

# A GENDER-SENSITIVE APPROACH TO COMBATING HUMAN TRAFFICKING AND SUPPORTING ASYLUM-SEEKING SURVIVORS IN THE EU

ECRE'S ANALYSIS ON STRENGTHENING GENDER-SENSITIVE MEASURES TO ADDRESS HUMAN TRAFFICKING AND SUPPORT SURVIVORS SEEKING ASYLUM IN THE EU

## I. INTRODUCTION

Human trafficking disproportionately affects women and girls. EUROSTAT's latest EU-wide [statistics](#) reveal that 63% of all survivors of Trafficking of Human Beings (THB) and 75% of child survivors are female. Many of these women and girls are trafficked in the context of migration and may seek international protection upon arrival. While there is no precise EU-wide data on how many trafficking survivors are also asylum seekers, [EUROSTAT's 2023](#) data show that 64% of registered trafficking survivors in the EU were third-country nationals, a category that includes many asylum seekers. In [several countries](#), it is asylum authorities who are the first point of contact for survivors of THB in Europe.

In addition, people within the asylum process, particularly women and girls, face [greater risk](#) of becoming victims of trafficking due to their precarious legal, economic and social status, limited access to safe housing and financial support, and barriers to employment and services. These vulnerabilities can lead to dependence on informal or exploitative networks. Without gender-sensitive reception conditions and targeted safeguards, the asylum procedure itself may expose individuals to further harm and fail to adequately identify or protect survivors of trafficking.

Understanding the intersection between trafficking and asylum is critical to ensure that asylum systems are equipped to identify and respond to specific vulnerabilities of trafficking survivors and ensure that they can access their rights, including through access to international protection status or other residence permits. For this, a well-coordinated system of protection and referral systems are needed at the national level.

This Policy Note examines how the revised [EU Anti-Trafficking Directive](#) (ATD) can better protect women and girls at risk of or subjected to trafficking in the asylum process, in line with international and European standards. With the ATD already adopted and Member States (MS) required to align their national legislation by July 2026, this period is crucial for addressing both the directive's potential and the gaps identified in various evaluations. Additionally, the note explores overlaps with the [proposed Facilitators Directive](#), which is still under negotiation. Given the ongoing legislative process, it is essential for co-legislators to recognize and remove harmful provisions that could undermine protection efforts. Drawing on assessments from the [Asylum Information Database](#) (AIDA), the [Council of Europe Group of Experts on Action against Trafficking](#) (GRETA), [Committee on the Elimination of Discrimination Against Women](#) (CEDAW), and the [Group of Experts on Action against Violence against Women and Domestic Violence](#) (GREVIO), this analysis identifies key legal and practical challenges as well as good practices. To enhance the effectiveness of both directives, the note provides recommendations for the European Commission (EC), MS and co-legislators on adopting gender-sensitive strategies for prevention, victim protection, and survivor support.

## II. ANALYSIS

### NON-PUNISHMENT OF THB SURVIVORS

Many trafficked women and girls only encounter authorities when seeking asylum, but restrictive entry policies often prevent their access to safety. Neither the revised ATD nor the proposed Facilitators Directive ensures the decriminalization of irregular entry for asylum seekers, as required by the 1951 Refugee Convention. While Article 8 of the revised ATD prohibits prosecuting trafficking survivors for crimes they were forced to commit, including assisting in irregular migration, the proposed Facilitators Directive (Article 3.1.a and 3.1.b) criminalizes facilitating “illegal” entry, transition or stay disregarding that many women and girls rely on smugglers to escape trafficking and persecution due to the lack of safe migration routes. This broad criminalization could lead to the prosecution of trafficking survivors, especially women and girls coerced into irregular migration, carrying documents or helping others to escape. The proposed Facilitators Directive lacks explicit exemptions for survivors, conflicting with the revised ATD and risking their treatment as smugglers.

