). These women are often seen in Europe as distant or authoritarian mothers, unfit for motherhood, or even confronted with the preconception that they got pregnant as a strategy to stay in Europe (Women’s Link Worldwide, 2018). Stereotypes like these might lead to inadequate conclusions that harm the best interests of the child.

It is of note that trafficking nets use female bodies and their reproductive capacity to their own benefit, generating pregnancies and abortions. Thus, the assessment of the best interests of the child must not be blind to the consequences of the decisions to the mother and the highly victimising context in which that child was born (Women’s Link Worldwide, 2018).

Thus, to ensure the effectiveness of this measure it will be important that those responsible for assessing the interests of a girl victim have appropriate training. The importance of training and specialisation for the delivery of assistance and support is highlighted in the European Union Agency for Fundamental Rights’ report on Child Friendly Justice (2017). This, however, is not provided for in the directive. Recital 61 of the Victims’ Rights Directive could be interpreted as requiring training for officials involved in criminal proceedings as it references ‘specialist training where their work focuses on victims with specific needs’, however there is a risk that implementation might not reflect this broad interpretation.

According to Article 14(1) of the Anti-Trafficking Directive, the purpose of conducting an individual assessment, discussed earlier, is finding a ‘durable solution’ for child victims of trafficking.

This follows a similar intention outlined in recital 22. This can be contrasted with the support measures for adult victims of trafficking, which do not consider their longer-term needs. Given a child's need for stability, the focus on a durable solution is key and can contribute towards the recovery and reintegration of girl victims of trafficking. It is an opportunity, in particular, that Member States are encouraged to offer integration into the host country as a durable solution. The longer-term reintegration strategies for exiting prostitution could be considered in cases of girls trafficked for sexual exploitation. The European Commission recommends the extension of exit services and protection for young victims of trafficking for sexual exploitation to the age of 21 to minimise harm and prevent re-trafficking (European Commission, 2016f).

The European Commission found that the return and reintegration of child victims is alarming, and that 'fast track' methods of return are not in the best interest of the child and should be avoided (European Commission, 2016e). It should be borne in mind that there are third-country national girls trafficked in the European Union and that the size of this group may have increased in the current migration crisis. For example, in 2017 the United Nations Migration Agency reported that Italy has experienced an almost 600 % increase since 2014 in the number of potential victims of trafficking for the purpose of sexual exploitation arriving through the Central Mediterranean route, mostly Nigerian girls aged 15-17 (International Organisation on Migration, 2017). Thus, all returns of children should be closely monitored, in particular, girl victims must not be repatriated to countries with significant gender discrimination, which may lead to their speedy re-victimisation.

The European Commission states that the implication of family involvement in child trafficking and the returning of child victims to their communities are matters that need to be further studied and understood (European Commission, 2016e). The trafficking of children is often pushed by the family, for example, in cases where parents could not afford their upbringing, or wished for a better future for their children, sending them away purposefully but unaware of the risks the child faces. It also happens that the family sends the child to another country as an 'investment', hoping to receive a financial compensation when the child settles in the country of destination (European Commission, 2015c).

Dysfunctional families with a history of abuse towards the child may also intentionally enter children into trafficking schemes to further exploit them, a decision that is facilitated by social acceptance of (forced) child marriages in the community, patriarchal family structures, inter alia (European Commission, 2015c). The family background and the reasons behind the child entering the trafficking situation must be carefully analysed before returning child victims is considered.

Concerning support and assistance provided to girl victims, guardianship is also a relevant concern. Children deprived of parental care are particularly vulnerable to abuse and exploitation, which an effective guardianship system must prevent.

The European Union Agency for Fundamental Rights (2015b) points out that a robust guardianship system is a cornerstone to any comprehensive child protection system that addresses child trafficking. This position is underscored in the European Union Strategy for Eradication of Trafficking in Human Beings 2012-2016 (European Commission, 2012). The practice of many Member States is to use the existing guardianship systems to cater for the needs of victims of trafficking.

