

# Victim Support Europe Contribution

---

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



## About Victim Support Europe

Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 62 member organisations, providing support and information to more than 2 million people affected by crime every year in 30 countries.

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

## Introduction

Over the last thirty years, policies and rights for victims have developed on the international and European stage. With respect to victims of human trafficking, the adoption of various European Union (EU) instruments from the EU Anti-Trafficking Directive to the recent EU Strategy on combatting trafficking in human beings 2021-2025<sup>1</sup>, are having a positive impact whilst demonstrating the necessary and important commitment of the EU to the issue.

Nevertheless, as with all victims' policy, significant challenges remain and the EU has an important role in helping overcome those challenges to achieve real change for victims. Victim Support Europe, therefore welcomes the evaluation of the Anti-trafficking Directive.

Regarding possible options for action, as with other evaluations, this is highly dependent on understating the nature of the problems, barriers to achieving objectives and gaps in existing action. Understanding the detailed analysis is required, in VSE's experience of the implementation of existing EU legislation on victims rights, the fundamental issues relate to:

- **Failure of Member states to implement existing rules:** driven by a lack of interest to fully implement, a lack of prioritization or a lack of understanding of the best means to implement. Improvements in EU legislation – detail of requirements, the mandatory nature of requirements, clarification and focus on common best practices – are essential mechanisms for ensuring that a consistent, practical implementation of laws is achieved within a reasonable period by all Member States and not just the most advanced.

---

<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings (2020-2025) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171&qid=1631609525146&from=EN>

- Insufficient coverage of specific issues: the range of limitations on EU action, legal basis, proportionality, subsidiarity, political and economic feasibility all result in important issues not being included within EU legislation. At the same time, development in knowledge, emerging crimes, methods, vulnerabilities also mean that it is common for any EU legislation that is a decade old to have gaps in rights and obligations. We believe this is true of the current legislation even when considered in conjunction with additional EU Victims legislation. It is essential that any evaluation, fully considers the potential for incorporating new rights not already established.
- Lack of oversight and enforcement mechanisms: with broad language, lack of clarity, lack of data, it is difficult for the EU, national organisations and individuals to press for full implementation of laws and to protect rights through legal redress. More specific drafting, with clear indicators on implementation, combined with obligations on the collection of data – an increasingly critical issue in this field where a lack of data is repeatedly used to slow or block change – as well as ideally redress mechanism (as might exist for other sectors and indeed exist for defendants), and oversight mechanisms, can all improve implementation of existing and future legislation.

Whilst we understand the concerns of some stakeholders that changes to legislation could result in a weakening of the existing laws – something that must not happen – we believe the continual progress of victims’ legislation in the EU has demonstrated that EU mechanisms for proposals and negotiation of legislation tend to result in incremental improvements. With that in mind and subject to a detailed evaluation, **we believe baseline scenario n. 4 foreseeing legislative changes, supported by non-legislative measures is most likely to achieve the greatest positive impact for victims of human trafficking.** In the consideration of such legislation, it will be critical to be coherent with any new Victims Directive. At the same time, the mere coverage of an issue by the victims’ directive should not be assumed *prima facie* to be sufficient to respond to the specific situation of victims of human trafficking.

To support an understanding of the above position, VSE has provided a non-exhaustive example list of issues where improvements to victim responses through legislative and non-legislative action would benefit victims and which should be addressed through any evaluation of the EU Anti-trafficking Directive.

### [Examples of key issues with respect to the EU Anti-trafficking Directive](#)

#### **Article 11 – Assistance and support for victims of trafficking in human beings**

- **Right to receive information from the first-contact authority, right to understand and to be understood, access to translation/interpretation**

Information rights, granted by the 2012 Victims' Rights Directive, are especially important and relevant for victims of trafficking because of the nature and impact of trauma and the fact they are often cross-border victims. Language barriers, lack of knowledge about the country's justice system and differences in cultural backgrounds may prevent them from accessing information and exercising their rights<sup>2</sup>.

Thus, VSE encourages the European Commission to assess how these rights can be strengthened with a specific focus on human trafficking victims, and ensured in practice, by e.g. foreseeing that the language/format of information given to victims be adapted to these needs, law enforcement officers and other first-contact authorities are trained on understanding the trafficking victims' trauma and impact of crime, as well as on soft skills for communicating and empathising with THB victims, facilitated access is granted to translation/interpretation services, etc.. For instance, it should be stressed the importance of having this information explained by a professional legal counsellor, as European anti-trafficking systems are complex and victims of trafficking may not be able to fully comprehend the extent of the information and its implications on their own.<sup>3</sup>

- **Assistance and support to victims**

As noted in VSE's contribution for the evaluation of the Victims' Rights Directive, for those who are identified as victims and require support, in many EU countries, generic and specialised victim support services do not exist or are insufficient, are not accessible or are not of a high quality.