### EARLY IDENTIFICATION AND REFERRAL OF SURVIVORS OF THB

Article 2 of the revised ATD expands the definition of human trafficking by including forced marriage, illegal adoption and surrogacy. Article 11(4) mandates MS to create national referral mechanisms (NRMs) for the early detection, identification, and support of trafficking survivors. These mechanisms must set minimum standards for survivor identification, offer appropriate support, and establish cooperation protocols with asylum authorities to ensure trafficking survivors receive necessary protection.

The obligation to establish effective national referral mechanisms aligns with critical gaps in survivor identification and protection. Common issues in identifying trafficking survivors include the absence of formal identification methods, limited involvement of relevant actors, insufficient proactive outreach by police, and inadequate training for staff who may encounter survivors. ([AT](#), [BE](#), [BG](#), [CH](#), [CY](#), [CZ](#), [EL](#), [ES](#), [FR](#), [HR](#), [IE](#), [LU](#), [LV](#), [MT](#), [NL](#), [NO](#), [PL](#), [PT](#), [SE](#), [SI](#), [RS](#)). Reports also emphasize country-specific challenges in identifying trafficking survivors. In [Malta](#), [the Netherlands](#) and [Sweden](#), identification is linked to the prospects of the investigation and prosecution, while in some cases, [Swedish](#) police apply stricter thresholds for survivors exploited in a country other than their current location. [Spain](#), [Croatia](#), and [Poland](#) face detection barriers due to pushbacks of irregular migrants and asylum seekers. The [Netherlands](#), [Portugal](#), and [Slovenia](#) lack child- and gender-sensitive reception conditions, affecting women and children. In [France](#), isolated migrant children at borders with the UK and Italy are often unidentified and [police concerns](#) over false claims hinder identification. Additionally, inadequate identification mechanisms delay recognizing trafficking and gender-based violence survivors, with [France](#) and [Slovenia](#) failing to provide special procedural guarantees for women struggling to disclose sensitive information.

Despite implementation challenges, some local initiatives show promise, such as [Sweden's](#) anti-trafficking networks for better coordination, [Luxembourg's](#) mandatory trafficking training for staff, and [Latvia's](#) multi-disciplinary commission to improve survivors identification. [Italy](#) stands out with national guidelines co-developed with UNHCR focused on asylum seekers, enabling coordinated identification and referral by trained officers and NGOs, particularly for women and girls. [Finland](#) has appointed a trafficking expert within its asylum unit, with local liaison officers supporting interviewers in detecting trafficking cases.

#### Specialised training for professionals

Article 18b of the revised ATD mandates MS to provide regular, specialized training for professionals, including

police, court staff, and social and healthcare workers, to prevent human trafficking, identify and assist survivors, and avoid secondary victimization. The training should be human-rights-based, victim-centred, and sensitive to gender, disability, and children's needs, with additional focus on judges and prosecutors handling criminal cases.

This requirement for specialised training corresponds to a significant need highlighted in evaluation reports from several countries (BE, CY, ES, FR, IE, LU, MT, PT, SI). Some reports specify training needs for specific groups, such as lawyers (NO, SE), psychologists (NO), and staff in reception and immigration detention centres (ES, NL). While ad-hoc training is provided by organizations like EUAA, UNHCR, and IOM (CY, ES, HR, RS, SI), and for certain groups like lawyers or police in the Netherlands and BAMF officers in Germany, regular and systematic training remains insufficient.

## ACCESS TO ASYLUM

Article 11a of the revised ATD requires MS to ensure trafficking survivors can apply for international protection or equivalent national status. The UNHCR Guidelines on Gender-Related Persecution state that trafficking for forced prostitution or sexual exploitation can form the basis of a refugee claim if the State fails to protect against such harm or threats. Meanwhile, Article 3.2 of the proposed Facilitators Directive creates a new offense for “publicly instigating” third-country nationals to enter, transit, or stay irregularly in the EU. This vague provision could criminalize legitimate activities, such as sharing vital information about rights and asylum, potentially deterring support for women, girls, and trafficking survivors who are often unaware of their right to seek international protection.