The Anti-Trafficking Directive provides for a guardian to be appointed in the case of an unaccompanied child victim or where there is a conflict between the interests of the child victim and those with parental responsibility: Articles 14(2) and 16(3). This is an important protection and a welcome binding obligation, particularly for girl victims of trafficking for sexual exploitation involving parents or those with parental responsibility. Although the directive contains no detail as to the duties of the guardian, recital 23 makes it clear that the core of guardian's role is to safeguard the child's best interests.

The European Union Agency for Fundamental Rights (2015) observes that migration and asylum law applies to third-country national child victims if they are not formally identified as victims by the competent authorities. As a general rule, the report recommends the independence of the guardianship system from migration and asylum authorities. Given the nature of exploitation that is prevalent in cases of trafficking for sexual exploitation, it is also essential that the guardian has special training on working with children who are recovering from sexual abuse.

Research shows that, in the European Union, almost no specialised centres for children victims of trafficking exist. Thus, children victims are often integrated in juvenile centres that do not offer specialised services to attend to the children's specific needs and consequences of the trafficking experience. Shelters designed for women victims of trafficking also lack specialised services for girl-child victims, leaving this group unattended in respect to their specific needs (Women's Link Worldwide, 2018).

6.3. Access to justice

Given their circumstances and particular vulnerabilities, girl victims may present with different needs in the context of the judicial system, specific to their status as children, which must be addressed in criminal proceedings. These measures are in addition to the suite of measures available to all victims. By Article 22(4) of the Victims' Rights Directive, child victims are presumed to have specific protection needs; it provides that the extent to which they would benefit from special measures shall be subject to an individual assessment: as provided for by Article 22(1). This presumption is helpful. There is no hurdle for a child to demonstrate that she needs special measures: the starting point is that she does. Children may not be strong advocates on their own behalf and may be more inhibited from articulating their needs as compared with an adult victim. Girl victims of trafficking benefit from this strong protection.

**Case study** ⁽¹⁰⁾

'[In one case] the trafficker was allowed to directly address questions to the victim. The judge attempted to say "Do you have legal representation?", but when the attorney started to yell that he [was] not able to [ask] all the questions, that the trafficker [was] directly involved and that he should have the right to ask the victim, the judge remained silent. The trafficker [then] addressed the victim directly. I was right next to [the child trafficking victim] and I saw her reaction. She didn't know what to do, to answer or not, especially since the questions formulated by the trafficker weren't related to the offence, but to the identity of the victim. His purpose was to find the identity [...] and, at the end, he called her by her name, he said, "I know who you are" and he said her name. The child was almost about to faint on the chair.'
(Romania, psychologist, female)

The Anti-Trafficking Directive provides additional measures for the protection of child victims. Article 15(1), for example, requires that in circumstances where those with parental responsibility are precluded from representing the interests of a child, owing to a conflict of interest, the competent authorities should appoint a representative for this purpose. Similarly, it provides for the mandatory appointment of a representative for unaccompanied minors, as well as the appointment of a guardian, where appropriate (Article 16(2) and (3)).

Importantly, the directive contains a number of binding provisions relating to how child victims of trafficking are interviewed during criminal proceedings. Article 15(3) of the directive contains six specific, additional requirements for child interviews. The measures are designed to reduce the risk of secondary harm for girl victims of trafficking. To take one example, the provision to avoid unjustified delays in interview scheduling (Article 15(3) (a)) protects children by ensuring their cases are prioritised for speedy interviews. Delays in dealing with children create a risk

that legal adulthood could be reached before the investigation is concluded, possibly leading to child-specific entitlements being withdrawn from the child victim. Member States can guard against this in implementation by ensuring that 18 is not a 'bright line' when it comes to suspected child victims of trafficking, and permitting them to continue to avail of some child services for a transition period after attaining adulthood. The benefits of the full implementation of the protections in Article 15(3) were recently highlighted by a study by the European Union Agency for Fundamental Rights (2017), which records the opinions of child victims of crime.

