



Identification of
Victims of Trafficking
in Human Beings in
International Protection
and Forced Return
Procedures

Luxembourg

Third Focussed Study 2013

European Migration Network
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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.



PREFACE

The opinions expressed in this report are those of the author. They do not necessarily reflect the positions of the Luxembourg Ministry of Family and Integration or the Ministry of Foreign Affairs.

The present report was drafted by Lisa Li with the assistance of Fabienne Becker, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Ass.-Prof. Dr. Christel Baltes-Löhr. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Sylvie Prommenschenkel and Géry Meyers (Directorate of Immigration, Ministry of Foreign Affairs), Germaine Thill (STATEC), and Marc Hayot (OLAI Reception and Integration Agency, Ministry of Family and Integration).

EMN FOCUSSED STUDY 2013

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

Top-line “Factsheet” (National Contribution) Executive Summary (Synthesis Report)

National contribution (one page only)

Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.

In Luxembourg, the detection of a victim of trafficking in human beings can happen in many different situations and by a variety of actors; it can be law enforcement, an NGO, a ministry or a labour inspector among others. However, the scope of this study is limited to a particular situation as it only looks at the detection and identification of potential victims among persons who have applied for international protection or who are in a forced return procedure.

The Grand-Ducal Police is the only authority in Luxembourg that can formally identify a presumed victim. So far, no legislation lays down the procedure but an informal standard practice has been established by the actors involved in the detection and identification of potential victims. An internal document drafted by the Police describes the practice and has been distributed among the actors.

In international protection procedures the applicants have to self-report. There is no proactive screening for victims by the case workers of the Directorate of Immigration. Once a victim is detected, the case will be handed over from the Directorate of Immigration to the Judicial Police, which, with the help of a list of indicators, the evidence presented and the results of the immediate investigation, decides on the identification of the presumed victim of trafficking in human beings as such.

Luxembourg has no formal national referral mechanism. Once a victim is identified, the Directorate of Immigration will issue a reflection period certificate (valid for 90 days) and subsequently a residence permit (valid for six months renewable) if certain conditions are fulfilled. The two procedures (application for international protection and victim of trafficking in human beings) will run in parallel and the victim has access to the assistance measures provided by both procedures. Those measures are overlapping and therefore, the relevant social services will collaborate in order to provide the victim with the appropriate assistance. However, the assistance granted to a victim of trafficking is conditional upon the cooperation of the person concerned.

One should note that the number of identified victims of trafficking in human beings in international protection procedures is very low. Since 2008, 5 victims have been identified and only 1 victim was granted a reflection period. The detection and identification of a victim of trafficking in a forced return procedure, in a reception centre or in the Retention Centre, has not yet arisen in Luxembourg. Therefore, the answers provided in the relevant sections of this study are based on hypothetical cases.

Synthesis Report (up three pages)

Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.

Section 1

Residence permits, protection statuses and national programmes available to victims of trafficking in Member States

(Maximum ½ page)

This section briefly outlines the residence permits and protection statuses available to victims of trafficking in human beings in Member States. The aim of this section is to contextualise the section on referral. Information on rights should not be provided in detail, as it falls outside of the scope of this Study.

Q.1 What residence permit(s) specifically for victims of trafficking in human beings are available in your Member State? (list them here)

Q1a. Are they conditional on cooperation with the authorities?

Q1b. In which year was it/were they introduced?

In Luxembourg, the residence permit as a victim of trafficking in human beings was introduced by the Law of 29 August 2008 on the Free Movement of Persons and Immigration¹, which entered into force on 1 October 2008².

Articles 92 to 98 of this law lay down the conditions for obtaining such a permit.

Article 92 explicitly states that the police will inform the presumed victim of the possibility to obtain a reflection period according to article 93 as well as a residence permit according to Article 95, and which is conditional upon his/her cooperation with the authorities in charge of the investigation or the prosecution of the case.

Furthermore, Article 95 states that after the expiration of the reflection period the minister delivers a residence permit, which is valid for 6 months, to the person concerned if the following conditions are fulfilled:

1. s/he has filed a complaint or made declarations against the persons or the networks presumed of having committed the offence, or
2. his/her presence on the territory is necessary for the investigation or the procedure or because of his/her personal situation;
3. s/he has severed all links with the presumed authors of the offence;
4. s/he is not considered to be a danger to the public order or to the internal security.

This permit is renewable for another period of six months if the conditions remain fulfilled. After the expiration of the residence permit the minister can grant the person in question an authorisation of stay for private reasons pursuant to Article 78 (3) of the aforementioned law.³

Q.2 Are international protection status(es) granted to third-country nationals for the reason of being a victim of trafficking in human beings in your Member State? Yes / No

¹ Law of 29 August 2008 on the Free Movement of Persons and Immigration, Mémorial A n° 113 of 3rd July 2013, available at: <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 4.10.2013.

² Article 162 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

³ Article 98 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

Q2a. If yes, please name which statuses are granted here

A third-country national will not be granted an international protection status solely on the grounds of being a victim of trafficking in human beings in Luxembourg.