The ECtHR - *Chowdury and Others v Greece* recognized trafficking for sexual exploitation as ground for asylum, alongside other forms of exploitation. In France, the CNDA ruled that Nigerian women trafficked for sexual exploitation form a “social group” under the Geneva Convention. In the Czech Republic, the Regional Court found the Ministry of the Interior’s denial of asylum inadequate, as it failed to assess the link between smuggling and trafficking networks.

The obligation to guarantee access to asylum for trafficking survivors addresses significant legal and practical barriers in the field. In practice, access to asylum is restricted due to a lack of specific procedures for identification and inadequate information provision about the rights to seek asylum (ES, FR, NO), expulsion/pushback (PL, RS, SI) and no activation of the protocol for the identification of THB despite the presence of human trafficking indicators (ES). It is also reported that trafficking that has occurred in a place other than the country of origin can lead to a negative outcome when deciding on an asylum claim (SE).

### *Transfers to another MS*

Recital 10(c) of the revised ATD establish that MS must not transfer asylum applicants to a country where they face areal risk of inhuman or degrading treatment, which would violate their fundamental rights. Article 6 of the the Council Directive on the residence permit issued to third-country nationals who are victims of THB mandates MS to grant a reflection period, allowing survivors to recover and escape the influence of traffickers. The Council of Europe Convention on Human Trafficking, particularly Articles 10, 12, and 13, aligns with EU asylum law by ensuring that individuals cannot be removed from a country until the identification process is completed and they have a minimum 30-day reflection period in national law.

Relevant rulings from the European Court of Human Rights (ECtHR), such as *M.S.S. v Belgium and Greece [GC]*, *Tarakhel v. Switzerland*, as well as CJEU cases like *O.T.E. v State Secretary for Justice and Security, Joined cases of N.S. v United Kingdom and M.E. v Ireland*, and several national case law (*Austrian Federal Office for Aliens and Asylum (BFA) v Applicant, Applicant v CGRS, Uganda v State Secretary for Justice*) support suspending Dublin Regulation procedures when trafficking risks are present.

The obligation to prevent the transfer of trafficking survivors to unsafe conditions directly responds to critical gaps in protection. Asylum-seeking trafficking survivors, especially women and girls, may be transferred to another country under the Dublin Regulation or AMMR in the future without proper risk assessment. This can expose them to dangers such as re-trafficking, retaliation from traffickers, and inadequate support. The strict application of these rules often denies them a necessary reflection and recovery period, increasing their vulnerability. (AT, BE, CH, ES, LU, IE NO, SE). Some countries exclude certain groups, such as survivors of labor exploitation (NO) or undocumented migrants (BE), from receiving this period.

Despite these challenges, Austria’s 2023 inclusion of trafficking considerations in binding Dublin procedure instructions (Verbindliche Arbeitsanleitung “Dublin-Verfahren”) marks a key advancement, affirming that trafficking can justify retaining an asylum seeker in the national system rather than transferring them under Dublin rules.

## ACCESS TO UNCONDITIONAL ASSISTANCE

Article 11(3) of the revised ATD retains the same provision from the 2011 Anti-Trafficking Directive, requiring that survivors of human trafficking receive assistance and support regardless of their willingness to cooperate in criminal proceedings. This obligation applies without prejudice to the Residence Permit Directive or equivalent national legislation. However, the Residence Permit Directive or similar national rules allow MS to impose their own conditions on the provision of support to survivors. While survivors receive basic aid before obtaining a residence permit (e.g., subsistence and emergency medical care), long-term support often depends on their cooperation with authorities (Art.8). This means that despite protections under the Anti-Trafficking Directive, access to housing, legal aid, and medical services may still be restricted based on a survivor's willingness to assist in criminal proceedings in contradiction with Article 12 of the Council of Europe Convention on Human Trafficking.

Evidence from country reports demonstrates this misalignment. The identification, recovery, and reflection period for trafficking survivors are often linked to their cooperation in criminal proceedings (BE, IE, LU, NL, SE). In Norway and Sweden, survivors face limited options to stay in the country after investigations end and the reflection period expires, losing their residence permits and rights, including the ability to work. Asylum applications become one of their few options.

