

Common template for EMN study on Third-Country National Victims of Trafficking in Human Beings

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Action: EMN NCPs are invited to submit their completed common templates by 25 October 2021.

If needed, further clarifications can be provided by directly contacting the EMN Service Provider (ICF) at emn@icf.com.

1 BACKGROUND AND RATIONALE FOR THE STUDY

Trafficking in human beings is a crime against people that can take various forms such as sexual exploitation (including forced prostitution), forced labour or services, slavery and servitude related practices, as well as the removal of vital organs, all of which constitute a grave violation of victim's fundamental rights. Trafficking in human beings is prohibited in various international instruments such as in the Charter on Fundamental Rights of the European Union (EU),¹ the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Children and Women, supplementing the UN Convention against Transnational Organized Crime (Annex II),² the Council of Europe (CoE) Conventions on Action against Trafficking in Human Beings³ (which is monitored by GRETA, the CoE Group of Experts on Action against Trafficking in Human Beings) and on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention),⁴ the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the International Covenant on Civil and Political Rights

¹ Charter of Fundamental Rights of the European Union, 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>, last accessed on 10 May 2021.

² UNODC, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 2000, https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf, last accessed on 9 May 2021.

³ CoE, Convention on Action against Trafficking in Human Beings, 2005, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d>, last accessed on 9 May 2021.

⁴ CoE, Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>, (Istanbul Convention), last accessed on 9 May 2021.

⁵ UN, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, <https://www.un.org/womenwatch/daw/cedaw/>, last accessed on 10 May 2021.

(ICCPR),⁶ the Global Compacts for Migration⁷ and Refugees⁸ and the 2030 Agenda for Sustainable Development.⁹

According to the latest available data, between 2017 and 2018, there were more than 14 000 registered victims within the EU.¹⁰ Trends in the EU seem to mirror those at global level: for every 10 victims detected, five are adult women and two are girls, one in every three is a child.^{11 12 13} Trafficking in human beings is not only recognised as a highly profitable crime,¹⁴ it is also recognized as a crime with links to social development and security, migration, conflict- and climate-induced displacement. The impact and cost of human trafficking on individuals as well as on political, economic and social systems is compelling. Trafficking victims may suffer from an array of physical and devastating psychological health issues stemming from brutal physical and emotional attacks at the hands of their traffickers, dangerous workplace conditions, occupational hazards, inhumane living conditions, poor sanitation, inadequate nutrition, poor personal hygiene, and general lack of quality health care. Human trafficking has the power to affect the victims' life forever:¹⁵ therefore, the application of a human right-based and victim-centred approach is needed.

Persistent demand for sexual services and for low-wage workers employed in manual jobs continue to ensure opportunities for traffickers to operate: in spite of the recent significant increase in the number of people convicted, many perpetrators remain undetected and unpunished.¹⁶ Given its clandestine nature, and the many factors which may deter a victim from reporting the crime, trafficking in human beings is believed to be significantly underreported.¹⁷ Detection and identification of (potential) victims of trafficking in human beings is therefore likely to remain at the same time critical and problematic, as flagged by a recent report of the European Parliament.¹⁸

Third-country nationals account for more than half of the registered victims in EU Member States.¹⁹ Vulnerable migrants have been reported to be at persistent risk of becoming victims of trafficking along

⁶ UN, International Covenant on Civil and Political Rights, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, last accessed on 10 May 2021.

⁷ UN, Global Compact for Safe, Orderly and Regular Migration, 2018, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/73/195, last accessed on 9 May 2021.

⁸ UN, Global Compact for Refugees, 2018, https://www.unhcr.org/qcr/GCR_English.pdf, last accessed on 9 May 2021.

⁹ UN, 2030 Agenda for Sustainable Development, 2015, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E, last accessed on 10 June 2012. Trafficking in human beings is addressed under Goal 5 (Gender Equality), Goal 8 (Decent Work and Economic Growth) and Goal 16 (Peace Justice and Strong Institutions).

¹⁰ European Commission, Data collection on trafficking in human beings in the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf, last accessed on 8 May 2021.

¹¹ European Commission, Data collection on trafficking in human beings in the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf, last accessed on 8 May 2021.

¹² UNODC, Global Report on Trafficking in Persons, 2020, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf, last accessed on 8 May 2021.

¹³ The Counter Trafficking Data Collaborative, Global Data Hub on Human Trafficking, www.ctdatacollaborative.org, last accessed on 10 June 2012.

¹⁴ ILO, Profits and Poverty: The Economics of Forced Labour, 2014, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf, last accessed on 9 May 2021.

¹⁵ IOM, UN.GIFT and London School of Hygiene and Tropical Medicine, Caring for Trafficked Persons: A Guide for Health Providers, https://publications.iom.int/system/files/pdf/ct_handbook.pdf, 2009, last accessed on 14 June 2021.

¹⁶ UNODC, Global Report on Trafficking in Persons, 2020, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf, last accessed on 8 May 2021.

¹⁷ EUROPOL, European Union serious and organised crime threat assessment (SOCTA), 2021, <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment>, last accessed on 10 May 2021.

¹⁸ European Parliament, Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, (2020/2029(INI)), 2020, https://www.europarl.europa.eu/doceo/document/A-9-2021-0011_EN.pdf, last accessed on 15 May 2021.

¹⁹ European Commission, Data collection on trafficking in human beings in the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf, last accessed on 8 May 2021.

migration routes: in particular unaccompanied minors and those in the asylum procedures, might be at a higher risk of becoming victims of trafficking in human beings and other gender-based violence, such as rape or domestic violence.²⁰ Reception centres for asylum applicants can be targeted by human traffickers for recruitment.²¹ Early identification of victims is crucial to promptly assist, support and protect victims of trafficking in human beings and enables police and prosecution authorities to better investigate and punish traffickers.²² However, their detection and identification in mixed migration flows remains a challenge²³ in a number of Member States,²⁴ some of which also relate to tensions with the current legal framework (especially within asylum procedures)²⁵ as well as to disruption in victim assistance and support services.²⁶ For instance, difficulties have occurred in some Member States, e.g. labour exploitation cases not recognised as trafficking in human beings and treated by the police under civil law (Latvia), difficult in detection and identification of victims due to more restricted movements during the Covid-19 pandemic crisis (Luxembourg), ‘cross-border’ victims or third-country nationals ‘forced’ to commit criminal acts themselves (the Netherlands) or collaboration with governmental agencies (Sweden).

The full extent of the impact of the COVID-19 pandemic on trafficking in human beings is not yet known. However, a rise in poverty as a result of restrictions, an increase in vulnerabilities linked to migration statuses and ongoing travel restrictions may have, among other factors, resulted in higher levels of trafficking and placed third-country national migrants at greater risk of exploitation.²⁷ The risks of exploitation of minors in particular are thought to have increased.²⁸ The pandemic has also made the identification of victims of trafficking more challenging for authorities and has resulted in delays in identification procedures.²⁹

In 2012, the EU called upon Member States to set up “systematic approach(es) to victim identification, protection and assistance” including promoting “regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings [...] aimed at enabling them to identify and

²⁰ European Commission, Third report on the progress made in the fight against trafficking in human beings, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/third_progress_report.pdf, last accessed on 15 May 2021.

²¹ EUROPOL, European Union serious and organised crime threat assessment (SOCTA), 2021, <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment>, last accessed on 10 May 2021.

²² European Commission, Communication on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, 2021 (New EU Strategy) https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf, last accessed on 18 May 2021.

²³ European Commission, Third report on the progress made in the fight against trafficking in human beings, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/third_progress_report.pdf, last accessed on 15 May 2021.

²⁴ European Commission, Study on reviewing the functioning of Member States’ National and Transnational Referral Mechanisms, 2020, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_reviewing_the_functioning_of_member_states_national_and_transnational_referral_mechanisms.pdf, last accessed on 15 May 2021.

²⁵ Johanna Schlintl, Liliana Sorrentino, Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law, 2021, https://documentation.lastradainternational.org/Isidocs/3387-REST%20Report%20Residence%20Permits%20-%20International%20Protection%20and%20Victims%20of%20Human%20Trafficking%20-%20FEB%202021.pdf?fbclid=IwAR2YqjwiVDXebOCtOMDdJQd9LOGBDw_pMZ0d7hS_NQF3-E3deluMObDued4, last accessed on 10 May 2021.

²⁶ International Organization for Migration (IOM), Understanding the migration & mobility implications of COVID-19, https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_59_human_trafficking_update.pdf, last accessed on 12 June 2021.

²⁷ Giammarinaro, Maria Grazia, COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons’, UN Human Rights Special Procedures, 2021, <https://www.ohchr.org/Documents/Issues/Trafficking/COVID-19-Impact-trafficking.pdf>, last accessed on 6 May 2021.

²⁸ EUROPOL, European Union serious and organised crime threat assessment (SOCTA), 2021, <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment>, last accessed on 10 May 2021.

²⁹ CoE, 10th General Report GRETA Activities, 2021, <https://rm.coe.int/10th-general-report-greta-activities-en/1680a21620>, last accessed on 9 May 2021.

deal with victims and potential victims of trafficking in human beings”.³⁰ One of the key priorities of the EU Strategy on Combatting Trafficking in Human Beings 2021–2025 is protecting, supporting and empowering victims, which also includes the early identification of victims: in this regard, working together with relevant EU agencies, as well as embedding cooperation and partnerships against trafficking with non-EU countries of origin and transit and organisations at regional and international levels in the EU’s external relations policy is fundamental.³¹

2 EU LEGAL AND POLICY CONTEXT

This section outlines EU legislation relevant to the identification and protection of victims of trafficking. It begins by describing the anti-trafficking legislation and its main recent developments, followed by relevant elements of the Common European Asylum System (CEAS). Whilst the Anti-trafficking Directive 2011/36/EU introduces the concepts of detection and identification of victims in all situations, existing instruments for international protection and forced return procedures do not explicitly provide for a tailored mechanism.^{32 33} The recast asylum acquis goes some way in improving this situation as described below, although there may be room to further enhance provisions for victims of trafficking in human beings who are in Dublin or forced return procedures.