However, if a third-country national is a victim of trafficking and additionally has a well-founded fear of being persecuted in his/her country of origin according to the Geneva Convention⁴, the international protection status or subsidiary protection will be granted.

Q3. Does your Member State have a national referral mechanism? Yes / No

The Luxembourgish Government has not established a formal national referral mechanism. However, in practice an informal referral mechanism does exist.

Section 2

Detection, identification and referral of victims in International Protection Procedures

(Maximum 7 pages)

This section first examines the mechanisms that are used to detect and identify victims in the procedure for international protection,⁵ It then explores how identified victims are given access to appropriate assistance and support and specifically looks at mechanisms for coordination and referral between procedures.

*Where relevant, please distinguish between first instance and appeal procedures, where applicable.*⁶

2.1 Legislative framework

Q.4 Are there established mechanisms for detecting and identifying victims of trafficking in human beings in the procedure for international protection?⁷ Yes/No

Q4a. If yes, please state whether one of the scenarios below or a combination thereof applies in your (Member) State:

- a. Process for detection and identification of victims in the procedure for international protection is outlined in legislation (if yes, provide reference to the legislation)*
- b. Process for detection and identification in the procedure for international protection is outlined in soft law – e.g. a ‘protocol’ (if yes, provide the reference)*
- c. Process is not outlined in official documents, but there is a working system or standard practice in place, which is understood and used by the actors concerned (if yes, provide a brief description)*

⁴ United Nations Convention relating to the Status of Refugees (1951).

⁵ In **Ireland**, this would imply covering both procedures for asylum and subsidiary protection, as no single procedure is in place.

⁶ For example, in **Ireland** there is no appeal procedure for subsidiary protection application, and this is decided on the basis of papers submitted. (The implications of CJEU Judgment of 22/11/12 and Irish HC Judgment of 23/1/13 in *MM v Min. for J&E* case that applicants for Sub/Protection have ‘a right to be heard’ are currently being considered in *DJ&E.*)”

⁷ (Member) States should here **only** refer to mechanisms for detection/identification used in international protection procedures – i.e. they should not refer to those used specifically by law enforcement, NGOs or other persons coming into contact with victims in situations outside of international protection procedures.

In Luxembourg, the Grand-Ducal Police is the only authority which can identify a presumed victim of trafficking in human beings.⁸ However, the detection can be made by various other actors. If a person is detected as a potential victim of trafficking in human beings in an international protection procedure, the process which follows is not outlined in an official document, but there is a standard practice in place.

The Refugee Department (*Service des réfugiés*) of the Directorate of Immigration⁹ is the authority responsible for international protection applications. If during an audition, the caseworker has received any evidence that the international protection applicant might be a victim of trafficking, s/he will immediately hand the case over to the Head of the Third Country Nationals Department (*Service des ressortissants de pays tiers*)¹⁰ who is in charge of cases of trafficking in human beings. The latter department will then hand the case over to the Police for formal identification of the presumed victim.

As there are only very few cases in Luxembourg each year, it remains possible to react on a case-by-case basis. However, since many different actors are involved in the process, it was important to define the role of each actor¹¹ and as a consequence the Judicial Police drafted a *Proposal on the procedures regarding the cooperation of the actors involved with victims of trafficking in human beings*.¹²

This document organises the collaboration among the various actors involved: Grand-Ducal Police, Public Prosecutor's Office, Ministry of Foreign Affairs – Directorate of Immigration, Ministry of Equal Opportunities, Ministry of Justice, Ministry of Family and Integration - Luxembourg Welcome and Integration Agency and the relevant social services. It also states how presumed victims of trafficking can obtain the status of a victim and how they are to be taken care of.

Even though it is not an official document, it describes the internal procedure in detail, including a list of indicators, and is being used as a reference document by the Directorate of Immigration.

Q5. Are there different protocols and/or practices for children and adults? Yes / No

Q5a. If yes, please briefly describe how these differ and why.

An international protection applicant who is an unaccompanied minor will be appointed an ad hoc administrator as soon as possible. This person will assist the unaccompanied minor throughout the procedure.¹³

The international protection procedure for unaccompanied minors is also slightly different because the auditions will be adapted to the age of the child. If s/he is relatively young a lot of

⁸ Article 92 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

⁹ For further information, please see: <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres/Organisation/Direction-de-l-Immigration>, last accessed 4.10.2013.

¹⁰ The Foreigners Department is composed of the Third Country Nationals Department and of the EU Citizens Department.

¹¹ Judicial Police, Interview 21.08.2013.

¹² Judicial Police, internal document.

¹³ Article 12 (1) of the Law of 5 May 2006 on Asylum and Complementary Forms of Protection, Mémorial A n°113 of 3rd July 2013, available at: <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 4.10.2013.

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precautions have to be taken. The interview will be conducted by a person who has the necessary knowledge of the particular needs of a minor.¹⁴ Therefore, the audition will start with open questions in order to establish a certain atmosphere which puts the child/adolescent at ease and allows the child/adolescent to talk freely. They will also be recorded in order to avoid that the minor is repeatedly exposed to interviews and can be used as evidence for the criminal proceedings against the presumed offender(s).

Q6. Are there different protocols and/or practices for men and women? Yes / No

Q6a. If yes, please briefly describe how these differ¹⁵ and why.