There is, however, a concern that the protection offered by a number of the above provisions will be undermined by their wording, in particular the use of the term 'where necessary'. Without an explicit requirement that those involved in criminal proceedings receive training and are specialised in the care of child victims of trafficking, it is possible that those determining the necessity of certain measures may be ill-equipped to make that decision. This is something that Member States can guard against during implementation of the directive by providing training to ensure that those interacting with girl victims of trafficking for sexual exploitation have specialist skills to do so.

Training of professionals is also required by the Victims' Rights Directive, namely by Article 23 that requires that 'interviews with the victim [are] being carried out by or through professionals trained for that purpose'. This is applied in the context of victims with specific protection needs, which includes children. As such, those responsible for assessing the protection needs of children and providing assistance are required to have appropriate training and expertise.

Article 15 (4) of the Anti-Trafficking Directive obligates Member States to take necessary measures to ensure that interviews may be tape-recorded and, further, that such tapes may be used as evidence in court, where appropriate. A similar provision is provided in Article 24(1)(a) of the Victims' Rights Directive, that authorities may record interviews with child victims to use during criminal proceedings.

⁽¹⁰⁾ European Union Agency for Fundamental Rights (2015a), p. 26.

7. RECOMMENDATIONS FOR MEMBER STATES



7. RECOMMENDATIONS FOR MEMBER STATES

On the basis of the analysis conducted, EIGE proposes recommendations for Member States when implementing the Anti-Trafficking Directive, as complemented by the Victims' Rights Directive, from a gender perspective, in a way to account for the specific needs of women and girls trafficked for sexual exploitation.

7.1. General recommendations

Ensure full awareness of the provisions of the Victims' Rights Directive and other relevant instruments

Taking into account the approach enshrined in the Anti-Trafficking Directive, it is recommended that Member States should be aware of the provisions of the Victims' Rights Directive and the wider body of law and policy on gender equality, violence against women (such as the Istanbul Convention and the CEDAW Convention), in the implementation of Articles 11-17 of the Anti-Trafficking Directive.

Recognise trafficking for sexual exploitation as violence against women

Recognising the gender-specific characteristics and harm experienced by victims of trafficking for sexual exploitation, it is recommended that Member States identify such victims as victims of violence against women under the Victims' Rights Directive. Unconditional assistance and specific, targeted and integrated support, regardless of whether the offender is identified, prosecuted or convicted, should be granted. Member States should include their strategy on trafficking for sexual exploitation in their broader strategy on violence against women and use gender-specific indicators, benchmarks and time frames. Moreover, it is recommended that specific budgets are allocated for measures against trafficking for sexual exploitation, which can be monitored and evaluated from a gender perspective, and informed by experts and national frameworks on violence against women. Member States should continuously monitor the impact of laws, policies, programmes and actions.

Provide training on trafficking from a gender perspective

It is recommended that violence against women is mainstreamed into training programmes on trafficking in human beings, by focusing on the gender dimension of trafficking,

particularly for sexual exploitation. This should form an intrinsic part of all training materials and programmes delivered to professionals who are likely to come into contact with victims, including legal practitioners, judiciary agents (including judges, court interpreters, among others), law enforcement, immigration officials, health and child care professionals, civil society organisations, inter alia. The training programmes should focus, but not be limited to, power dynamics of violence against women and its root causes, characteristics of sexual exploitation, from recruitment to its consequences and victims' needs. Training should also concentrate on children's experiences and a deconstruction of victim-blaming and stereotyping discourses. These training programmes should also be offered to a range of different sectors, which may come into contact with victims, such as embassy and consular staff, airline personnel, marriage registrars, border guards, among others.