2.1 EU ANTI-TRAFFICKING LEGISLATION

The EU recognises trafficking in human beings as a violation of human rights: Article 5(3) of the EU Charter on Fundamental Rights prohibits trafficking in human beings outright. The EU’s competence to act in relation to trafficking in human beings is set out in the EU Treaties, and in several legal documents. The Treaty on the Functioning of the EU (TFEU) recognises the EU’s power to act on trafficking in relation to its nature as (i) a phenomenon with links to migration,³⁴ and (ii) a cross-border crime.³⁵

Several Directives within the migration acquis either focus on, or have implications for, third-country national victims of trafficking in human beings, but the Anti-trafficking Directive 2011/36/EU is the first act at the EU level to address trafficking in human beings in a comprehensive and integrated way. The instrument adopts a victim-centred ‘human rights approach’, providing for a common definition of the criminal offence of trafficking, and obliging Member States to “establish appropriate mechanisms aimed at the early identification of and assistance to victims, in cooperation with relevant support organisations”.³⁶ In 2020 the European Commission published its third two-yearly report on the progress made in the fight against trafficking in human beings as required under Article 20 of the Anti-trafficking Directive 2011/36/EU.³⁷

Prior to the entry into force of the Anti-trafficking Directive 2011/36/EU, the Residence Permit Directive 2004/81/EC was the only piece of EU legislation providing for assistance to third-country national victims

³⁰ European Commission, EU Strategy towards the eradication of trafficking in human beings 2012–2016, 2012 (EU Strategy), https://ec.europa.eu/anti-trafficking/sites/default/files/the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf, last accessed on 6 May 2021.

³¹ New EU Strategy.

³² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Anti-trafficking Directive), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>, last accessed on 10 May 2021.

³³ Forced return is outside the scope of this study.

³⁴ Treaty on the Functioning of the European Union (TFEU), Article 79, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>, last accessed on 15 May.

³⁵ TFEU, Article 83.

³⁶ It is noted that Denmark, Georgia, the Republic of Moldova and Norway are not bound by this Directive.

³⁷ European Commission, Third report on the progress made in the fight against trafficking in human beings, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/third_progress_report.pdf, last accessed on 15 May 2021.

of trafficking.³⁸ It sets out a framework for Member States to grant a temporary reflection period of unconditional stay and assistance and conditions for granting a residence permit to third-country national victims of trafficking in human beings, when these persons cooperate with the authorities competent to start pre-trial investigations and convict the perpetrator. Some Member States³⁹ make provision for certain forms of residence permit, based on the vulnerable position of the victim. This possibility is sometimes limited to particular categories of persons (e.g. minors).⁴⁰

According to the Anti-trafficking Directive 2011/36/EU, "a person should be provided with assistance as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness".⁴¹ The Anti-trafficking Directive 2011/36/EU goes on to state that in cases where the victim does not already reside lawfully in the Member State the assistance should be provided unconditionally for at least the duration of the reflection period. However, it can be withdrawn if on completion of the identification process or expiry of the reflection period, the victim is not considered eligible to remain in the Member State.⁴² The Anti-trafficking Directive 2011/36/EU, however, recognises that in addition to residence based on cooperation, victims of trafficking may also be eligible for international protection.⁴³

It is also of note that potential victims of trafficking who have been issued a reflection period cannot be subject to any expulsion order against them for the duration of this period,⁴⁴ and that victims of trafficking who have been granted a residence permit will not be subject to an entry ban, provided that there is no threat to public policy, public security or national security within the scope of the Return Directive 2008/115/EC.⁴⁵

Finally, in its *Rantsev v. Cyprus and Russia* ruling,⁴⁶ the European Court of Human Rights (ECtHR) recalled the positive obligations that fall to States when it comes to inquiring into possible trafficking situations and to taking the necessary measures to protect victims. Going further than a simple obligation for states to enact laws aimed at ensuring the prohibition of slavery, servitude and forced labour as provided for in Article 4 of the European Convention on Human Rights (ECHR), the Court, set forth the obligation for states to take appropriate measures to 'remove an individual from a situation or risk, where it is presumed that state authorities were aware that this individual was at real and immediate risk of being trafficked or exploited'. Very recently, the Court reiterated that these positive obligations are incumbent upon states and stressed the need for the latter to 'protect victims and investigate as soon as there are reasonable grounds to believe that there is credible suspicion of trafficking'.⁴⁷

³⁸ Directive 2004/81/EC 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, (Residence Permit Directive), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081>, last accessed on 15 May.

³⁹ AT, BE, ES, HU, IT, LU, NL, PL, SK.

⁴⁰ Denmark, Ireland and Norway do not participate in and therefore are not bound by the 2004 Directive, while having similar national provisions in place for granting reflection periods and granting of a temporary residence permit based on a victim's cooperation with the authorities. European Commission, Report on the application of Directive 2004/81/EC, 2010, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0493&from=EN>, last accessed on 9 May 2021.

⁴¹ Anti-trafficking Directive, recital 18 and Article 11(3).

⁴² Anti-trafficking Directive, recital 18.

⁴³ Anti-trafficking Directive, Article 11(6).

⁴⁴ Article 6(2) of the Residence Permit Directive provides for a possibility to Member States authorities to terminate the reflection period in cases where the person concerned has actively, voluntarily and on his or her own initiative renewed contact with the perpetrators of trafficking or for reasons relating to public policy and to the protection of national security.

⁴⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, (Return Directive), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>, last accessed on 9 May 2021.

⁴⁶ ECtHR, *Rantsev v. Cyprus and Russia*, Application No.25965/04, 10 May 2010: <https://rm.coe.int/16806ebd5e>, last accessed on 15 May 2021.

⁴⁷ ECtHR, *V.C.L and A.N. v. The United Kingdom*, Applications Nos. 77587/12 and 74603/12), 16 February 2021: <http://hudoc.echr.coe.int/fre?i=001-207927>, last accessed on 15 May 2021.

2.2 MAIN EU POLICY DEVELOPMENTS ADDRESSING TRAFFICKING IN HUMAN BEINGS

While the main responsibility for tackling trafficking in human beings and protecting victims lies with Member States, in 2012 the European Commission launched the first EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (EU Strategy).⁴⁸ It calls on Member States to adopt a systematic approach to victim identification, protection and assistance, including through the establishment of formal, functional national referral mechanisms (NRMs). In its mid-term report on the implementation of the EU Strategy,⁴⁹ for the first time, the European Commission collected statistical data on the trafficking of human beings at a European level. In 2020, a fifth edition was published together with the third report on the progress made in the fight against trafficking in human beings mentioned above.

On 14 April 2021, the European Commission adopted the new EU Strategy on Combatting Trafficking in Human Beings 2021-2025,⁵⁰ calling for a comprehensive response to combatting a complex criminal phenomenon as follows:

- Reducing demand that fosters trafficking, including by assessing the possibility of establishing minimum EU rules criminalising the use of exploited services from victims of trafficking and proposing legislation on corporate governance to clarify the responsibilities of companies.
- Breaking the business model of traffickers, online and offline including by conducting a dialogue with internet and technology companies and encouraging systematic training of law enforcement and judicial practitioners on detecting and addressing trafficking in human beings.
- Protecting, supporting and empowering the victims with a specific focus on women and children including by seeking to improve the early identification of victims and their referral to further assistance and protection. Strengthen victim empowerment programmes and facilitate re-integration. The European Commission will also fund gender-specific and child-sensitive training to help police, social workers, border guards or healthcare staff to detect victims.
- Promoting international cooperation with international partners including by means of foreign policy instruments and operational cooperation to help combat trafficking in countries of origin and transit including through dedicated human rights and security dialogues.

Tackling trafficking in human beings and the early identification of potential non-EU victims (who account for more than half of the total number) is also a priority under several of the latest Communications adopted by the European Commission. These include the new EU Security Union Strategy⁵¹ launched in July 2020, and the New Pact on Migration and Asylum⁵² of September 2020. It also plays a prominent role in the Europol Serious and Organised Crime Threat Assessment and the EU Strategy to tackle Organised Crime 2021-2025, presented respectively on 13 and 14 April 2021.⁵³

⁴⁸ EU Strategy.

⁴⁹ European Commission, Communication on the application of Directive 2004/81/EC, 2014, <https://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-635-EN-F1-1.Pdf>, last accessed on 9 May 2021.

⁵⁰ New EU Strategy.

⁵¹ European Commission, Communication on the EU Security Union Strategy, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0605&from=EN>, last accessed on 9 May 2021.

⁵² European Commission, Communication on a New Pact on Migration and Asylum, 2020, https://ec.europa.eu/info/sites/default/files/1_en_act_part1_v7_1.pdf, last accessed on 9 May 2021.

⁵³ European Commission, Communication on the EU Strategy to tackle Organised Crime 2021-2025, 2021, https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_to_tackle_organised_crime_2021-2025_com-2021-170-1_en.pdf, last accessed on 9 May 2021.

The European Commission recently published three studies – one on the gender dimension of trafficking,⁵⁴ one on its economic, social and human costs⁵⁵ and one on reviewing the functioning of Member State's National and Transnational Referral Mechanisms⁵⁶ – focused on (different aspects of) the topic, with the latter one in particular treating victim detection and identification in the context of migration and asylum. Finally, the outcomes of this study will complement the Commission's evaluation of the Anti-trafficking Directive 2011/36/EU, which is a key action of the New EU Strategy.

2.3 EU ASYLUM ACQUIS

The EU asylum acquis comprises two Regulations and four Directives, which legislate on different aspects of the procedure for granting international protection, including which country is responsible for examining each application (Dublin III Regulation),⁵⁷ and how to compare fingerprints for law enforcement purposes (Eurodac Regulation),⁵⁸ the type of persons who qualify for international protection and the rights related to the international protection status (Qualification Directive 2011/95/EU),⁵⁹ the common standards that Member States should have in place for granting and withdrawing international protection (Asylum Procedures Directive 2013/32/EU),⁶⁰ and the common standards for the reception of applicants that should be granted to guarantee them a dignified standard of living (Reception Conditions Directive 2013/33/EU).⁶¹ In the EU asylum acquis, victims of human trafficking are considered a vulnerable category of applicants under the Reception Conditions Directive 2013/33/EU which lays down specific provisions for vulnerable applicants and their special reception needs, including the assessment of such needs.⁶² The applications of vulnerable persons can be prioritised under the Asylum Procedures Directive 2013/32/EU.⁶³ Finally, the new EU Pact on Migration and Asylum⁶⁴ proposes to put in place a pre-entry

⁵⁴ European Commission, Study on the gender dimension of trafficking in human beings, 2016, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf, last accessed on 9 May 2021.