In light of the gaps in the provision of assistance and support offered to trafficked persons in Europe, including in the provision of appropriate and safe accommodation and material assistance as well as necessary medical treatment including free psychological assistance, VSE encourages the European Commission to revise this article by foreseeing more specific terms on how the support should be developed, accessed by and delivered to victims of trafficking.

Establishing a national strategic framework, in line with VSE's national framework for victims support, is critical to maximise access to a full support network. In particular, this means every member state should have in place: victim support organisations whose sole focus and objectives are to support victims, organisations that support all victims of crime and within which they have specialist capability to support victims of human trafficking, and organisations with a specialised focus solely on human trafficking.

At the same time, organisations that come into regular contact with victims of human trafficking including police and prosecution services, should have specialist capabilities to address the specific needs of such victims.

---

<sup>2</sup> Cross-border victimisation: challenges and solutions with respect to the provision of support to victims of crime in a cross-border situation, Victim Support Europe, 2017, available at <https://victimsupport.eu/activeapp/wp-content/uploads/2017/02/VSE-Cross-border-Victimisation-Report.pdf>

<sup>3</sup> Prevent, Combat, Protect Human Trafficking, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, available at [https://www.unodc.org/documents/human-trafficking/2011/UN\\_Commentary\\_EU\\_Trafficking\\_Directive\\_2011.pdf](https://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf)

Achieving close co-operation and maximum levels of referral between those organisations is critical and the Commission should actively evaluate the feasibility of mandated opt-out referral mechanisms from the police to victims support services.

Knowing that practical implementation of rules on support remains a major problem, and that this is often due to funding limitations, the Commission should explore how to develop more detailed rules on the level of access and availability of services that is required.

Moreover, in accordance with key international standards on assistance and protection of trafficked persons, it should be specified that assistance including the above-mentioned services shall be given taking due account of the special needs of persons in a vulnerable position and that access is granted unconditionally – in particular, irrespective of the victim’s residency status, whether the victim decides to report crime or not and agrees to cooperation in the prosecution of the traffickers (as already mentioned in Article 11.3 of the Directive).<sup>4</sup>

Moving beyond the broad requirements of the existing anti-trafficking and victims’ directives, an important added value in any revision will be the precision on specific types of support services most needed by victims of human trafficking.

For example, such victims are in need of assistance to seek long term residence permits, skills based training to find new employment, cultural, language and other forms of knowledge and skills development to help victims adapt and integrate into society. **Social inclusion of trafficked persons** is of major importance and should be implemented, whether in countries of destination or after return to the country of origin or another third country. Support to victims of trafficking should encompass the provision of skills, resources, and confidence to strengthen their economic position and enable them to financially support themselves and their families in the short and long-term. This is critical both from a gendered approach to support victims of trafficking for sexual exploitation as well as for other forms of human trafficking.

## **Article 12 – Protection of victims of trafficking in human beings in criminal investigation and proceedings**

- **Protection of victims**

The Victims Directive already mandates a needs assessment for victims of crime. However, specific issues and approaches to needs and risk assessment are necessary for victims of human trafficking. The European Commission should therefore assess whether such measures are already sufficiently in place or should be mandated through the EU. Such assessments should take into consideration the personal circumstances of the victim, including factors like age, gender, health, disability, mental and psychological disorder, as well as the abuse and violations suffered such as torture, rape or other forms of sexual and gender based violence.

---

<sup>4</sup> Art. 10, 12, 28 & 35 Council of Europe Convention on Action against Trafficking in Human Beings available at <http://conventions.coe.int/Treaty/EN/Reports/Html/197.html>

- **Legal aid**

Currently, the right to legal aid is defined in the 2012 Victims' Rights Directive (Art. 13) as is provided in accordance with national procedural rules. This in effect provides little guarantee as to which victims will in fact have access to legal aid or any other form of legal assistance. Experience of victims support services is that free legal assistance can be a critical aspect to helping vulnerable victims access their rights. Recognising the financial and political challenges of this issue, VSE encourages the Commission to thoroughly evaluate access to free legal assistance and the impact this has on victims of trafficking.

Whilst recognising potential legal base limitations, VSE also urges the European Commission to review how access to free legal assistance can be ensured not just for criminal proceedings but also to cover all legal proceedings related to the person's victim status, including criminal, civil or labour procedures for the purpose of compensation, as well as proceedings in relation to immigration status or asylum.