## SPECIALISED ACCOMMODATION

Sub-article 11.5 (a) of the revised ATD requires MS to provide an adequate number of easily accessible and well-equipped shelters and interim accommodations to meet the recovery needs of presumed and identified THB survivors, including children, by providing adequate and appropriate living conditions with a view to a return to independent living.

The requirement for adequate and accessible shelters for trafficking survivors addresses the critical need for safe and supportive living conditions. In practice, there is a shortage of specialized, gender-sensitive, and safe accommodation for asylum-seeking survivors, particularly women, in several countries (BE, EL, IE, LV, MT, NO, RS, SE, SI). Some female survivors are placed in shelters with predominantly single men (FR), and there is a lack of secure accommodation for children (ES, FR, PT, SE, SI). Children risk disappearing from reception centers after arriving in Europe (NL). Inadequate reception conditions—such as overcrowding, mixed accommodation, poor and insecure living environments, and extreme restrictions—raise serious concerns about the safety and well-being of trafficking victims and potential victims (EL, UK). However, good practices exist in France and Belgium, where specialized accommodations are provided for female asylum-seeking and refugee survivors of human trafficking. In Norway, safe houses are available where survivors can stay longer while claiming asylum after the reflection period ends.

## COLLECTION OF DISAGGREGATED DATA

Article 19a of the revised ATD mandates MS to establish a system for collecting and providing anonymized statistical data on identified and presumed trafficking survivors, disaggregated by factors like sex, age, citizenship, and exploitation type, as well as data on suspects, prosecutions, convictions, and court decisions.

The obligation to collect and provide anonymized statistical data on trafficking survivors is essential for improving transparency and accountability. Several country assessment reports highlight a gap in the collection of disaggregated data on the number of presumed trafficking survivors, including those in reception and detention centers (AT, BE, NO, PL). Additionally, there is a lack of statistics on the number of individuals granted asylum or alternative protection as trafficking survivors (FR, NL). Sweden's centralised data collection and annual reports and Belgium's Federal Migration Centre (MYRA)'s annual reports with statistics and analysis on trafficking, serving as a good example.

## COORDINATION OF ANTI-TRAFFICKING ACTIONS

Article 19 of the revised ATD requires MS to establish National Anti-Trafficking Coordinators (NACs) or equivalent bodies with sufficient resources to work with law enforcement, national referral mechanisms, and civil society. Their responsibilities include assessing trafficking trends, measuring anti-trafficking efforts, gathering statistics, and reporting. While it no longer requires MS to establish independent national rapporteurs, it gives them the discretion to create independent bodies to monitor, assess, and report on anti-trafficking actions. Article 19b mandates the adoption of National Anti-Trafficking Action Plans (NAPs), developed in consultation with NACs and relevant stakeholders.

The need to establish NACs and NAPs is a crucial step in addressing the gaps in coordination and effectiveness within anti-trafficking efforts. In practice, challenges persist, including insufficient human and material resources for regional co-ordinators against human trafficking (SE), limited protocols linking asylum and trafficking,

insufficient cooperation between law enforcement and NGOs for detection (ES), inadequate collaboration with NGOs supporting survivors (FR), and lack of coordination among authorities during the Dublin process (ES). However, the Swedish Civil Society Platform is a promising practice that coordinates victim support and protection through civil society organizations, ensuring shelter and assistance in line with international human rights standards in collaboration with government agencies.