⁵⁵ European Commission, Study on the economic, social and human costs of trafficking in human beings within the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_economic_social_and_human_costs_of_trafficking_in_human_beings_within_the_eu.pdf, last accessed on 15 May 2021.

⁵⁶ European Commission, Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms, 2020, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_reviewing_the_functioning_of_member_states_national_and_transnational_referral_mechanisms.pdf, last accessed on 15 May 2021.

⁵⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), (Dublin III Regulation), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R0604>, last accessed on 15 May 2021.

⁵⁸ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, (Eurodac Regulation), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603>, last accessed on 15 May 2021.

⁵⁹ 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 (recast), (Qualification Directive), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>, last accessed on 15 May.

⁶⁰ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>, last accessed on 18 May 2021.

⁶¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), (Reception Conditions Directive), last accessed on 18 May 2021.

⁶² Reception Conditions Directive, articles 21 and 22.

⁶³ Asylum Procedures Directive, Article 31(7)(b).

⁶⁴ European Commission, Communication on a New Pact on Migration and Asylum, 2020, https://ec.europa.eu/info/sites/default/files/1_en_act_part1_v7_1.pdf, last accessed on 9 May 2021.

screening that should be applicable to all third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation.⁶⁵

In this study, the Dublin III Regulation is of relevance as it establishes the criteria and mechanisms for determining the Member State responsible for the examination of an asylum claim in the EU. Where a Member State other than the one in which the applicant has lodged an application is found to be responsible for examining the application, the applicant will usually be transferred to that Member State. Where the applicant has lodged multiple applications in different Member States, the person will usually be transferred back to the Member State previously determined as responsible. In cases where a victim has been exploited in the Member State responsible, it could be traumatic to be returned to that Member State, even though in accordance with the Dublin Regulation, the transfer can take place. However, questions have arisen in relation to the reflection period that should be granted under art 6(2) of the Residence Permit Directive 2004/81/EC.⁶⁶ According to this provision, any expulsion order against a victim of trafficking shall not be enforced during this reflection period, which is an occasion for them to recover and decide whether they want to cooperate with the competent authorities, by, for example, reporting their trafficking situation. The Court of The Hague has referred several questions for a preliminary ruling, including whether a transfer decision pursuant to the Dublin Regulation during the reflection period qualifies as an expulsion order and thus whether such transfer is precluded by the Residence Permit Directive 2004/81/EC.⁶⁷

Where the applicant is an unaccompanied minor without family members on the territory of other Member States, the State where the unaccompanied minor has lodged an application for international protection shall be responsible.⁶⁸ Moreover, so-called 'Dublin' transfers do not always take place for instance where a Member State decides to take responsibility for an application for international protection lodged by a third-country national or a stateless person itself, for example:

- on the basis of a national decision (the so-called 'sovereignty clause');⁶⁹
- on humanitarian grounds based in particular on family or cultural considerations (the so-called 'humanitarian clause').⁷⁰

Concerns arise when it comes to asylum applicants who may become victims of trafficking during so-called 'secondary movements' or may be returned under the Dublin III Regulation to the country where

⁶⁵ European Commission, Proposal for a Regulation introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 2020, https://ec.europa.eu/info/sites/default/files/communication-screening-third-country-nationals_en.pdf, last accessed on 18 May 2021.

⁶⁶ Johanna Schlintl, Liliana Sorrentino, Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law, 2021, https://documentation.lastradainternational.org/Isidocs/3387-REST%20Report%20Residence%20Permits%20-%20International%20Protection%20and%20Victims%20of%20Human%20Trafficking%20-%20FEB%202021.pdf?fbclid=IwAR2YqjwIVDXebOCtOMDdJQd9LOGBDw_pMZ0d7hS_NQF3-E3deluMObDued4, last accessed on 10 May 2021. Also, Case C-66/21 CJEU in which the Netherlands asked preliminary questions on the relation between art. 6(2) Dir. 2004/81 and Dublin transfers.

⁶⁷ Court of the Hague, 29 January 2021 ECLI:NL:RBDHA:2021:727 also Johanna Schlintl, Liliana Sorrentino, Residence Permits, International Protection and Victims of Human Trafficking: Durable Solutions Grounded in International Law, 2021, https://documentation.lastradainternational.org/Isidocs/3387-REST%20Report%20Residence%20Permits%20-%20International%20Protection%20and%20Victims%20of%20Human%20Trafficking%20-%20FEB%202021.pdf?fbclid=IwAR2YqjwIVDXebOCtOMDdJQd9LOGBDw_pMZ0d7hS_NQF3-E3deluMObDued4, last accessed on 13 June 2021.

⁶⁸ Dublin III Regulation, Article 8(4).

⁶⁹ Dublin III Regulation, Article 17(1).

⁷⁰ Dublin III Regulation, Article 17(2).

exploitation has occurred. In 2011, in *N.S. and M.E.* (Joined cases C-411/10 and C-493/10),⁷¹ the Court of Justice of the EU (CJEU), held that, in line with Article 4 of the EU Charter of Fundamental Rights, Member States may not transfer an asylum applicant to the responsible Member State where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions in that Member State amount to substantial grounds for believing that the asylum applicant would face a real risk of being subjected to inhuman or degrading treatment. The determining Member State shall continue to examine the criteria set out in the hierarchy of criteria in order to establish whether another Member State can be designated as responsible. This principle applies to all applicants whether or not they claim to be victims of trafficking.⁷² Nonetheless, decisions not to transfer remain dependent on effective detection methods, identification processes and a procedure in place for the transfer to be delayed or a final decision made whether or not to proceed with it.

Detection and identification of potential victims is key, and national courts have stressed the importance of these steps on several occasions, pointing to the tension that may arise from the time-efficiency spirit of the Dublin Regulation on the one hand, and the protection duties imposed on Member States on the other.⁷³

When the Dublin III Regulation was adopted in 2013 it also improved possibilities for detection, since it introduced a provision to conduct a personal interview 'in order to facilitate the process of determining the Member State responsible'.⁷⁴ The Dublin III Regulation introduced provisions on the consideration of safety and security of unaccompanied minors in particular where there is a risk of the child being a victim of trafficking,⁷⁵ but does not explicitly introduce provisions relevant to adults who are (potential) victims of trafficking in human beings within Dublin procedures: the Reception Conditions Directive 2013/33/EU states that Member States shall take into account the specific situation of vulnerable persons such as (among others) victims of human trafficking.⁷⁶

2.4 THE VICTIMS' RIGHTS DIRECTIVE

Adopted in 2012, the Victims' Rights Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect.⁷⁷ Trafficking in human beings is recognised as one of the crimes covered by the Victims' Rights Directive 2012/29/EU.⁷⁸ Victims of crime must receive proper protection, support and access to justice: in particular, the need for special support and protection for women (and their children) who are victims of gender-based violence, especially with a view to avoiding secondary and repeated victimisation, is emphasised.⁷⁹ In the context of the individual needs' assessment, particular attention shall be paid to victims of trafficking.⁸⁰

On that basis, all EU Member States,⁸¹ must ensure and prioritise victims' protection and safety regardless of their residence status. Indeed, while Article 1 of the Victims' Rights Directive 2012/29/EU calls for a non-discriminatory approach to the protection of victims of crime, Article 2 further defines victims as "anyone who has suffered physical, mental, emotional or economic harm caused by a criminal offence, as well as

⁷¹ Judgment of the Court (Grand Chamber) of 21 December 2011. *N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*. References for a preliminary ruling: Court of Appeal (England & Wales) (Civil Division) - United Kingdom and High Court of Ireland - Ireland.

⁷² Dublin III Regulation, Article 3(2).

⁷³ For instance, Case N. NL19.30940 mentioned above (footnote 63).

⁷⁴ Dublin III Regulation, Article 5.

⁷⁵ Dublin III Regulation, Article 6(3)(c).

⁷⁶ Reception Conditions Directive, Article 21.

⁷⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, (Victims' Rights Directive), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>, last accessed on 18 May 2021.

⁷⁸ TFEU, Article 83(1).

⁷⁹ Victims' Rights Directive, Recital 17.

⁸⁰ Victims' Rights Directive, Article 22(3).

⁸¹ Denmark opted out from the Victims' Rights Directive.

family members of someone whose death case caused by a criminal act”. Read in conjunction with Recital 10 which highlights that “Member States must take necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim’s residence status”, the definition of ‘victims’ provided de facto encompasses third-country nationals who may fall victims to crime within the EU territory, including the one of trafficking in human beings. The Victims’ Right Directive 2012/29/EU provides victims and their family members with a right to information, support and protection. It further strengthens the victims’ procedural rights in criminal proceedings and requires that EU Member States ensure appropriate training on victims’ needs for officials who are likely to come into contact with victims. For certain groups of victims, the EU has adopted specific rules which respond more directly to the specific needs of some victims as, *inter alia*, to provide protection and support for victims of human trafficking.⁸²

3 STUDY AIMS AND OBJECTIVES

The proposed study aims to explore the national practices of detection, identification and protection of third-country national victims of trafficking in human beings. In this respect, without adopting the same scope, it updates the 2013 EMN study “Identification of victims of trafficking in human beings in international protection and forced return procedures” and covers:

1. Overview of national situations in relation to trafficking in human beings, in particular focusing on the national, latest available data, trends, patterns and trafficking purposes (Introduction).
2. National policy and legislative developments and measures to detect (presumed) third-country national victims of trafficking in human beings, including information on competent authorities, existing reporting mechanisms, possibilities to appeal decisions. (Section 1).
3. National policy and legislative developments and measures to identify (presumed) third-country national victims of trafficking in human beings, including referral mechanisms (if existent) among national authorities and other relevant stakeholders (Section 2)
4. National policy and legislative developments and measures to protect (presumed) third-country national victims of trafficking in human beings, including the legal framework for granting the reflection period, residence permits and the provision of appropriate information and assistance (Section 3).
5. Cooperation mechanisms with other Member States, EU agencies (EASO, Europol, Frontex), international organisations and third countries of origin and of transit (Section 4).
6. Challenges and good practices in Member States, such as those concerning vulnerable persons, (presumed) cases falling under the scope of the Dublin III Regulation and the impact of COVID-19 (Section 5).