No, the practice is the same for men and women.

However, the people auditioning are aware of the vulnerability of the victims; they always try to avoid a second victimisation. Therefore, they take into account the type of exploitation and are attentive to the level of trauma that might have occurred.¹⁶

A potential victim of trafficking is also often afraid of the Police, especially if his/her identification documents are not in order.¹⁷

2.2 Detection and identification of victims

Q7. How are (potential) victims of trafficking in human beings detected in procedures for international protection?

Q7a. Please state whether one of the scenarios below or a combination thereof is applicable to your (Member) State. For each, state Yes / No and (if yes) give a brief description of how this works:

a. The competent authority¹⁸ proactively screens all applicants for indications of trafficking in human beings;

No.

b. The competent authority proactively screens applicants with a particular profile¹⁹ for indications of trafficking in human beings (please provide information on the type of profile);

No.

c. Victims self-report;

In an international protection procedure the applicant has to self-report. The Refugee Department does not screen the applicants proactively. Every applicant is asked if s/he has been persecuted, his/her reasons for coming to Luxembourg and in a way this also covers trafficking in human beings.²⁰ Nevertheless, a potential victim might also be detected because

¹⁴ Article 12 (2) of the Law of 5 May 2006 on Asylum and Complementary Forms of Protection.

¹⁵ E.g. only female officers can screen / assess women.

¹⁶ Refugee Department, Interview 22.08.2013.

¹⁷ Judicial Police, Interview 21.08.2013.

¹⁸ Here, "competent authority" refers to the authority competent for examining the merit of the third-country national's case for international protection. In many (Member) States, this is a 'case worker'.

¹⁹ E.g. unaccompanied minors; children; women; women from particular geographical regions; women or children who, for example, when describing the route from their country to the EU Member State, refer to a known route used by traffickers.

²⁰ Refugee Department, Interview 22.08.2013.

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of indirect statements s/he has made or because of evidence found which supposes that the situation corresponds to trafficking in human beings.

Even though it is mainly during the auditions that victims are detected, it can happen at all the stages of the international protection procedure. For example, it could also happen during registration; it always depends on the declarations made by the person concerned.

Furthermore, the Directorate of Immigration put forward the argument that screening for victims with a particular profile could be misleading because the victims are often those who one would not necessarily suspect to be a victim.²¹

d. Another actor in contact with the victim draws attention to the potential victimisation (if so, please refer to section 3.4 if (optionally) completed);

Please see Section 4.

e. Other (please specify).

No.

Q7b. Is there a stage the applicant for international protection can no longer be screened (e.g. after the first negative decision)? Yes / No. If yes, please describe the circumstances.

No, the applicant can be screened at all stages.

Q8. If the competent authority detects that an applicant may be a victim of trafficking in human beings, what are the next steps in terms of assessment?

As mentioned above, the Directorate of Immigration will deal neither with the identification process, nor the assistance and support which is granted to the victim of trafficking. If a potential victim of trafficking is detected, the concerned department will hand the file over to the person in charge of cases of trafficking in human beings within the Directorate of Immigration and he/she will immediately contact the Organised Crime Section of the Judicial Police. The Judicial Police has the responsibility to launch the procedure to officially identify the victim and to inform the Public Prosecutor's Office.

Q8a. Does the Member State apply a standard set of indicators to assess whether the person is a (potential) victim? Yes / No

a. If yes, please give further details, provided the information is not considered of a sensitive nature. How have these been developed? Are they based, for example, on international standards?

The Judicial Police refers to a list of indicators²² when identifying presumed victims. The following elements are taken into account:

- Presence/absence of identification documents (ID card or travel documents)
- Location/venue where the victim was just before being noticed (bar, nightclub, street, construction site, restaurant, etc.)
- Physical appearance (signs of physical and/or psychological violence)
- Home (hotel, permanent address)

²¹ Directorate of Immigration, Interview 18.07.2013.

²² Judicial Police, internal document.

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- Stable income (salary)
- Work contract, social security
- Entry to the territory (how, with whom, from where, since when)
- Duration of stay
- Verbal and non-verbal communication
- Country of origin, nationality (Eastern European countries, China, African countries, non-industrialised countries)

One also has to mention that this list of indicators is included in the document elaborated by the Judicial Police and which has been distributed to all the actors involved. (Please see Q.4)

Q8b. Are other mechanisms²³ used by the competent authority to assess whether a person detected as a (potential) victim should be identified as such (or referred onto formal identification procedures)? Yes/No

a. If yes, what are these?

b. If no, why not?²⁴

The Judicial Police works with all the evidence presented, it is not necessary for the potential victim of trafficking to declare himself/herself as such. The Police will interpret the declarations made, the existing indicators and the results of the immediate investigation in a non-restrictive manner.

Q8c. If, following detection, the third-country national concerned is not assessed as a (potential) victim, what happens? Can the third-country national seek an alternative assessment elsewhere?

The potential victim of trafficking in human beings will always be assessed as such after detection.

Q9. Have methods for the detection and/or identification of victims in international protection procedures been evaluated in your Member State? Yes/No

Q9a. If yes, how well are they considered to be working? Is there any evidence to suggest that (potential) victims are going undetected / unidentified? Provide evidence.