### **Article 17 – Compensation**

While this article requires Member States to ensure that trafficked persons have access to existing schemes of compensation available to victims of violent crimes, in practice the actual receipt of a compensation payment by a trafficked person is extremely rare. According to available research this is due to several factors such as the lack of awareness among the police and the judicial system, lack of access to legal aid and adequate information for victims, the postponement of trials and long duration of criminal and civil proceedings, in the case of foreign victims - their return or deportation to their country of origin before a verdict is reached and/or their irregular immigration status.<sup>5</sup>

VSE encourages the European Commission to thoroughly evaluate not only whether compensation schemes exist but also how accessible they are, how victim centric procedures are, the extent to which they exclude in practice victims of trafficking. Taking into account the Report on compensation by President Junckers advisor, Mrs Milquet, the Commission should examine what specific measures can be adopted to improve access to compensation for victims of trafficking.

### **Articles 11 & 18 – comments on the identification of victims, prevention measures and helping victims to come forward**

VSE welcomes the fact that the 2011 Directive recognises the importance of adopting prevention measures and establishing mechanisms aiming to identify victims (Article 11.4 & 18). We however note the particularly vague language used in Article 11.4 regarding the establishment of '*appropriate mechanisms aimed at the early identification of, assistance to and support for victims*'. VSE encourages the European Commission to clarify the aim and scope of these mechanisms to be adopted by Member States, either in the legislative text itself or by when adopting non-legislative measures.

Traffickers prey in particular on the most vulnerable, those in need, isolated, excluded and those who are least able to protect themselves. They use wide ranging methods and are increasingly resorting to digital platforms for their recruitment methods.

---

<sup>5</sup> [www.justiceatlast.eu](http://www.justiceatlast.eu)

Greater, more targeted, consistent and long term efforts to identify these methods, disrupt them and to educate specific populations most likely to be targeted are necessary. New technologies should be used or developed to support these objectives including to improve the reach and impact of information campaigns.

In our experience, to achieve the consistent long term application of these types of campaigns requires some level of legislative impetus. Without it, only some Member States will follow through and many will only do so at infrequent intervals.

Not only must potential victims be a target of education and information campaigns, but also those who may come into contact with victims in wide ranging circumstances. Victims of trafficking face significant barriers to seeking help and reporting a crime. Equally, they are largely hidden from society. It is critical that the EU and Member States focus actions on identification of victims, knowledge on what to do and how to report situations of trafficking, and remove or reduce barriers to such reporting.

Some of these may require basic practical actions whilst others may require legislative or procedural changes such as anonymous reporting.

It is well recognised that victims of trafficking suffer from an important lack of trust towards authorities and fear of consequences for reporting crime or seeking help<sup>6</sup>: for instance, the fear of retaliation from the trafficker or organised crime group, should it be any form of violence or abuse, or denouncing the victim's irregular status to the authorities; the fear/risk of arrest or expulsion from the country for the conduct of illegal activities or illegal entry into the Member State's territory. VSE therefore encourages the European Commission to assess in details how specific measures could be put in place in order to help victims coming forward and enhance the trust towards national authorities and law enforcement.

Training is particularly crucial in order to address early identification of victims, the creation of safe environments for victims to report crime and the respectful treatment of victims. Article 18.3 already encourages Member States to *'promote regular training for officials likely to come in contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.'* VSE believes that training of these officials should be mandatory and addressed as a priority by Member States. To address the THB victims' specific needs, this training should focus on: understanding what trafficking is, the nature and impact of trauma on its victims, the means, risks and methods used by traffickers to recruit and exploit their victims (online and offline), recognising signs of victimisation for victims identification, soft skills on communicating with THB victims (both for all THB victims and specific vulnerable groups, such as children). VSE believes that the Directive should detail what these training should focus on as well as how/how often they should be organised, in order to help Member States designing their training programmes and to create a consistent approach across the EU.

Moreover, still today and in many Member States, victims of trafficking are still being seen as criminals by law enforcement authorities, particularly victims of sexual exploitation. This element only reinforces the victims' lack of trust towards the authorities, the absence of a safe space for victims to come forward and the lack of respectful treatment of victims. VSE encourages the European

---

<sup>6</sup> UNODC, Global report in trafficking in persons 2020, p.51, available at [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_15jan_web.pdf)

Commission to seek to better address this issue, via the officers' training programmes and other relevant measures.

### **Article 19 - National rapporteurs or equivalent mechanisms**

Whilst EU legislation has already established the requirement for National Rapporteurs or equivalent mechanisms, the scope of activities carried out by such bodies could be helpfully broadened to improve independent oversight whilst support continuous development and implementation.

In particular, the Commission should examine the role to cover: the formulation of policy, legislation, plans for programmes and budgets, monitor and report on anti-trafficking efforts and responses. The establishment of National Rapporteurs or equivalent mechanisms could also seek to achieve greater clarity and transparency on who is accountable, and ultimately ensure the conditions for improved accountability mechanisms and transparency.

VSE encourages the European Commission to evaluate the efficiency of the current system and, if not, to foresee measures in order to better address it.