⁸² Victims’ Rights Directive, articles 8, 22 and 24.

4 SCOPE OF THE STUDY

The study covers the following categories of third-country nationals, detected, identified and protected as (presumed) victims of trafficking in human beings, who are:

- Asylum applicants;
- In an irregular situation;
- In possession of a valid authorisation to stay on the territory of a Member State (residence permit or short-term visa).

Third-country nationals who are in an irregular situation and subject to a return decision will be out of the scope of this study as they have already been dealt with in other recent EMN products.

The temporal scope for statistics and the national contexts is from January 2015 up to December 2020 for statistics and the national contexts.

The study is aimed at policy makers at national, European and international level, but also representatives of specific industries (e.g. private sectors in areas where trafficking in human beings is documented to occur), civil society organisations, academia, and will complement and update findings of other relevant European Commission reports and studies as well as contribute to the European Commission's study for the evaluation of the Anti-trafficking Directive.

For the purpose of this study, the definitions listed in the section below will apply.

5 DEFINITIONS

The study uses the following definitions, which – unless otherwise stated – are based on the EMN Asylum and Migration Glossary.⁸³

Detection of (a situation of) trafficking in human beings	The process of identifying a possible situation of trafficking in human beings.
Dublin procedure	The process of determining the EU Member State responsible for examining an application for international protection lodged in one of the EU Member States by a third-country national under Regulation (EU) No 604/2013 (Dublin III Regulation).
Dublin transfer	<ol style="list-style-type: none"> 1. The transfer of responsibility for the examination of the merits of an application for international protection from one Member State to another Member State. 2. The (physical) transfer of an applicant to the EU Member State who is considered to be responsible for examining the merits of an application following a Dublin procedure
Identification of a victim of trafficking in human beings	The process of confirming and characterising a situation of trafficking in human beings for further implementation of support.

⁸³ EMN Glossary, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en, last accessed on 18 May 2021.

Identified victim of trafficking in human beings	A person who has been formally identified as a victim of trafficking in human beings according to the relevant formal authority in Member States.
International protection	In the global context, the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries. In the EU context, protection that encompasses refugee status and subsidiary protection status.
National referral/cooperation mechanisms	Mechanism aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society. ⁸⁴
Potential victim of trafficking in human beings	A person vulnerable to trafficking in human beings. ⁸⁵
Presumed victim of trafficking in human beings	A person who has met the criteria of EU regulations and international Conventions but has not been formally identified by the relevant authorities (e.g. police) as a trafficking victim or has declined to be formally or legally identified as victim of trafficking.
Protection of (<i>presumed/identified</i>) victims of trafficking in human beings	The action of national authorities aimed at protecting the fundamental rights of (presumed) victims of trafficking in human beings. ⁸⁶
Reception centre	A location with facilities for receiving, processing and attending to the immediate needs of refugees or asylum applicants as they arrive in a country of asylum.
Reflection period	A period of time determined according to national law granted to third-country nationals officially identified as victims of trafficking in human beings allowing the victim to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to

⁸⁴ Article 11(4) of the Anti-trafficking Directive lays down an obligation on Member States to take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

⁸⁵ Definition inspired by IOM, <https://publications.iom.int/books/migrants-and-their-vulnerability-human-trafficking-modern-slavery-and-forced-labour>, last accessed on 10 June 2021.

⁸⁶ Definition inspired by the Anti-trafficking Directive, Article 11. A person shall be provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to trafficking in human beings.

	whether (or not) to cooperate with the competent authorities.
Registered victim of trafficking in human beings	A person who is either an identified or a presumed victim of human trafficking and has been registered by authorities and/or other agencies and organisations. ⁸⁷
Trafficking in human beings	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.
Transfer of procedure	The process of changing from one migration procedure to another. ⁸⁸
Victim(s) of crime	Anyone who has suffered physical, mental, emotional or economic harm caused by a criminal offence, as well as family members of someone whose death case caused by a criminal act'. ⁸⁹
Voluntary Return	The assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

6 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

Primary research questions:

1. What is the national situation with regard to (presumed) third-country national victims of trafficking in human beings in the Member States?

⁸⁷ Definition inspired by the European Commission, Data collection on trafficking in human beings in the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf, last accessed on 8 May 2021.

⁸⁸ Definition elaborated by the Core AG for the purpose of this study.

⁸⁹ Victims' Rights Directive, Article 2.

2. What are the national policies and procedures in place to detect (presumed) third-country national victims of trafficking in human beings (including targeted policies and strategies for vulnerable persons)?
3. What are the national policies and procedures in place to identify (presumed) third-country national victims of trafficking in human beings (including targeted policies and strategies for vulnerable persons)?
4. What are the national policies and procedures in place to protect and support (presumed) third-country national victims of trafficking in human beings and what is the role of national referral mechanisms?
5. To what extent and how do Member States cooperate internationally in detecting, identifying and protecting (presumed) third-country national victims of trafficking in human beings?
6. What are the key challenges and good practices in the Member States in the detection, identification and protection of (presumed) third-country national victims of trafficking in human beings?

7 RELEVANT SOURCES AND LITERATURE

EMN Studies

- EMN (2014), [Study on the identification of victims of trafficking in human beings in international protection and forced return procedures](#).

EMN Ad-Hoc Queries (AHQ)

- EMN (2019), [AHQ on Access of victims of trafficking to their rights](#)
- EMN (2018), [AHQ on Identification of victims of human trafficking during asylum interview](#)
- EMN (2016), [AHQ on Protection of victims of human trafficking](#)
- EMN (2012), [AHQ on Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)
- EMN (2009), [AHQ on Types of residence permits that victims of trafficking who do not cooperate with the authorities are granted](#)

Other Studies, Reports and Communications

- European Commission (2021), [Communication on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025](#)
- European Commission (2021), [Communication on the EU Strategy to tackle Organised Crime 2021-2025](#)
- EUROPOL (2021), [European Union serious and organised crime threat assessment \(SOCTA\)](#)
- Council of Europe (2020), GRETA's activities, [General reports and resources](#)
- Council of Europe (2020), [Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection](#)
- European Commission (2020), [Communication on the EU Security Union Strategy](#),
- European Commission (2020), [Communication on a New Pact on Migration and Asylum](#),
- European Commission (2020), [Third report on the progress made in the fight against trafficking in human beings](#)
- European Commission (2020), [Data collection on trafficking in human beings in the EU](#)
- European Commission (2020), [Study on the economic, social and human cost of human trafficking](#)
- European Commission (2020), [Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms](#)
- European Parliament (2020), [Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)
- UNODC (2020), [Global Report on Trafficking in Persons](#)

- UNODC (2020), [How Covid-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America](#)
- Council of Europe (2020), [Assistance to victims of human trafficking](#)
- European Commission (2016), [Study on the gender dimension of trafficking in human beings](#)
- European Commission (2014), [Communication on the application of Directive 2004/81/EC](#),
- ILO (2014), [Profits and Poverty: The Economics of Forced Labour](#)
- European Commission (2013): [Guidelines for the identification of victims of trafficking in human beings](#)
- European Commission (2012), [EU Strategy towards the eradication of trafficking in human beings 2012-2016](#)
- OHCHR (2010), [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#)

Case law

- European Court of Human Rights, V.C.L and A.N. v. The United Kingdom, Applications Nos. 77587/12 and 74603/12), 16 February 2021: <http://hudoc.echr.coe.int/fre?i=001-207927>
- Court of Justice of the European Union (Grand Chamber) of 21 December 2011. N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform. References for a preliminary ruling: Court of Appeal (England & Wales) (Civil Division) - United Kingdom and High Court of Ireland - Ireland.
- European Court of Human Rights, Rantsev v. Cyprus and Russia, Application No.25965/04, 10 May 2010: <https://rm.coe.int/16806ebd5e>

8 AVAILABLE STATISTICS

This study builds on the study on data collection on trafficking in human beings in the EU which provides for an in-depth analysis of criminal justice statistical data for years 2017 and 2018.⁹⁰

Information is checked against the EMN Annual Report on Migration and Asylum 2020 (ARM): to facilitate data collection, the EMN Service Provider provides the relevant datasheets on trafficking for each Member State, prepared since 2016, as part of the Statistical Report of the EMN Annual Report on Migration and Asylum.

9 METHODOLOGICAL CONSIDERATIONS

As with all EMN Studies, the National Reports should be primarily based on secondary sources. These may be supplemented by expert interviews. For example, experts working in the field (e.g. national authorities, service provider, civil society organisations, and international organisations) could be consulted to identify key challenges and good practices in the Member States in the detection, identification and protection of (presumed) third-country national victims of trafficking in human beings.

10 ADVISORY GROUP

The Core Advisory Group (AG) for this study is composed by: FR, IE, LU, NL, PL EMN NCPs, ICF (EMN Service Provider), DG HOME. Together with the following EMN NCPs (BE, CZ, EE, ES, FI, HU, LT, LV, MT, PL, SE, SI, SK, GE, MD), EASO and EUROPOL, they form the wider AG for this study.

⁹⁰ European Commission, Data collection on trafficking in human beings in the EU, 2020, https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf, last accessed on 8 May 2021.