### III. RECOMMENDATIONS

The revised ATD brings certain improvements, including a broader trafficking definition, stronger referral mechanisms, a reinforced non-punishment clause, specialized accommodation, collection of disaggregated data and NACs. However, gaps persist in ensuring safe migration, long-term reintegration, unconditional assistance, independent oversight, and explicit non-refoulement protections. The proposed Facilitators Directive further threatens these protections by criminalizing irregular entry and introducing vague provisions that could lead to the prosecution of trafficking survivors or those assisting them. This Policy Note outlines recommendations based on the analyses provided:

#### To MS :

- » MS should implement the revised ATD with clear safeguards to ensure that survivors are not prosecuted for actions taken under coercion, including assisting in irregular migration.
- » When implementing the revised ATD obligation to create national referral mechanisms (NRMs) for the early detection, identification, and support of trafficking survivors, MS should establish effective gender-sensitive identification and referral mechanisms through protocols and guidance and address the weak implementation of early identification by ensuring formal and systematic identification, proactive outreach, and multi-agency involvement.
- » In order to respect the revised ATD obligation to provide regular, specialized training for professionals, MS should ensure regular and systematic training for professionals, including judges, prosecutors, lawyers, psychologists, law enforcement, and immigration officers, as well as child protection authorities, addressing identified gaps in a human-rights-based, victim-centred, and gender-sensitive manner.
- » In order to respect the revised ATD obligation to meet the non-refoulement principle, MS should develop and implement a robust risk assessment process for asylum-seeking trafficking survivors, particularly women and girls, under the Asylum and Migration Management Regulation (AMMR), considering the risk of re-trafficking, retribution, and lack of adequate care.
- » When implementing the revised ATD obligation to ensure that trafficking survivors can apply for international protection or equivalent national status, MS should facilitate access to asylum for trafficking survivors, acknowledging the various forms of exploitation and the specific vulnerabilities faced by women and girls in certain regions due to gender stereotypes. MS should ensure trafficking survivors are informed of their right to seek asylum and have access to gender-sensitive asylum procedures. In line with the Council of Europe Convention on Human Trafficking, MS should guarantee a recovery and reflection period for survivors and ensure that access to assistance, recovery, and reflection time is not conditional on cooperation in criminal proceedings.
- » MS should ensure access to long-term support, including residence permits on personal grounds, social services, and employment opportunities to aid survivors' recovery and reintegration.
- » In fulfilling the revised ATD obligation to provide an adequate number of easily accessible and well-equipped shelters and interim accommodations to THB survivors, MS should provide specialised, gender-and-age-sensitive accommodation for asylum-seeking trafficking survivors, ensuring safe and appropriate housing, particularly for women and girls.
- » In implementing the revised ATD's obligation to collect disaggregated data, MS should collect disaggregated data beyond the minimum requirements of the revised ATD, considering race, ethnicity, migration status, disability, and family status of children, ensuring compliance with GDPR principles.
- » To meet the revised ATD obligation to establish National Anti-Trafficking Coordinators, MS should enhance coordination to overcome challenges in coordinating anti-trafficking efforts by providing resources for regional coordinators, improving cooperation between law enforcement, NGOs, and authorities, and fostering collaboration during the Dublin process.
- » In complying with the revised ATD obligation to adopt NAPs, MS should develop NAPs with clear objectives and measures to address trafficking in the asylum and women's rights context.
- » establish independent bodies to monitor the implementation and impact of anti-trafficking measures.



## To EC

- » EC should improve monitoring of implementation gaps and violations, produce and share evaluation reports on anti-trafficking actions, require MS to systematically collect and report anonymized, disaggregated data on trafficking survivors, and closely monitor the implementation of NAPs.

## To Co-legislators (the Council of the European Union and the European Parliament)

- » Co-legislators should add a provision to the proposed Facilitators Directive to decriminalize irregular entry, stay, or transit, in line with the non-punishment principle of the Refugee Convention.
- » Co-legislators should strengthen legal protections to prevent the wrongful prosecution of trafficking survivors by including explicit exemptions for survivors, aligned with the revised ATD.



A project led by the association France terre d'asile

AMAL: Empowerment and Protection of Migrant Women" is a three-year project (2023-2025) implemented by France terre d'asile in partnership with the European Council on Refugees and Exiles (ECRE). The Project aims to improve the realisation of migrant women's rights through a wide range of activities, including advocacy at both the French and the EU level, protection, empowerment and capacity-building activities.



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