Promote cooperation between authorities and establish partnerships

It is recommended that Member States offer integrated services for protection and support, and build sustainable partnerships at local, regional and international levels to allow for more effective responses, from identification to protection and support, irrespective of the victims' willingness to cooperate with police or criminal proceedings. Different stakeholders must be involved in a multi-agency cooperative network (such as health and social services, maternity services, child protection systems, education institutions, law enforcement, migration authorities, inter alia). Partnerships with specialised civil society organisations which play a role in identification and in providing specialised and integrated support to victims are key to a holistic and effective response to victims' needs. Given the recent migration crisis, it is recommended that close cooperation with humanitarian responses and disaster relief programmes, for example, is ensured. A national referral mechanism should be established to connect trafficking in human beings to refugee protection rights and ensure that international protection as a refugee is available to victims of trafficking, when appropriate, and that the victims are referred to specialised care.

Improve data analysis and research

In order to better understand the gender and age dimensions of trafficking for sexual exploitation and in line with Article 19 of the Anti-Trafficking Directive, it is recommended that Member States collect sex and age-disaggregated data of victims and perpetrators. Furthermore, it is recommended that data



collected on victims includes information on support, assistance and protection measures that have been applied. Efforts should be put into researching the links between trafficking and refugee protection needs, as well as the phenomenon of recruitment and re-trafficking. It is recommended that Member States investigate the reasons that hamper early victim identification and their resort to assistance mechanisms, in their national contexts. This should be done through an independent analysis of how the system serves the victims. Actions should be taken to tackle identified gaps.

7.2. Identification of victims

Ensure early identification

It is recommended that a low threshold vis-à-vis the evidentiary standard used for identification is adopted in all Member States. Competent authorities should identify gaps in the early recognition of indicators of the multiple forms of direct and subtle forms of coercion, deception and abuses of vulnerability, which are used in the trafficking of women and tackle them. Authorities should ensure that as soon as there is reason to suspect that a person is a victim of trafficking for sexual exploitation they receive immediate protection and assistance. Confirmation of their status as a victim of trafficking in human beings should occur at a later stage. Consent given to traffickers should be always considered irrelevant by the authorities, particularly for female victims of trafficking for sexual exploitation and forced marriage.

Introduce special measures to identify and protect girls and women at risk

Considering the importance of indicators in the identification of victims, it is recommended that gender-specific indicators informed by evidence in relation to gender-specific risks and needs experienced by victims of trafficking for sexual exploitation are an integral part of the identification process. The EU is still facing migratory pressure, leading to an increasing number of asylum seekers, refugees and immigrants. Therefore, it is recommended that Member States introduce a gender-specific approach to the identification and protection of women and girls at risk of, and subjected to, trafficking in human beings, especially for sexual exploitation, in precarious contexts including populations displaced by war and conflict, and refugee camps. Member States should make full use of available tools, such as the European Asylum Support Office (EASO) Training module on trafficking in human beings; European Fundamental Rights Agency (FRA) Handbook on Guardian systems for children deprived of parental care, with a particular focus on child victims of trafficking, the European Border and Coast Guards Agency (EBCG) Vega Handbook on children at risk in airports, as well as the Handbook on risk profiles on trafficking in human beings (available for use for relevant national authorities).

Identify and support victims irrespective of their migration status

Recognising that irregular (or undocumented) migration status is a major barrier to seeking help and may have been used to control victims of trafficking for sexual exploitation, it is recommended that Member States ensure that the identification process is not influenced by legal status, ethnicity, nationality and the right to seek asylum. It is particularly important that competent authorities assure victims of their rights as victims of trafficking and that their primary concern is identification and protection, not immigration status. Member States should establish additional means of identification, other than through criminal proceedings, to ensure that victims who do not wish to pursue criminal proceedings are still identified and assisted, in line with the principle and spirit of the Anti-Trafficking Directive on unconditional assistance, protection and support.