11 TIMETABLE

The following tentative timetable has been proposed for the development of the common template for this study:

Date	Action	By whom
20 April	AG meeting	Lead EMN NCPs, wider AG, COM, EMN Service Provider
29 April	Draft version 2 common template to be shared with core AG members (1-week deadline)	Core AG EMN NCPs (FR, IE, LU, NL, PL NCPs), Odysseus experts
19 May	Draft version 3 to be shared the wider AG and COM for comments (1-week deadline)	All EMN NCPs to review
9 June	Core AG meeting to discuss comments	Core AG EMN NCPs (FR, IE, LU, NL, PL NCPs), EMN Service Provider
17 June	Consolidated final draft to be shared with COM	EMN Service Provider
25 June	Launch of common template	EMN Service Provider
25 October	Submission of common templates	All EMN NCPs

12. TEMPLATE FOR NATIONAL CONTRIBUTIONS

Common template of EMN study 2021

DETECTION, IDENTIFICATION AND PROTECTION OF THIRD-COUNTRY NATIONAL VICTIMS OF TRAFFICKING IN HUMAN BEINGS

National contribution from *Member State*⁹¹

Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.

Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as an overview of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policymakers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

Please provide a concise summary of the main findings of Sections 1-5:

Introduction:

National situation with regard to detection, identification, and protection of (presumed) third-country national victims of trafficking in human beings (2015-2020)

1. Please describe the main policy developments and debates that have occurred in the reference period 2015-2020 with regard to detection, identification, and protection of (presumed) third-country national victims of trafficking in human beings (e.g., parliamentary debates, policy reforms, draft/adopted legislation, media coverage, awareness-campaigns, relevant publications).

The Ministry of the Interior and Administration conducts activities supporting victims of trafficking in human beings regardless of their country of origin and does not categorize its activities according to the given criterion. In the above-mentioned period, the undertaken activities were based on the National Action Plans against Trafficking in Human Beings adopted by the Council of Ministers. Above-mentioned strategy is being developed and there have been no changes in the direction of the operating strategy.

In the indicated period, the Ministry of the Interior and Administration carried out a number of preventive, informative and educational activities. Amongst others, in 2015 educational materials - posters, leaflets and guides in the form of brochures - were designed, developed and commissioned for printing. From the funds allocated to the implementation of the National Plan the following materials were created: 1 000 posters, 6 500 leaflets; 2 400 brochures. In 2016, 31 000 copies of leaflets for foreigners were printed in 9 languages (Polish, English, French, Russian, Ukrainian, Vietnamese, Arabic, Romanian and Bulgarian). They informed about the most important rights victims are entitled to under the support and protection system for victims of trafficking in human beings in Poland. In 2016, public television in the pre-holiday period broadcasted 72 preventive ads. The ad and the outdoor campaigns (billboards) were prepared as part of the project "Improving Poland's ability to fight trafficking in human beings". In 2018, 5 000 copies of an information brochure for young people in the form of a comic book, 5,000 calendars for 2019 and a total of 10 000 posters containing information about human trafficking were ordered. In 2019, 15 000 educational brochure for young people "You are not for sale" and 10 000 posters were ordered. In 2020, 20

⁹¹ Replace highlighted text with your **Member State** name here.

000 of the above-mentioned brochures were ordered and a pilot outdoor campaign (billboards) was carried out. In 2021, 35 850 leaflets in 3 languages (Polish, Ukrainian and Vietnamese) and 2 850 posters were prepared.

All the above-mentioned informational and educational materials were distributed to voivodeship teams for combating trafficking in human beings, voivodeship headquarters, Border Guard divisions, and labour offices. The reporting information shows that the materials were used during educational lessons, lectures and educational meetings.

Moreover, the Ministry of the Interior and Administration conducted external trainings for people in training for consular positions, employees of crisis intervention centres, social assistants and labour inspectors. The training included such issues as the organization of the system for preventing trafficking in human beings in Poland, early identification of victims of trafficking in human beings, with particular emphasis on minors, characteristics of the phenomenon of trafficking in human beings, support for victims of trafficking in human beings, etc. For example, in the period 2015-2020, on the request of the Ministry of Foreign Affairs, the Ministry of the Interior and Administration trained 921 persons, while in 2021 it already conducted 7 training courses.

Due to the needs reported by representatives of the Border Guard and the Police, who are members of the Group for the Support of Victims of Trafficking in Human Beings established as part of the Team for Counteracting Trafficking in Human Beings, the Ministry of Interior and Administration has started in 2020 working on updating two documents, i.e. "The algorithm of conduct for law enforcement officers in the event of disclosure of a crime of trafficking in human beings" and "The algorithm of identification and conduct for Police and Border Guard officers in case of a minor victim of trafficking in human beings". In the course of the Group's work, the algorithms were updated and then developed in terms of their graphic design. They will be used by current and future Border Guard and Police officers in their daily service and for training purposes. The algorithms were shared with the Commander-in-Chief of the Border Guard and the Commander-in-Chief of the Police for official use by their subordinate officers.

As the Office for Foreigners reports, on January 1, 2021 the amendment to the Act of 14 July 2006 on the entry, residence and departure from the territory of the Republic of Poland of citizens of the European Union States and their family members entered into force. The amendment complemented the implementation of Art. 11 of Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (Journal of Laws UE L 101 of 15 April 2011, p. 1) with regard to EU citizens and their family members.

The Act introduced measures to protect victims of trafficking in human beings similar to those previously applied in the Act on foreigners from 12 December 2013 in relation to third-country nationals. The amendment introduced provisions concerning the possibility of issuing a certificate confirming the existence of a presumption of being a victim of trafficking in human beings within the meaning of Art. 115 § 22 of the Criminal Code in relation to the EU citizen and family members who are not EU citizens, based on the relevant provisions of the Act on foreigners, i.e. Art. 170 - 176. The catalogue of data to be included in the certificate was defined (Article 41a (2)) as well as the period for which the first and subsequent certificates may be issued (Article 41b (2) and (3)) and the procedure for invalidating the certificate has been regulated (41c id).

This change was aimed at making it possible for EU citizens and family members who are not EU citizens to take advantage of the right to social assistance benefits in the form of crisis intervention, shelter, meal, necessary clothes and a specific benefit.

2. Please elaborate on the characteristics of detected, identified and protected (presumed) third-country national victims of human trafficking (including age, gender, country of origin, migration status), trafficking purposes (e.g. sexual exploitation, including forced prostitution, forced labour or services, slavery and servitude related practices, as well as the removal of vital organs), latest patterns and trends in the reference period 2015-2020.

As reported by the Police Headquarters, due to numerous changes, only data on alleged victims of trafficking in human beings for the period 2017-2020 is available:

2017 - Ukraine: female 43 years old and male, 35

2018 - Ukraine: adult female

2019 - Philippines: 23 adult females and 57 adult males

- Peru: adult female

2020 - Colombia: 3 male adults exploited for forced labour

Between 2015 and 2020, the Border Guard, in the course of their official activities, identified the alleged victims of trafficking in human beings in the number indicated below: (data include the number of persons, country of origin, gender (M/F), age and forms of exploitation):

2015 - 33 persons

- 5 citizens of Ukraine (M- 26, 28, 47, 48) - forced labour (F-33)- prostitution;
- 3 citizens of Rep. of Poland (F- 23, 25, 29)- prostitution
- 3 citizens of Bulgaria (F- 22, 25, 32)- prostitution;
- 1 citizen of Romania (M- 76)- begging;
- 4 citizens of Sri Lanka (F- 29, 34, 39, 39)- forced labour
- 17 citizens of Vietnam (M-14, 16, 16, 17, 18, 20, 20, 21 and F- 15, 16, 19, 21, 22, 23, 24, 25, 29)- forced labour, prostitution

2016 - 104 persons

- 1 citizen of Vietnam (M-34)- forced labour
- 1 citizen of Bulgaria (M-36) - begging;
- 1 citizen of Congo (M-30)- forced labour / sexual exploitation;
- 2 citizens of RP (F- 23,28)- prostitution;
- 99 citizens of Ukraine (M-17, 19, 19, 19, 21, 22, 22, 22, 23, 24, 25, 25, 25, 26, 26, 26, 27, 28, 28, 29, 30, 30, 31, 34, 36, 37, 38, 38, 39, 40, 43, 48); (F- 19, 20, 20, 21, 21, 21, 21, 21, 22, 22, 22, 22, 24, 24, 25, 26, 27, 27, 28, 28, 28, 28, 28, 29, 29, 30, 30, 31, 31, 32, 33, 34, 34, 35, 35, 35, 36, 37, 38, 38, 39, 40, 40, 41, 42, 42, 42, 42, 43, 43, 43, 44, 44, 45, 46, 45, 47, 47, 47, 47, 48, 51, 53, 53, 55, 61) – forced labour.

2017 - 43 persons

- 30 citizens of Ukraine (F- 22, 24, 29, 32, 35, 36, 36, 41, 43, 51, 52; M- 21, 23, 26, 26, 28, 31, 31, 31, 34, 36, 36, 38, 38, 38, 42, 43, 46, 51, 58)- forced labour
- 5 citizens of RP (F- 21, 25, 40)- prostitution; (M- 50, 62)- forced labour;
- 4 citizens of Vietnam (M- 28, 28, 34, 38)- forced labour
- 1 citizen of Nigeria (F- 25)- forced labour
- 2 citizens of Belarus (F- 21, M- 22); forced labour
- 1 citizen of Syria (K- 42) along with a son a citizen of Saudi Arabia (M- 8)- domestic slavery.

2018 - 65 persons

- 22 citizens of RP - forced labour (M- 25, 29, 32, 33, 33, 37, 42, 44, 45, 53, 57, 67)// sham marriages (F- 19, 21, 23, 28, 34, 34, 39; M- 25)// prostitution (F-26)// child sale (1 M- infant)
- 18 citizens of Ukraine (M- 25, 26, 31, 31, 32, 33, 34, 38, 44, 44, 47, 47, 49, 52, 56, 60; K- 21, 35) - forced labour

- 9 citizens of Belarus (M- 31, 36, 36, 37, 39, 41, 43, 49, 53) – forced labour
- 8 citizens of Philippines. (M- 37, 38, 39, 40, 41, 44, 46, 52) – forced labour;
- 3 citizens of Bulgaria (F- 29, 31, 40) – prostitution;
- 2 citizens of Vietnam (M- 17, 20) - forced labour;
- 1 citizen of Gambia (F- 24) - domestic slavery;
- 1 citizen of Guinea (F- 20) – domestic slavery;
- 1 citizen of unknown country (F- 31) – prostitution.