Q9b. If no, please provide any other evidence of the effectiveness (or otherwise) of detection / identification in international protection procedures.

The delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) has carried out an evaluation visit to Luxembourg from 11 to 14 December 2012.²⁵ Unfortunately, the report is not yet available. So far, there has not been any other evaluation of the methods for detection and identification of victims of trafficking in international protection procedures.

²³ E.g. interviews.

²⁴ E.g. legislation foresees that the slightest indication that a person may be a victim of trafficking in human beings is sufficient for automatic identification.

²⁵ For further information, please see:

http://www.coe.int/t/dghl/monitoring/trafficking/docs/News/LUX_web_article_en.asp#TopOfPage, last accessed 4.10.2013.

2.3 Referral

Q10. If an applicant is identified as a (potential) victim, can s/he access tailored statutory assistance and support whilst remaining in the international protection procedure (i.e. without referral to other procedures)? Yes/No

If a victim is identified s/he will continue to stay under the international protection procedure (please see Q.11) and therefore s/he still has the right to the assistance measures that are available to all international protection applicants.²⁶ These measures are foreseen by Article 1 of the Grand-Ducal Regulation of 8 June 2012 fixing the conditions and the modalities for granting social aid to international protection applicants and entail:

1. Housing, full board included or otherwise accompanied by the delivery of meals or foodstuffs
2. A monthly allowance
3. Basic medical care
4. Payment of the voluntary insurance contributions
5. Public transportation in Luxembourg
6. Social guidance
7. Care of unaccompanied minors²⁷
8. Psychological assistance for persons in need, especially for victims of trauma
9. Sexual and reproductive health counselling
10. Other assistance if the need arises

As a victim of trafficking in human beings, s/he will additionally have access to the security, protection and assistance measures that are foreseen for victims of trafficking.²⁸

Q10a. If yes, please briefly describe how the assistance is provided (e.g. state programme, access to general state welfare services, government-funded assistance provided by NGOs, etc.).

According to Article 92 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, the Police will inform the person who is a presumed victim of trafficking of his/her rights and will establish a contact between the victim and social services at the earliest opportunity.²⁹

²⁶ Grand-Ducal Regulation of 8 June 2012 fixing the conditions and the modalities for granting social aid to international protection applicants, Mémorial A n°123 of 20 June 2012, available at: <http://www.legilux.public.lu/leg/a/archives/2012/0123/a123.pdf#page=2>, last accessed 4.10.2013.

²⁷ Article 3 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings also provides that an unaccompanied minor will be represented by a tutor.

²⁸ Article 94 (during the reflection period) and Article 97 (after obtaining the residence permit) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

²⁹ This is also foreseen by Article 6 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings.

A phone number, which is working 24h/24h, has been established in order for the Police to be able to arrange an emergency shelter for the victim.³⁰

Article 2 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings³¹ states that a victim, in order to regain his/her physical, psychological and social well-being, has the right to housing, social and socio-educative aid, material and financial aid, medical, psychological or therapeutic assistance, linguistic assistance and legal assistance. These measures are provided by two NGOs (*Femmes en détresse*³² and *Fondation Maison de la Porte Ouverte*³³), which are accredited and funded by the Ministry for Equal Opportunities, in cooperation with the Police. The social services will immediately inform the victim on his/her rights, on the judicial and administrative proceedings as well as on the assistance measures available. They will accompany the victim all along the way to recovery in a manner that is respectful of the victim's wishes.³⁴ The Police informs the victim about his/her right to constitute himself/herself as a civil party and on the progress of the criminal proceedings.³⁵ As the focus of the investigation lies on the protection of the victim, s/he will also be protected in case there is a danger to his/her life.³⁶

Q10b. If yes, describe under what conditions the assistance can be provided (without referral to other procedures) – specifically, does the (potential) victim have to be formally identified by a competent authority (e.g. law enforcement) in order to access the assistance? (Yes / No) – if yes, state which authorities are competent.

The current law states that the victim will only be provided assistance if s/he cooperates with the Police.³⁷ If a victim cooperates, s/he will immediately be granted assistance measures, even if s/he has not yet been formally identified. If not, the Police will draft a report on the refusal and inform the Directorate of Immigration responsible for issuing the reflection period

³⁰ Judicial Police, internal document.

³¹ Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings, Mémorial A n°129 of 9 June 2009, available at: <http://www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf>, last accessed 4.10.2013.

³² *Femmes en détresse* provides support for people in distress including homes where people can find refuge. They closely cooperate with *Fondation Maison de la Porte Ouverte*. For more information, please see: <http://www.fed.lu/>, last accessed 4.10.2013.

³³ *Fondation Maison de la Porte Ouverte* also operates homes for people in distress. For more information, please see: <http://www.fmpo.lu/>, last accessed 4.10.2013.

³⁴ Article 7 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings.

³⁵ Article 6 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings.

³⁶ Judicial Police, Interview 21.08.2013. Article 8 of the Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings states that the Police and social services collaborate in order to ensure an effective and appropriate protection of the victim against intimidations and retaliation on behalf of the authors of the offence.