Avoid secondary harm

Given the forms of exploitation that victims of trafficking for sexual exploitation may disclose, such as rape, sexual assault and inhuman and degrading treatment, it is critical that they should not be made to extraneously repeat accounts of the abuse experienced. It is recommended that interviews are kept to a minimum during all stages of the process (from identification to investigation and other criminal proceedings) and that unnecessary questions about the victim's private current or past life are avoided. Moreover, victims should be able to choose the gender of the interviewer and any other actor involved in the process, such as an interpreter. Interview recordings and protocols for transfer of evidence between agencies must adhere to the highest standards of personal data protection and confidentiality. Member States should ensure that interviewers are properly trained to avoid secondary victimisation and understand violence against women and its consequences, as well as to acknowledge differences and needs based on diverse cultural backgrounds, inter alia. The safety of the victim shall be assured at all times and contact between victims and perpetrators shall be avoided to the possible extent, limiting the risk of re-victimisation, in all stages of the process.

7.3. Assistance and support

Assess individual needs

It is recommended that a needs assessment for each suspected victim is conducted as soon as possible by a specialist practitioner who is trained to identify gender-specific harms and the needs of victims of trafficking for sexual exploitation. This assessment should focus on protection needs, including the assessment of the potential threat of re-victimisation and re-trafficking, but also medical, psychological, social and legal assistance and support needs. The victim should have the right to select the gender of the professional who will be performing the assessment. It is crucial that a thorough needs assessment is conducted for all victims, irrespective of their willingness to cooperate with criminal proceedings.

Provide appropriate support and assistance

It is recommended that Member States ensure that victims of trafficking for sexual exploitation receive support and assistance, which is proportionate, appropriate and tailored to meet the needs of each individual victim. Member States should consider violence against women as valid grounds for durable assistance and ongoing support, at all stages, irrespective of the victims' willingness to cooperate with police or criminal proceedings. It is crucial to provide support to the victims while re-integrating them into society. The discontinuation of assistance and support services could have a devastating impact on the victims. Therefore, the duration of the assistance should not have an established end-point and should be carefully and continuously assessed by trained professionals, specialised in the areas in which the victim is being supported. Residence status provided to undocumented third-country nationals should be extended to avoid harmful early discontinuation of assistance and support measures, in spite of the termination of criminal proceedings. All assistance and support measures provided to victims of trafficking for sexual exploitation should be implemented with full consent by the victim.

Develop integrated services and good practices

It is recommended that good practice models, which provide an integrated range of protection and support services in the same building continue to be developed and resourced. These services include information in the victims' original language and in a way that's intelligible to them, accommodation, psychological and physical health services, trauma support and counselling, legal advice and information, migration support, material assistance, financial support, access to education, training and support in the integration of the labour market, inter alia. Furthermore, Member States should ensure that accommodation for victims of trafficking for sexual exploitation is a safe, secure and appropriate space. Accommodation should be adjusted to women's needs, promoting a feeling of safety and preventing re-traumatisation and the potential for further targeting and sexual exploitation. Moreover, shelters should also be culturally sensitive to accommodate the needs of women victims with different cultural, ethnic and linguistic backgrounds. Shelters also need to be adapted to the needs of women with a disability and women with children, providing integrated services and support for families. Extra protection should be available in locations where refugees and asylum-seekers reside to prevent targeting by traffickers, especially for those who have already been trafficked or are vulnerable to trafficking due to their migration journey and/or specific migration status.

7.4. Access to justice

Ensure early legal intervention

It is recommended that Member States ensure early legal intervention for all victims of trafficking for sexual exploitation at the point of detection or disclosure to any front-line responder or competent authority. This should not be limited to legal advice on criminal law matters (such as their rights to recovery and reflection periods) but also include legal information and advice on legal status matters (for example, the right to claim international protection or access other immigration related procedures), and on civil and family law topics (such as child custody, guardianship of children, divorce). The right to compensation and the provision of legal representation should be ensured at every stage of civil and criminal proceedings.