2019 - 98 persons

- 46 citizens of Ukraine (M- 24, 25, 26, 26, 26, 27, 27, 29, 30, 31, 31, 31, 32, 34, 35, 36, 37, 37, 37, 38, 38, 38, 38, 38, 39, 39, 39, 40, 40, 40, 41, 41, 41, 42, 44, 44, 44, 44, 45, 46, 48, 58, 59, 50) - forced labour; (F- 45) - domestic slavery;
- 27 citizens of RP (M- 20, 23, 24, 25, 27, 28, 28, 28, 30, 31, 32, 33, 36, 37, 37, 45, 59, 59) - forced labour; (F- 18, 20, 22, 23, 24, 24, 30, 33, 34) - sham marriages;
- 9 citizens of Uganda (F- 25, 26, 28, 29, 29, 30, 31, 32) - forced labour;
- 5 citizens of Sierra Leone (F- 15, 16, 16, 16, 18) – prostitution;
- 3 citizens of Guinea (F- 15, 16, 30) - prostitution;
- 3 citizens of Belarus (M- 23, 32, 36) - forced labour;
- 2 citizens of Philippines (M- 32, 48) - forced labour;
- 1 citizen of Vietnam (M- 30) - forced labour / forcing to commit a crime;
- 1 citizen of India (M- 52) - forced labour;
- 1 citizen of Nepal (M- 21) - forced labour.

2020 - 43 persons

- 16 citizens of Ukraine (M- 21, 24, 29, 32, 32, 32, 33, 39, 40, 42, 47, 50, 56, 61/ F- 26, 28)- forced labour;
- 10 citizens of Moldova (M- 27, 30, 33, 33, 35, 37, 51/ F- 25, 29, 46)- forced labour;
- 5 citizens of RP (F- 20, 24, 24, 26, 48)- sham marriages;;
- 5 citizens of Yemen (M- 24, 25, 27, 27, 34)- forced labour;
- 5 citizens of Philippines (M- 37, 42/ F- 32, 37, 44)- forced labour;
- 1 citizen of Belarus (M- 29)- forced labour;
- 1 citizen of Russia (M- 59)- forced labour.

Section 1: Detection of third-country nationals (presumed) victims of trafficking in human beings

3. Please describe the national procedures to detect (presumed) third-country national victims of trafficking in human beings, by answering to the following questions:

- a) Are there mechanisms in place to detect (presumed) third-country national victims of trafficking in human beings? Yes No

If so, please further elaborate in the table below.

Mechanism in place to detect (presumed) third-country national victims of trafficking in human beings	Details
Self-reporting	Individual self-reports (in person, by e-mail to a widely known and accessible BG address) are noted.
Awareness raising campaigns	Campaigns are conducted to raise awareness on the phenomenon of human trafficking. The BG conducts periodic training sessions with high school students and university students. Leaflets and posters are made available with information on where to seek help and which services to inform if a person is identified as a possible victim of THB, including those from third countries.
Collection of indicators	BG uses trafficking indicators to support identification. These indicators are included in the Algorithms of Procedure. In addition, depending on the cases the BG also uses indicators from the International Labour Organization (ILO).
Intelligence gathering	Intelligence is gathered on an ongoing basis, both from our own recon, ongoing inspections and information coming from outside. Any information on trafficking in human beings, including on victims who are third-country nationals, shall be investigated and verified.
Proactive screening in asylum procedures	
Proactive screening in migration procedures	
Other	Procedure for the employees of the Office for Foreigners examining applications for international protection in the case of preliminary identification of a foreigner as a victim of trafficking in human beings. Research as part of the epidemiological filter, including a psychologist if necessary.

b) What measures are in place to promote and facilitate self-reporting by (presumed) third-country national victims of trafficking in human beings?

The Border Guard participated in outreach campaigns where flyers were distributed about how victims can come forward. Cooperation with non-governmental organizations is carried out, as a result of which the possibility, manner and scope of providing information is worked out for each factual state (single case).

c) Are there specific measures in place to detect (presumed) third-country national victims of trafficking in human beings? Yes No
If so, please elaborate.

The Algorithms of the Procedure of Law Enforcement Authorities for Victims of Trafficking in Human Beings (for adults and minors) were in place in previous years. Updated Algorithms (also concerning adults and children) developed under the aegis of the Ministry of Internal Affairs and Administration were handed over to Border Guard officers as of 05.02.2020.

d) Please indicate whether (and in what way) these specific measures differ for any of the cases below.

There is no distinction in terms of the following examples, except only the age of the victims (adults, children under 18). Only after a foreign victim of trafficking in human beings from a third country is identified, the procedure under the Act on foreigners is initiated, which legalizes their stay on the territory of the Republic of Poland.

Specific measure to detect (presumed) third-country national victims of trafficking in human beings:	Details
within asylum procedures	As reported by the Office for Foreigners, persons examining applications for international protection are obliged to apply an internal procedure developed in the event of preliminary identification of a foreigner seeking protection as a victim of trafficking in human beings. An employee of the Department for Refugee Proceedings of the Office for Foreigners is obliged to provide information about the presumption to the Border Guard, and after obtaining consent of the foreigner – also to National Consulting and Intervention Centre for the Victims of Trafficking (Krajowe Centrum Interwencyjno-Konsultacyjne dla Ofiar Handlu Ludźmi, KCIK). Research as part of the epidemiological filter, including a psychologist if necessary.
within other migration procedures (e.g. seasonal workers, domestic workers, au pairs, students)	
who are voluntary returnees	
who fall under other categories included in the definition of vulnerable persons adopted for this study (e.g. minors, unaccompanied minors, disabled people, elderly people, pregnant women)?	
Who are in an irregular situation	

e) What procedural safeguards exist for each category presented above?

The procedure is a part of the Rules of Conduct at the Department for Refugee Proceedings of the Office for Foreigners and applies to employees dealing with applications for international protection.

f) What organisations / authorities are trained / competent to detect (presumed) third-country national victims of trafficking)?⁹²

Organisation / authorities	Trained to detect (presumed) third-country national	Competent to detect (presumed) third-	Details

⁹² EMN NCPs are invited to address this question by using as source the European Commission, Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms, 2020, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_reviewing_the_functioning_of_member_states_national_and_transnational_referral_mechanisms.pdf, last accessed on 15 May 2021.

	victims of trafficking? Y/N	country national victims of trafficking? Y/N	
Police	Yes	Yes	<p>As part of the basic course, Polish policemen get familiarized with the crime of human trafficking. Successively, persons appointed as coordinators of this issue in Provincial, Municipal and District Headquarters undergo a specialized course providing them with knowledge about trafficking in human beings. The course deals with the use of modern techniques by criminals, including the use of the Internet and instant messaging. Cases illustrating the modus operandi of the perpetrators are presented. As part of practical classes, participants of the course solve cases related to the crime of human trafficking.</p> <p>Bearing in mind the strategies of action in combating trafficking in human beings, the Police Commander in Chief issued on September 22, 2016, Order No. 14 on the performance by the Police of certain tasks in the field of detecting THB, which regulates the division and scope of duties to be performed by individual Police units in the scope of activities related to the detection of this crime.</p>
Border guards	Yes	Yes	<p>Border Guard officers are familiarized with the subject of human trafficking during their basic training, training at non-commissioned officer academy and officer school and during the officer course. Then the issue is discussed in detail during subsequent editions of a specialized course dealing exclusively with the issue of human trafficking and during organized workshops. During the trainings, the topics of discussion include: the mechanism of perpetrators' actions, collection of evidence in THB cases, victims' rights and tactics of interviewing THB victims. Coordinators then conduct periodic, recurring local training for officers of all divisions in their home units.</p>
Labour inspectors	No	No	
Migration services	Yes	Yes	
Asylum case officers	Yes Periodic training of employees of centres for foreigners	Yes	The trainings concern the initial identification of alleged THB victims in the asylum procedures
Health workers	No	No	
General practitioners	No	No	

Employers	No	No	
Trade unions	No	No	
Civil society organisations	Yes	Yes	
Others			

g) Please describe how national referral mechanisms (or alternative mechanisms in absence of one) have evolved in the detection of (presumed) third-country national victims of trafficking in human beings?⁹³

Algorithms for the detection of alleged THB victims developed / updated under the leadership of the Ministry of the Interior and Administration working group, are in place.

Section 2: Identification of (presumed) third-country national victims of trafficking in human beings

4. Please describe the national procedures to identify (presumed) third-country national victims of trafficking in human beings, by answering to the following questions:

a) What organisations / authorities are competent to identify (presumed) third-country national victims of trafficking?

Organisation / authorities	Competent to identify (presumed) third-country national victims of trafficking? Y/N	Details
Police	Yes	The Police reports that “The algorithm of identification and treatment of a minor victim of trafficking in human beings for Police and Border Guard officers” and “The algorithm of conduct for law enforcement officers in the event of disclosure of a crime of human trafficking” have been developed. On their basis, an officer is able to identify the alleged victim. An alleged crime of trafficking in human beings should be determined primarily by the circumstances of the event itself and the presence of elements from the definition of the crime of trafficking in human beings, irrespectively of formal procedural steps undertaken or other legal qualification of the act adopted later.
Border guards	Yes	In order to systematize activities undertaken by officers in the case of a suspicion that one may be dealing with a human trafficking crime, patterns of conduct included in the following documents were developed and put into practice: "Algorithm of conduct for law enforcement officers in the case of identifying a human trafficking crime" and "Algorithm of identification of and procedure towards minor victim of trafficking in human beings for Police and Border Guard officers". Based on the recommendations included in those documents, a Border Guard officer is able to identify an alleged victim of trafficking in human beings. The identification should be carried out having

⁹³ Ibid.

		regard mainly to the circumstances of the occurrence and to the fulfilment of the statutory attributes of a crime set forth in Article 115§ 22 of the Penal Code, irrespective of undertaking formal procedural steps and irrespective of a different legal classification of the act adopted at a later stage of proceedings.
Labour inspectors	No	
Migration services	No	
Asylum case officers	No	
Civil society organisations	No	
Others		

- b) Are there specific measures in place to identify (presumed) third-country national victims of trafficking in human beings? Yes No
If so, please elaborate.
- c) Please indicate whether (and in what way) these specific measures differ for any of the cases below.