³⁷ Please see Q.1.

certificate and subsequently the temporary resident permit.

The bill, which was introduced to the Chamber of Deputies on 11 April 2013, and which is going to transpose the Directive 2011/36/EU³⁸ into national law, clarifies that the victim will no longer be obliged to file a written complaint.³⁹ Once this bill is transposed, victims will also be granted assistance even if they refuse to cooperate. However, Article 7 clarifies that this is only the case with regards to the reflection period; the residence permit will continue to depend on the victims' cooperation.⁴⁰

Q10c. What mechanisms are in place to facilitate this type of referral (to assistance, whilst remaining in international protection procedures)? Are there any agreements in place? Does it form part of a National Referral Mechanism?

Q10d. Are there any obstacles to this type of referral?

There are no formal agreements in place but the social services in charge of victims of trafficking will coordinate the assistance measures together with the social services of the Luxembourg Welcome and Integration Agency⁴¹, which is in charge of providing social aid to international protection applicants. This results in a situation where the more favourable measures are going to be applied.⁴²

Q11. If an applicant is identified as a (potential) victim and there is the possibility to change to (or participate in parallel in) procedures as foreseen under Directive 2004/81/EC or national equivalent measures⁴³ how does this work in practice?

Q11a. Does the applicant have to withdraw from the procedure for international protection in order to do so? Yes/No

- a. If yes, can s/he re-open the procedure for international protection if s/he is not granted a residence permit under Directive 2004/81/EC? Yes/No, please elaborate the process.*
- b. If no, please elaborate – how does this work in practice? Does the victim have to be formally identified by a different competent authority? (Yes / No) – if yes, state which authority*

The applicant for international protection, who has been identified as a victim of trafficking does not have to withdraw from the international protection procedure as the two procedures will run in parallel. According to the Directorate of Immigration, there is no need to stop the one or the other procedure because they do not depend on each other and because the victim cannot be sure to be granted the international protection status. If the two procedures run in

³⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA.

³⁹ Article 3 of the Bill N°6562 on Reinforcing the Right of Victims of Trafficking in Human Beings, available at: http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/108/297/120976.pdf, last accessed 4.10.2013.

⁴⁰ Article 7 of the Bill N°6562 on Reinforcing the Right of Victims of Trafficking in Human Beings.

⁴¹ For further information, please see: <http://www.olai.public.lu/fr/accueil-integration/encadrement/index.html>, last accessed 4.10.2013.

⁴² Judicial Police, internal document.

⁴³ As mentioned, Denmark, **Ireland** and the **United Kingdom** have not opted into Directive 2004/81/EC.

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parallel, the chances of getting appropriate protection and the necessary assistance are enhanced.⁴⁴

One also has to note that the residence permit, which is granted to victims of trafficking in human beings is only valid for six months, renewable for another six months compared to a positive decision of the international protection procedure, where the applicant is granted a much more stable residence permit, as it is valid for at least 3 years and renewable.⁴⁵

Before the expiration date of the reflection period, and by the latest 15 working days before the 90 days are over, the Directorate of Immigration will contact the Judicial Police in order to find out whether the victim can still be considered as such. In order to decide, the Police, together with the Public Prosecutor's Office, will address the following three questions⁴⁶:

1. Has the victim filed a complaint or made a statement against the persons or the network suspected of a trafficking offence?
or
Is the physical presence of the victim necessary for the investigation or the procedure?
2. Has the victim cut all links with the presumed actors of the offence?
3. Could the victim be considered as a threat to the public order or to the national security?

The answers given by the Police will determine the delivery of the residence permit on the grounds of being a victim of trafficking. If favourable, the Directorate of Immigration will issue the residence period.

One should also note that the residence permit can be withdrawn if the victim no longer fulfils the conditions for the delivery of the permit and in particular:

1. If the victim actively, voluntarily and from his/her own initiative reconnects with the presumed authors of the offence(s);
2. If s/he ceases to cooperate with the competent authorities;
3. If the judiciary decides to stop the procedure.

The residence permit can also be withdrawn if the cooperation of the concerned person turns out to be a fraud or if the complaint is a fraud or unfounded, or if the reasons related to the public order or the internal security are at stake.⁴⁷

Q11b. How is referral to the procedure as foreseen under Directive 2004/81/EC organised? Please highlight which one option, or a combination thereof, is applicable in your Member State:

- a. *The victim is given information on his/her rights and possibilities, but has to initiate the procedure on his/her own (where applicable with the help of his/her legal representative).*
- b. *The competent authority contacts the authorities responsible for issuing a reflection period or residence permit. (If yes, please elaborate)*
- c. *There is a national referral/cooperation mechanism that helps him/her.*

⁴⁴ Directorate of Immigration, Interview 18.07.2013.

⁴⁵ Article 46 of the Law of 5 May 2006 on Asylum and Complementary Forms of Protection.

⁴⁶ Judicial Police, internal document.

Please also see: Article 95 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

⁴⁷ Article 96 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

(If yes, please elaborate).