Provide specialist and independent legal representation

It is recommended that legal advice and representation should be provided by independent specialist legal practitioners who are trained in the gender-specific aspects of trafficking in human beings, so as to adequately understand the specific needs of victims and best respond to them. It is recommended that Member States ensure legal representation is offered to victims of trafficking for sexual exploitation, across all legal paths they might need and/or choose to follow, besides criminal proceedings, including civil and family law matters and for the purposes of seeking compensation. Member States should ensure that legal representation is available without delay and without cost, or in a way that vulnerable victims are able to afford it without compromising the quality of their legal representation and access to their rights. Moreover, victims should be given the possibility to choose the gender of their legal representative.

Prevent secondary victimisation

It is recommended that Member States prioritise the prevention of secondary victimisation in all criminal proceedings and/or other legal interventions that affect victims of trafficking for sexual exploitation. This can be done through the use of a confidential and gender-specific approach that includes, but is not limited to: avoiding unnecessary repetition of interviews during investigation, prosecution or trial, preventing visual contact between victims and defendants, ensuring there is no unnecessary questioning concerning the victim's private life, removing the requirement to have the victim appear in court, collecting testimony/hearings through the use of communication technology or recordings, taking special measures in the handling and storage of data. All interventions should be conducted by professionals with proper training and gender-specific knowledge on sexual exploitation. This includes professionals such as judges, prosecutors, legal representatives, court interpreters, translators, among others.

**Protect victims during criminal trials**

It is recommended that special protection measures are taken especially during criminal trials to ensure that victims are protected from retaliation, intimidation, and from the risk of being re-trafficked or re-victimised. Comprehensive standardised risk assessment procedures should be developed and conducted at the earliest stage with each individual victim. Moreover, safety audits and assessments for privacy should also be carried out in interview rooms and courtroom premises to ensure that the victim cannot be intimidated or placed at risk by offenders. Witness protection programmes should be available, where needed.

Ensure legal advice and representation in seeking compensation

It is recommended that Member States ensure that victims of trafficking for sexual exploitation have legal advice and representation in seeking compensation from offenders or from a compensation fund within a reasonable time. Barriers such as a limited time frame to file the claim, or having to provide proof of 'good character' should be removed in cases of trafficking for sexual exploitation, ensuring that stereotyping does not play a role in the determination of access to compensation schemes. Moreover, the legal representative should ensure that the specific, non-material harm of sexual violence, including its psychological impacts is recognised in the claim and that an equal treatment approach is taken towards all victims of trafficking.

Grant permission to remain in the country

It is recommended that Member States grant permission for victims of trafficking for sexual exploitation to remain in the country, in spite of the termination of criminal proceedings, to ensure that they can participate in any investigations against the perpetrator and claim compensation, regardless of their legal residency status. Participation in criminal proceedings should invariably depend on the consent of the victim.

Ensure safe and voluntary repatriation of victims

It is recommended that Member States ensure that repatriation of victims of trafficking for sexual exploitation is voluntary, informed and safe. Member States should also ensure protection against *refoulement* and take into account threats of retaliation faced by victims, as well as the risk of re-trafficking upon return. These risks should be cautiously assessed by the responsible authorities before starting the process of repatriation. Access to services should be facilitated if reintegration is feasible. Member States should establish pathways to a third country including resettlement and humanitarian admission for refugees who are victims of trafficking for sexual exploitation and at risk of re-trafficking in their home country, or where there are barriers to integration due to the exploitation experienced.

Protect trafficking victims from related criminal proceedings

It is recommended that judicial authorities ensure that victims of trafficking for sexual exploitation are not subjected to criminal proceedings or sanctions for offences related to their situation as trafficked persons, including violations under immigration, prostitution and marital laws.