Specific measure to identify (presumed) third-country national victims of trafficking in human beings:	Details
within asylum procedures	As reported by the Office for Foreigners, persons conducting proceedings for granting international protection are trained in conducting preliminary identification of alleged victims among foreigners applying for international protection.
within other migration procedures (e.g. seasonal workers, domestic workers, au pairs, students)	
who are voluntary returnees	
who fall under other categories included in the definition of vulnerable persons adopted for this study (e.g. minors, unaccompanied minors, disabled people, elderly people, pregnant women)?	
who are in an irregular situation	

- d) Does a (presumed) third-country national victim have to be formally identified by a competent authority in order to apply for / be granted a reflection period / residence permit / protection status? Yes No

The above shall be implemented by an authority authorized to conduct cases on trafficking in human beings (Border Guard/Police/Prosecutor's Office). This may be done even before the formal initiation of preparatory proceedings, as well as in the course of an investigation already underway.

- e) Please describe how national referral mechanisms (or alternative mechanisms in absence of one) have evolved in the identification of (presumed) third-country national victims of trafficking in human beings?⁹⁴

Section 3: Protection of (presumed) third-country national victims of trafficking in human beings

5. In line with the Anti-trafficking Directive, please describe what kind of assistance, support and protection (presumed) third-country national victims of trafficking in human beings are given access to in your Member State during the four stages indicated in the table below.

Please also indicate, for each type of assistance the competent authority that can trigger its provision.

Type of assistance	Reflection period	Dublin III procedure	Asylum procedure	Residence permit
Information on risks and protection mechanisms	Information provided by BG: In case of a positive identification, the law enforcement agency of BG, Police, Prosecutor's Office issues a Certificate confirming the presumption that the person is an alleged victim of THB. The period of stay on the territory of the Republic of Poland (3/4 months for a minor foreigner) is a period of reflection, the so called time to think it over.	X (Office for Foreigners in scope of international protection proceedings)	X (Office for Foreigners in scope of international protection proceedings)	X (written instruction in understandable language) Information provided by BG: Statutory regulations: - Temporary residence permit art. 176 of the Act on Foreigners. - permanent residence permit – Art. 195(1)(5) of the aforementioned Act.
Appropriate and safe accommodation	KCIK			
Necessary medical treatment	KCIK		X (Office for Foreigners in scope of international	

⁹⁴ Ibid.

			protection proceedings)	
Counselling and information	KCIK			X
Legal assistance	KCIK			
Translation and interpretation	KCIK / powers in a criminal trial	X (Office for Foreigners in scope of international protection proceedings)	X (Office for Foreigners in scope of international protection proceedings)	X
Psychological assistance	KCIK	X (Office for Foreigners in scope of international protection proceedings)	X (Office for Foreigners in scope of international protection proceedings)	
Subsistence (material assistance)	KCIK			
Social and economic integration	KCIK			
Protection against re-victimisation	KCIK / proceedings of law enforcement authorities - incl. entries in Algorithms			
Other				The ability to work without the need for a work permit (if required)

6. Are there any specific measures or modalities which apply to third-country nationals who are asylum applicants, vulnerable persons or in an irregular situation? If so, please elaborate

a) How does your Member State operationalise the principle of non-refoulement for victims of trafficking in human beings?

If a third-country national or a stateless person stays on the territory of the Republic of Poland on the basis of a certificate issued in connection with the presumption that the foreigner is a victim of trafficking in human beings within the meaning of criminal law, no return proceedings are initiated, and if such proceedings were previously initiated, they are discontinued. The return decision expires by the power of law if the foreigner stays in Poland on the basis of a temporary residence permit for victims of trafficking in human beings, i.e. the right to temporary stay in Poland granted by an administrative decision to foreigners who have been confirmed to be victims of trafficking in human beings.

b) How does your Member State implement Article 60 and 61 of the 'Istanbul Convention'?⁹⁵

⁹⁵ CoE, Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>, last accessed on 9 May 2021.

The principle of non-refoulement applies to every foreigner applying for international protection. In practice, this means that each case is examined individually, taking into account the personal circumstances of the applicant, including those related to age, gender (also gender in the socio-cultural dimension, as referred to in Article 60 of the Istanbul Convention), health (including mental and physical health), as well as any violence suffered. Victims of human trafficking, persons subjected to torture are listed in Art. 68 and 69 of the Act on granting protection to foreigners in the territory of the Republic of Poland, which regulates the identification and special guarantees for persons requiring special treatment (persons with special care) in the procedure for granting protection. These guarantees in the procedural sphere mainly relate to the conditions of organizing and conducting interviews, so as to enable the applicant to justify his / her application in conditions ensuring freedom of expression, in a manner adapted to his / her psychophysical state.

7. Please describe what typology(ies) of reflection periods, residence permit(s), protection status(es) and national programme(s) are available to protect (presumed) third-country national victims of trafficking, by answering the following questions.

a) What organisations / authorities are competent to trigger the request for a (presumed) victim to remain on the territory of your Member State? Please indicate if the organisations / authorities differ between cases of presumed and identified third-country national victims of trafficking in human beings.

Yes, they are different. A residence permit is not granted to alleged victims of trafficking in human beings - if such a presumption exists, they are issued with a certificate which entitles them to stay in Poland during the period of validity. The stay of a foreigner in Poland during its validity period is considered legal, and no return proceedings may be initiated against the foreigner. Identified victims of trafficking in human beings who are third-country nationals or stateless persons are granted a temporary residence permit for victims of trafficking in human beings. The permit is granted by an administrative decision issued by the voivode competent for the foreigner's place of stay or by the Head of the Office for Foreigners - in the case of appeal proceedings. A permanent residence permit may be granted on request of a foreigner who is a victim of trafficking in human beings within the meaning of art. 115 § 22 of the Penal Code, under the condition that he or she stayed in Poland immediately before submitting the application for a permanent residence permit for a period of at least 1 year on the basis of a temporary residence permit for victims of trafficking in human beings, cooperated with law enforcement agencies in the criminal proceedings concerning the crime referred to in Art. 189a § 1 of the Criminal Code, and has well-founded fears of returning to the country of origin. A permanent residence permit is granted by the same authorities as the temporary residence permit.

b) Can third-country national victims of trafficking in human beings submit a request for a reflection period themselves? Yes No

A certificate confirming the presumption that the foreigner is a victim of trafficking in human beings is issued ex officio.

If so, to whom? Please indicate if this possibility exists for both cases of presumed and identified third-country national victims of trafficking in human beings and the extent to which they differ.

c) Does your Member State provide for a reflection period also for presumed third-country national victims of trafficking in human beings? Yes No

d) How long does the reflection period last to decide if (presumed) third-country national victims of trafficking in human beings want to cooperate with the authorities? Does it have the same duration in case it is provided to presumed victims?

The reflection period lasts for 3 months, after this period the alleged victim of trafficking in human beings is obliged to make a decision regarding cooperation with law enforcement authorities. The certificate confirming the presumption that a foreigner is a victim of trafficking in human beings is issued for a period of 3 months - in the case of an adult, and for a minor foreigner - for a period of 4 months.

- e) Are (presumed) third-country national victims of trafficking in human beings expected to cooperate with the authorities during the reflection period? Yes No
If so, what is expected from them (e.g. report to the police, refer to support organisations, discontinue contact with traffickers)? Does cooperation differ between identified and presumed third-country national victims of trafficking in human beings?

If a foreigner who is presumed to be a victim of trafficking in human beings, actively, voluntarily and on his own initiative re-establishes contact with persons suspected of a crime under Art. 189a of the Criminal Code or in the event of illegally crossing or attempting to cross the border of the Republic of Poland, he loses the right to recognize his stay in Poland as legal (under the issued certificate confirming the presumption of being a victim).

Temporary residence permit for victims of trafficking in human beings, granted to identified victims of trafficking in human beings, shall be withdrawn if the purpose for which the permit was granted has ceased or the foreigner has ceased to meet the requirements for its granting, in particular when he has stopped to cooperate with the authority competent to conduct criminal proceedings referred to in Art. 189a § 1 of the Criminal Code, or if the proceedings have been completed. The permit is also withdrawn in the following cases:

- when it is required for reasons of state defence, security or protection of public safety and order
- due to obligations resulting from the provisions of ratified international agreements binding for the Republic of Poland
- when the foreigner, in the permit granting procedure, submitted an application containing false personal data or false information or attached to it documents containing such data or information, or he testified untruthfully or concealed the truth, or forged or modified a document in order to use it as authentic or used such a document as authentic,

- f) What type of residence permit(s) are available specifically for (presumed) victims of trafficking in human beings in your Member State? Please indicate if this possibility exists for both cases of presumed and identified third-country national victims of trafficking in human beings and the extent to which they differ.

The provision of article 170 of the Act on Foreigners enables the issuance of a Certificate confirming that a foreigner is an alleged victim of human trafficking. This document legalizes the stay on the territory of the Republic of Poland for a person (staying illegally). Additionally, Article 176 of the above mentioned Act enables issuance of a Temporary Residence Permit for a victim of trafficking in human beings, which is issued for the period of 6 months with the possibility of further extension.

According to the Office for Foreigners, as a result of granting a temporary residence permit for victims of trafficking in human beings or a permanent residence permit, a residence card is issued. During its period of validity it confirms the identity of the foreigner on the territory of Poland and together with a passport allows for multiple crossings of the Polish border without the need to obtain a visa, if required. In the case of a temporary residence permit, the residence card is issued for the period of validity of the permit, which is not shorter than 6 months and not longer than 3 years. In the case of a permanent residence permit, the residence card is issued for a period of 10 years.

- g) What are the conditions for getting these permit(s) granted? Do conditions differ between presumed and identified (i.e. not yet identified) third-country national victims of trafficking in human beings?