As mentioned above, there is no formal national referral mechanism but the Directorate of Immigration immediately hands the case over to the Organised Crime Section of the Judicial Police, who will then formally identify the presumed victim. If it takes a favourable decision, the Directorate of Immigration will then issue a reflection period certificate which is valid for 90 days. Nevertheless, this certificate is not an authorisation of stay.

So far, the cooperation between the Police and the Directorate of Immigration has been working very well.⁴⁸

Q11d. Can the applicant's dossier /evidence gathered to date in the procedure for international protection (e.g. personal interview) be transferred to and used in the new procedure for a reflection period or residence permit as foreseen under Directive 2004/81/EC? Yes / No / in some cases (please elaborate)

The formal identification of a presumed victim starts as an oral procedure but the written documentation concerning the international protection procedure can subsequently be handed over if the Public Prosecutor's Office or the Judicial Investigation Officer requests it. The Police can then, if need be, access the file.

The victim's lawyer can also decide to submit the file to the Police as s/he disposes of a copy.⁴⁹

Q12. If an applicant is identified as a victim and there is the possibility to change to obtain a residence permit (other than that described in Q11) or international protection status on grounds of being a victim of trafficking in human beings, how does this work in practice?

According to Article 78 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, the minister can grant an authorisation of stay for private reasons to a third country national who asserts humanitarian reasons of an exceptional gravity on the condition that the persons' presence on the territory does not constitute a danger to the public order, to the public health or to the internal security. This possibility is available to victims of trafficking after expiration of their temporary residence permit and its renewal as a victim of trafficking in human beings.

It is up to the victim to decide whether s/he wants to apply for this residence permit. The residence permit for "private reasons" is valid for a maximum period of three years and renewable if after re-examination the situation of the victim remains unchanged.⁵⁰

The person concerned can also request the delivery of a residence permit as a salaried worker if s/he is committed to a salaried activity and fulfils the conditions set out in Article 42 (1) of the aforementioned law.⁵¹

Q12a. Can the applicant (where relevant, with the support of his/her legal representative) decide whether or not s/he wishes to apply for the residence permit /

⁴⁸ Judicial Police, Interview 21.08.2013.

⁴⁹ Refugee Department, Interview 22.08.2013.

⁵⁰ Article 79 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

⁵¹ Article 79 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

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international protection on these grounds? Yes/No

Q12b. If yes, please name the title of the residence permit / protection status and the conditions under which (potential) victims of trafficking in human beings can apply for it.

Q12c Does the (potential) victim have to be formally identified by a competent authority (e.g. law enforcement) in order to apply for the residence permit / protection status? (Yes / No) – if yes, state which authorities are competent. Can the authorities responsible for processing applications for international protection formally identify in these circumstances?

Q12d. When can the application procedure be started?

Please highlight which one option, or a combination thereof, is applicable in your Member State:

- a. When a first instance decision has been made as to whether the applicant can be granted asylum;*
- b. When a first instance decision has been made both in regard of whether the applicant can be granted asylum and, if not, whether s/he can be granted subsidiary protection;*
- c. When the third-country national has received a (final) negative decision on his/her application for asylum;*
- d. When the third-country national has received a (final) negative decision on his/her applications for (other types of) international protection;*
- e. Other, please specify.*

Q12e. How is referral to the procedure for the residence permit / international protection on grounds of being a victim of trafficking in human beings organised?

Please highlight which one option, or a combination thereof, is applicable in your Member State:

- a. The victim is given information on his/her rights and possibilities, but has to initiate the procedures on his/her own (where applicable with the help of his/her legal representative).*
- b. The competent authority starts up the procedure for the other form of protection. (If yes, please elaborate)*
- c. There is a national referral/cooperation mechanism that helps him/her. (If yes, please elaborate).*

Q12f. Can the applicant's dossier /evidence gathered to date in the procedure for international protection (e.g. personal interview) be transferred to and used in the new procedure? Yes / No / in some cases (please elaborate)

Q13. Have systems of referral of (potential) victims of trafficking in human beings from international protection procedures to other procedures been evaluated in your Member State?⁵² Yes /No

⁵² For example, if a national referral mechanism or (other) coordination mechanism exists, has this been evaluated?

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Q13a. If yes, how well are they considered to be working? Provide evidence.

Q13b. If no, please provide any other evidence of the effectiveness (or otherwise) of referral here.

No, there has been no evaluation of the standard practice in place. (Please see Q.9)

2.4 Detection and identification and referral in relation to Dublin procedures

Q14. If, in accordance with Council Regulation 343/2003, the competent authority decides that another Member State is responsible for examining the application for international protection (i.e. Dublin procedures apply) and the applicant is detected as a (potential) victim of trafficking in human beings, does this trigger Article 3(2)⁵³ and/or Article 15⁵⁴ of the Regulation – i.e. can the Dublin transfer be suspended? Yes/No/other response

Yes, the Dublin II transfer can be suspended if a potential victim of trafficking in human beings is detected as Article 92 (and following) of the Law on Free Movement of Persons and Immigration applies.

This means that the Police is immediately contacted if the case worker has detected a potential victim. There will be a suspension of the Dublin II procedure until the Police has had sufficient time to do the necessary investigations. If the victim is subsequently identified as such, s/he will be granted a reflection period and it will no longer be possible to remove the person from the territory.⁵⁵ If the Police issues a negative decision, the Dublin II procedure will proceed.