7.5. Girl-child victims of trafficking for sexual exploitation

Ensure child victims' early identification

It is recommended that priority be given to the early identification of children. Indirect victims of trafficking for sexual exploitation (e.g. children whose mothers are the direct victims) must be identified as victims of trafficking in human beings without delay and be considered eligible for protection and support measures. Identification mechanisms should take into account the special circumstances and gender-specific needs of child victims of trafficking for sexual exploitation, involving specialists on child abuse to ensure that the presumption of childhood is implemented swiftly. It is recommended that Member States develop guidelines for the identification of child victims, in order to facilitate a quick and accurate age-related assessment.

Appoint an adequate guardian

It is recommended that Member States ensure that agencies or individuals whose interests could conflict with those of the child, or who are accused of being complicit in the trafficking for sexual exploitation of the child, cannot be eligible for guardianship. The appointed guardian should have gender expertise in child victimisation. In appointing the guardian, the competent authority shall give due weight to the child's views, including her preference of gender for the guardian, and shall keep the child informed at all times.

Ensure immediate and adequate support and protection measures

It is recommended that Member States ensure that the child victim is given immediate access to support and protection measures. Member States should ensure the development of age-appropriate, safe and confidential programmes, medical, social and psychological support services, as well as gender-specific accommodation services for children and specialised shelters for girl victims of sexual exploitation. Support services offered to women victims of trafficking should also include child-specific services that allow for the accompanying children's (direct or indirect victims) needs to be adequately addressed in an integrated way. Moreover, Member States should recognise the particular needs of children born in the context of trafficking for sexual exploitation and provide the specialist services required, on an equal treatment basis.

Assess the best interests of the child

The individual assessment of the best interests of the child is a continuous process that has particular relevance for children trafficked for sexual exploitation. It is recommended that a thorough individual needs assessment is conducted to direct and indirect child victims of trafficking for sexual exploitation, in order to determine their best interests. Her cultural background and the context into which the child was born must be taken into account, as well as an assessment of the family situation.

Those responsible for conducting these assessments should be equipped with child and gender expertise, including specific knowledge on children's sexual exploitation. Furthermore, the child's views must be taken into consideration as appropriate and she shall be kept informed at all times. In situations where the mother is a victim of trafficking for sexual exploitation, particular care should be taken in the assessment of her ability to care for the child, and if necessary, conditions for her to do it should be provided together with support and protective measures.

8. INDICATORS TO MONITOR
THE GENDER-SPECIFIC
IMPLEMENTATION OF THE
ANTI-TRAFFICKING DIRECTIVE



8. INDICATORS TO MONITOR THE GENDER-SPECIFIC IMPLEMENTATION OF THE ANTI-TRAFFICKING DIRECTIVE

ElGE has developed a list of indicative indicators to support Member States in ensuring the implementation of the provisions of the Anti-Trafficking Directive, and the Victims' Rights Directive, from a victim-focused, gender and child-specific approach. The indicators are aligned with the European Union Gender Action Plan 2 (European Commission, 2015a) and with the United Nations Sustainable Development Goals (United Nations, 2015).

The indicators monitor the impact of the implementation of the measures set out by the directives on assistance, support and protection to victims of trafficking for sexual exploitation, and other policies and actions taken in this regard. They enable

consistent data collection across Member States and allow for the identification of gaps, contributing to ensure the accountability of all stakeholders.

The importance of data collection to monitor the gender-specific implementation of the European Union anti-trafficking legislation has been stressed by the European Commission (2016c) and the European Parliament Committee on Women's Rights and Gender Equality (2016a). The European Commission (2016c) has also reinforced its commitment to supporting Member States in data collection, namely through guidance regarding the use of indicators.