Temporary residence permit for a victim of trafficking in human beings is granted to a foreigner upon his request, provided that the following conditions are jointly met:

- he stays on the territory of the Republic of Poland;
- he cooperated with the authority competent to conduct proceedings in the case of an offense referred to in art. 189a § 1 of the Criminal Code, and in the case of a minor foreigner - received the status of an injured party in the proceedings concerning the crime referred to in art. 189a § 1 of the Criminal Code;
- he cut off contacts with persons suspected of committing the crime referred to in art. 189a § 1 of the Criminal Code.

A permanent residence permit is granted to a foreigner for an indefinite period, at his request, if he is a victim of trafficking in human beings within the meaning of art. 115 § 22 of the Criminal Code and:

- stayed on the territory of the Republic of Poland immediately before submitting the application for a permanent residence permit for a period of at least 1 year on the basis of a temporary residence permit for victims of trafficking in human beings,
- cooperated with law enforcement agencies in criminal proceedings concerning the crime referred to in Art. 189a § 1 of the Criminal Code,
- and has reasonable concerns about returning to the country of origin.

h) Are other protection status(es) and national programme(s) offered to protect (presumed) third-country national victims of trafficking in human beings? Yes No
If so, please indicate the extent to which they differ between presumed and identified third-country national victims of trafficking in human beings.

Section 4: International cooperation between Member States and with third countries in addressing detection, identification and protection of (presumed) third-country national victims of trafficking in human beings?

8. Please describe how your Member State cooperates within the scope of the Dublin III Regulation:
- a) How does your Member State deal with cases of (presumed) third-country national victims of trafficking in human beings that fall under the Dublin III Regulation?

So far, no such case has been identified in the Dublin procedure, but such cases would be considered on a case-by-case basis, considering the possible application of the sovereignty or humanitarian clause.

b) What is the national policy and practice regarding Dublin transfers of (presumed) third country national victims of trafficking in human beings?

There is no applicable policy or established national practice. Each case is considered individually. So far, no such case has been identified in the Dublin procedure.

c) How does identification and referral take place during the Dublin Procedure?

In line with the general rules for dealing with foreigners initially identified during the protection granting procedure. As indicated above, so far there has been no preliminary identification of a victim of trafficking in human beings in the Dublin procedure. Each such case would be considered individually, considering the possibility of applying the sovereignty or humanitarian clause.

d) Are presumed third country national victims of trafficking in human beings identified during the Dublin procedure entitled to a reflection period? Yes No

On the general terms relating to other foreigners identified as victims of human trafficking.

e) What, if any, are the situations in which Dublin transfers are halted for presumed third-country national victims of trafficking in human beings?

So far, no such case has been identified.

- f) Has your Member State used the humanitarian and sovereignty clauses under Articles 3 and 17 of Dublin III Regulation for cases of trafficking in human beings? Yes No

There has not been such a case so far, however, as mentioned earlier, each case is analysed individually and in the event of any prerequisites for the application of the humanitarian or sovereignty clause, they would be taken into account.

9. What (other) intra-EU cooperation mechanisms are in place regarding detection, identification and protection of (presumed) third-country national victims of trafficking in human beings?⁹⁶
10. What cooperation mechanisms with third countries, if any, are in place in your Member State regarding detection, identification, and protection of (presumed) third-country national victims of trafficking in human beings?
11. Does your Member States cooperate with third countries in the context of voluntary return of (presumed) third-country national victims of trafficking in human beings? Yes No
If so, in what way?
12. Is your Member State considering any future cooperation mechanisms with third countries and with other Member States regarding detection, identification, and protection of (presumed) third-country national victims of trafficking in human beings? Yes No
If so, please explain.

Section 5: Key challenges and good practices in Member States, including in light of the COVID-19 pandemic.

13.a What are the key challenges faced in the i) detection, ii) identification and iii) protection of (presumed) third-country national victims of trafficking in human beings?	
Please include one challenge per row and indicate the stage for which it applies in the tick boxes below. If needed, please add additional rows to the table below.	
Challenge <i>(Please list in order of importance or chronological order as instructed under the first question)</i>	Stage
<i>Please describe the challenge.</i>	<input type="checkbox"/> Detection
No identified challenges.	<input type="checkbox"/> Identification
Also answer the following questions:	<input type="checkbox"/> Protection
a) For whom is this a challenge (e.g. policy-makers, competent authorities, third-country nationals, other stakeholders.)?	

⁹⁶ EMN NCPs are invited to address this question by using as source the EMN AHQ 2019.91 on [victims of trafficking of human beings exploited in another Member State](#), requested by LU NCP on 10 October 2019, last accessed on 13 June 2021. The AHQ was not made publicly available on the EMN website.

<p>b) Why is it considered a challenge?</p> <p>c) What is the source of the statement (e.g. based on input from experts, surveys, evaluation reports, other sources)?</p>	
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13. Please elaborate by answering to the following questions

13.b What are the specific challenges at any of the above stages concerning vulnerable persons or asylum applicants?

Please include one challenge per row and indicate the stage for which it applies in the tick boxes below. If needed, please add additional rows to the table below.

Challenge <i>(Please list in order of importance or chronological order as instructed under the first question)</i>	Stage
<p><i>Please describe the challenge.</i></p> <p>According to the Office of Foreigners, initiating the procedure for granting international protection mainly to legalise (also temporarily legalise) the stay.</p> <p>Challenges/issues are identified in the annual reports, addressed to the Ministry of the Interior and Administration.</p> <p>Also answer the following questions:</p> <p>a) For whom is this a challenge (e.g. policy-makers, competent authorities, third-country nationals, other stakeholders.)?</p> <p>b) Why is it considered a challenge?</p> <p>c) What is the source of the statement (e.g. based on input from experts, surveys, evaluation reports, other sources)?</p>	<input type="checkbox"/> Detection <input type="checkbox"/> Identification <input type="checkbox"/> Protection

13.c What are the specific challenges with regard to traffickers / criminal organisations involved in trafficking in human beings using asylum procedures for means other than intended? *(for example, to temporarily house victims in a reception centre before moving them to the intended country)*

Please include one challenge per row. If needed, please add additional rows to the table below.

Challenge <i>(Please list in order of importance or chronological order as instructed under the first question)</i>
<p><i>Please describe the challenge.</i></p> <p>Using the procedure for granting international protection to legalise or temporarily legalise the stay of a foreign victim of trafficking in human beings or to legalise the stay of a person who is to recruit potential victims among foreigners applying for international protection.</p> <p>Also answer the following questions:</p>

- a) For whom is this a challenge (e.g. policy-makers, competent authorities, third-country nationals, other stakeholders.)?
- b) Why is it considered a challenge?
- c) What is the source of the statement (e.g. based on input from experts, surveys, evaluation reports, other sources)?

14. What are the consequences of COVID-19 pandemic on the detection, identification, and protection of (presumed) victims?

It should be noted that the COVID -19 pandemic, especially in its initial phase, significantly reduced migration flows. Due to the fact that in the initial period of the pandemic the borders were closed, cross border traffic was stopped and the movement of people around the country was impeded - a decrease in the level of crime under the jurisdiction of the Border Guard was observed, including the crime of trafficking in human beings. Consequently, there is also a noticeable decline in the detection and identification of alleged victims of trafficking. The Police reports, that there are limited possibilities of inspecting places where persons at risk of crime may be present.

The above results also from the fact that Border Guard officers were directed to perform additional duties, including sanitary and epidemiological control, border traffic control, protection of the so-called "green border". As a consequence of the above, the tasks related to combating trafficking in human beings, and consequently to identifying the victims of human trafficking , were carried out, but to a lesser extent. In addition, the COVID-19 pandemic has had the effect of reducing the performance of inspections in locations previously selected and where crime victims may have been present.

15. What new patterns and / or trends in trafficking in human beings have emerged because of the COVID-19 pandemic?

In general, no new trends were observed. In the last year, the predominant form of abuse of victims was the use for broadly understood sexual purposes. In the previous years, the dominant trend was the labour exploitation. However, this is not a drastic statistical change, but only a slight fluctuation. The pandemic significantly influenced the movement of people, so it is presumed that it also impacted the change of the forms of exploitation of the victims.

In the current practice of the Border Guard authorities, no changes in the trends of using people in the human trafficking procedure have been observed. Still, trafficking related to the use of persons for forced labour continue to dominate. However, it cannot be excluded that with the end of the pandemic, new areas and methods of exploitation of these people will be revealed.

16. How has your Member State adapted its policies and procedures due to the challenges of the COVID-19 pandemic?

17. Regarding the challenges identified above, does your Member State have concrete plans or proposals in place for improvements to deal with them?

18. In light of possible new trends and developments, is your Member State anticipating any new challenges in the near future? Yes No

If so, please explain.

19. What good practices in relation to i) detection, ii) identification and iii) protection of (presumed) third-country national victims of trafficking in human beings exist in your Member State? **For each good practice mentioned, please explicitly describe to which stage it applies.** *For each good practice mentioned, please a) describe for whom it is a good practice (e.g. policy-makers, competent authorities, third-country nationals, other stakeholders.), b) explain why it is considered a good practice and c) indicate the source of the statement (e.g. based on input from experts, surveys, evaluation reports, other sources).*

Good practices include the functioning Algorithms of conduct for law enforcement officers (adults and children) and Algorithms of conduct for employees of the Office for Foreigners and Labour inspectors.

20. Other

Below are statistical data provided by the Office of Foreigners on decisions issued under section 176 of the Protection Act, which applies to victims of trafficking in human beings.

Table 1. Number of decisions issued under Article 176 (Grounds for granting temporary residence permits for victims of trafficking in human beings) of the Act on granting protection to foreigners within the territory of the Republic of Poland in 2017-2020 (by citizenship)

Citizenship	2017	2018	2019	2020	2021	Sum
Belarus	4	1	0	0	0	5
Philippines	0	0	7	2	0	9
Georgia	0	0	2	0	0	2
India	0	0	0	1	0	1
Jemen	0	0	0	0	5	5
Columbia	0	0	0	2	0	2
South Korea	1	0	0	0	0	1
Marocco	1	0	0	0	0	1
Uganda	0	0	0	9	9	18
Ukraine	19	2	0	1	1	23
Sum	25	3	9	15	15	67