If yes, please answer the following questions:

Q14a If yes, how are (potential) victims subject to Dublin transfers detected? Please specify which applies:

- a. The competent authority⁵⁶ proactively screens all applicants subject to Dublin transfer for indications of trafficking in human beings;*
- b. The competent authority proactively screens applicants subject to Dublin transfer with a particular profile⁵⁷ (please provide information on the type of profile);*

⁵³ Article 3(2) states that “each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation.”

⁵⁴ Article 15(1) states that, “Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned. The persons concerned must consent.” Article 15(3) refers specifically to Unaccompanied Minors and states, “If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor”.

⁵⁵ Article 93 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration.

⁵⁶ Here, “competent authority” refers to the authority competent for examining the merit of the third-country national’s case for international protection. In many (Member) States, this is a ‘case worker’.

⁵⁷ E.g. unaccompanied minors; children; women; women from particular geographical regions; women or children who, for example, when describing the route from their country to origin to the EU Member State, refer to a known route used by traffickers.

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- c. *There is no systematic screening, but victims can self-report / other actors can draw attention to the potential victimisation (cf. section 3.4 if (optionally) completed);*

There is no proactive screening, victims have to self-report or they can be detected on the basis of indirect statements during auditions or evidence presented in the file. (Please see Q.7)

- d. *Other (please specify).*

Q14b. If a (potential) victim is detected, what are the next steps in terms of assessment and identification? Is there a specific level of evidence needed to suspend a Dublin II transfer?

No, there is no specific level of evidence required. The procedure is the same as the one mentioned above. (Please see Q.8)

Q15. If being a victim of trafficking in human beings does not trigger Article 3(2) or Article 15 in your Member State can Dublin II transfers be suspended anyway? Yes / No / in some cases. Please elaborate on your answer.

A potential victim of trafficking in human beings always triggers the suspension of the Dublin II procedure.

Q16. Are third-country nationals subject to Dublin procedures informed of possibilities offered under Directive 2004/81/EC or national equivalent measures, or other residence possibilities?

If a person declares himself/herself as a victim of trafficking, the Police informs the concerned person immediately of the possibilities offered to victims of trafficking, regardless of the fact that it is a Dublin II procedure or another procedure.

2.5 Future measures

Q17. Are any future measures anticipated in relation to improving or facilitating the detection and identification of victims of trafficking in human beings in procedures for international protection? Yes/No

Q17a. If yes, please briefly describe the anticipated measures here: what type of mechanisms to be covered, actors involved, etc.

Q17b. If no, are there any obstacles to the introduction of measures?

With the Law of 8 May 2009 on Assistance, Protection and Security of Victims of Trafficking in Human Beings a Monitoring Committee on Combating Trafficking in Human Beings was created.⁵⁸ For now, an informal Inter-ministerial Committee on Trafficking was put into place. The necessary Grand-Ducal Regulation, which will provide the formal basis of the Committee and determine its operating mode, has not yet been published.

⁵⁸ Article 10 of the Law of 8 May 2009 on Assistance, Protection and Security of Victims of Trafficking in Human Beings.

Presently, representatives from the Ministry of Justice, which acts as the presiding organ, the Directorate of Immigration, the Police, the Luxembourg Welcome and Integration Agency, the Public Prosecutor's Office and the Ministry for Equal Opportunities are members of this Committee. Other actors, such as the Ministry of Health, the Ministry of Labour and Employment, the Ministry of Small Enterprises, the Ministry of the Interior, the Inspectorate of Labour and Mines as well as two representatives from the NGOs providing assistance to the victims are going to be included once the Regulation enters into force.⁵⁹

This Committee discusses the existing cases and tries to find solutions to the problems that arise. It could enhance the procedure as an exchange takes place but it will not actually help with the discovery of potential victims. For example, the Committee discusses on how to proceed if the victim does not have any identification documents and other practical issues.⁶⁰ The Committee also coordinates, does the follow up on prevention activities and evaluates the phenomenon. As a consequence, it has been suggested to involve more actors in the detection process. One example would be to raise awareness among municipality workers, especially those who are dealing with the registration of residence.⁶¹

Representatives from the Directorate of Immigration stated that they were in favour of a formalisation of the various steps of the procedure as it is important to determine the responsibilities of each actor.⁶² Representatives from the Refugee Department also expressed the need of elaborating guidelines.

As long as there is no specific law or regulation regarding the internal organisation, the Directorate of Immigration tries to improve the procedure by communicating between the different departments and by having regular meetings.⁶³

The Bill on Reinforcing the Rights of Victims of Trafficking in Human Beings⁶⁴ affirms that a potential victim no longer has to file a complaint in order to be identified as a victim if there is sufficient evidence otherwise available. Therefore, assistance measures will no longer be depending on the cooperation of the victim. However, as mentioned above, this is only the case for the granting of a reflection period.⁶⁵ The Council of State⁶⁶ and the Consultative Commission on Human Rights⁶⁷ have given written opinions on this issue. Whereas the Consultative Commission on Human Rights is in favour of the Article 3 on the waiver of the obligation of filing a written complaint, the Council of State is proposing to leave out this

⁵⁹ Ministry of Justice, Interview 29.07.2013.