I. Policy framework

National action plan or strategy on combating violence against women includes trafficking in human beings (Yes/No)

Percentage of national budget spending allocated to actions related to trafficking in human beings for sexual exploitation in the last 12 months

Number of victims of trafficking for sexual exploitation, by age, sex, country of origin, EU or non-EU national, and unaccompanied minors referred to specialised support services in the last 12 months

II. Victim identification

Number of victims of trafficking in human beings per 100 000 population, by sex, age and form of exploitation in the last 12 months

Number and proportion of female deaths that occurred due to trafficking for sexual exploitation in the last 12 months

III. Assistance and support

Number of shelters specialised in trafficked women, that accept accompanying children in the last 12 months

Number of victims trafficked for sexual exploitation receiving assistance and support in terms of safe accommodation, social and/or medical care, psychological support services, legal aid services, material assistance in the last 12 months

Number of identified victims of trafficking for sexual exploitation that are granted international protection in the last 12 months

IV. Access to justice

Number of hours of specialised training on trafficking in human beings for sexual exploitation conducted in the last 12 months

Proportion of professionals from different sectors trained on trafficking for sexual exploitation, indicating geographical coverage in the last 12 months

Number of complaints on trafficking in human beings for sexual exploitation received by the police in the last 12 months

Number of cases of trafficking in human beings by type of exploitation being prosecuted in the last 12 months

Number of perpetrators of trafficking for sexual exploitation prosecuted and convicted by age, sex and relationship with the victim in the last 12 months

Number of victims of trafficking in human beings for sexual exploitation granted compensation in the last 12 months

9. CONCLUSIONS



9. CONCLUSIONS

Trafficking in human beings, particularly for the purposes of sexual exploitation, is a societal problem with gendered nature and manifestations. Preventive strategies and structural change in society are needed in order to provide durable solutions and to effectively combat it. Anti-trafficking efforts are more effective when they tackle factors that perpetuate discrimination and violence against women in society. Therefore, the analytical framework of violence against women proposed in this report is useful in identifying possible structural and institutional factors, which can have a more significant impact on the effectiveness of the anti-trafficking measures by more accurately addressing victims' needs.

Overall, the analysis concludes that the European Union legal and policy framework is not only gender-specific but attaches centrality to promoting gender responsive measures that implement legal or policy requirements. The Anti-Trafficking Directive, complemented by the Victims' Rights Directive, can provide a viable system for identification, support, assistance and protection of women and girls trafficked for sexual exploitation. However, there is a need to attribute concrete meaning to the gender-specific aspects of its implementation. The provisions of the Anti-Trafficking Directive often require practical solutions that are not necessarily detailed or specified in the directive. In this regard, the Victims' Rights Directive offers essential additional interpretation, which could bring the combined application of the two to the necessary standards for effective responses to victims. The observance of international standards and the results of recent European Commission studies are also crucial for effective implementation.

On account of the broad and general language used and the need to read the directive in conjunction with other instruments, for most of the provisions the effectiveness of the

implementation will depend on Member States' interpretations of the text of the directive(s). This raises the risk that, in reality, professionals implementing the directive in the field may overlook the specificities of the gender and age-specific approaches required, or not have the expertise to derive concrete measures from the provisions of the directives. Trafficking in human beings, and specifically for sexual exploitation, consists of an extremely complex legal definition, outlined by subtle nuances, which poses Member States, and professionals, an additional challenge of proper identification of victims and accurate assessment and responses to their gender-specific needs.

EIGE's recommendations presented in this report seek to support Member States to overcome these challenges, by providing guidance on how to fully integrate gender-specific measures in their efforts to address trafficking in human beings for sexual exploitation. The proposed indicators also aim to support Member States in monitoring their efforts to address trafficking for sexual exploitation from a gender perspective, in their policies, and in victims' identification, assistance and access to justice.

In addition, EIGE's newly developed measurement framework on violence against women, aimed to support Member States in their efforts to monitor the implementation of the Istanbul Convention, also includes an indicator on the number of women and girls registered victims of human trafficking (EIGE, 2017). Therefore, trafficking in human being is integrated in the broader monitoring of efforts to prevent and address violence against women at large and support victims.

In the future, an intersectional analysis of the directives would be helpful to further inform on how the approach to women victims of trafficking in human beings can be more comprehensive and address specific needs created by different experiences of vulnerabilities.

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