⁶⁰ Ministry of Justice, Interview 29.07.2013.

⁶¹ Judicial Police, Interview 21.08.2013.

⁶² Directorate of Immigration, Interview 18.07.2013.

⁶³ Refugee Department, Interview 22.08.2013.

⁶⁴ Article 3 Bill N°6562 on Reinforcing the Rights of Victims of Trafficking in Human Beings.

⁶⁵ Please also see Q.10b.

⁶⁶ Opinion of the Council of State, 2.7.2013, available at:

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/138/275/123774.pdf, last accessed 4.10.2013.

⁶⁷ Opinion of the Consultative Commission on Human Rights, 10.7.2013, available at:

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/150/252/124591.pdf, last accessed 4.10.2013.

article.

In conformity with Article 19 of the Directive 2011/36/EU a national rapporteur will also be put into place. This post is going to be attributed to the Mediator of the Grand-Duchy of Luxembourg⁶⁸ as it should be an institution which is independent of the Inter-ministerial Committee on Trafficking and should act as an organ for external evaluations.⁶⁹

Section 3

Detection, identification and referral of victims in Forced Return Procedures

(Maximum 4 pages)

This section first examines the mechanisms that are used to detect and identify victims who have received a (final) negative decision on their application(s) in international protection, or who have abandoned the procedure, i.e. “rejected applicants”, who are subject to a forced return procedure. It then explores how (potential) victims are given access to appropriate assistance and support and specifically looks at mechanisms for coordination and referral between procedures.

*Please note that wherever reference is made to forced return in this section, it relates to the **forced return of rejected applicants for international protection** only rather than other persons subject to forced return measures (e.g. irregular migrants).*

3.1 Legislative framework

Q18. Are there established mechanisms for detecting and identifying victims of trafficking in human beings in forced return procedures⁷⁰? Yes/No

Q18a. If yes, please state whether one of the scenarios below or a combination thereof applies in your (Member) State:

- a. Process for detection and identification in forced return procedures is outlined in legislation (if yes, provide the reference)*
- b. Process for detection and identification in forced return procedures is outlined in soft law – e.g. a ‘protocol’ (if yes, provide the reference)*
- c. Process is not outlined in official documents, but there is a working system or standard practice in place, which is understood and used by the actors concerned (if yes, provide a brief description)*

There are no official documents, but in a forced return procedure, the steps are the same as for international protection applicants, except that it is the Return Department (*Service des retours*) which will hand the file over to the Third Country Nationals Department, who then immediately contacts the Judicial Police. The Police will investigate and decide on the formal identification of the presumed victim. During the investigation the forced return is suspended.

⁶⁸ For further information, please see:

http://www.ombudsman.lu/index.php?1=1&page=accueil_site&action=&ok=&inscrit=&lang=en, last accessed 4.10.2013.

⁶⁹ Article 1 Bill N°6562 on Reinforcing the Rights of Victims of Trafficking in Human Beings.

Please also see: Conseil de gouvernement, Résumé des travaux du 13 mars 2013, available at:

http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2013/03-mars/13-conseil/index.html, last accessed 4.10.2013.

⁷⁰ (Member) States should here **only** refer to mechanisms for detection/identification used in forced return procedures – i.e. they should not refer to those used to detect/identify in situations outside of forced return procedures.

If subsequently the rejected applicant is not identified as a victim of trafficking, the return will proceed as planned.

The Immigration Police (*Police des étrangers*), who deals with people waiting for their return, has also been trained to detect potential victims, but a representative from the Judicial Police has claimed that it is very difficult for them to detect a victim.⁷¹

For more information, please refer to the answers provided in section 2.

Q19. Are there different protocols and/or practices for children and adults? Yes / No

Q19a. If yes, please briefly describe how these differ and why.

Please see section 2.

Q20. Are there different protocols and/or practices for men and women? Yes / No

Q20a. If yes, please briefly describe how these differ and why⁷²

Please see section 2.

3.2 Detection of victims

Q21. How are (potential) victims of trafficking in human beings detected, amongst rejected applicants, in forced return procedures?

Q21a. Please state whether one of the scenarios below or a combination thereof is applicable to your (Member) State. For each, state Yes / No and (if yes) give a brief description of how this works:

- a. The competent authority⁷³ proactively screens all rejected applicants for indications of trafficking in human beings;*
- b. The competent authority proactively screens all rejected applicants with a particular profile⁷⁴ for indications of trafficking in human beings (please provide information on the type of profile);*
- c. Victims self-report;*
- d. Another actor in contact with the victim draws attention to the potential victimisation (if so, please refer to section 3.4 if (optionally) completed);*
- e. Other (please specify).*

There is no proactive screening; victims have to self-report.

Q22. If the competent authority detects that a rejected applicant may be a victim of trafficking in human beings, what are the next steps in terms of assessment?

Q22a. Does the Member State apply a standard set of indicators to assess whether the

⁷¹ Judicial Police, Interview 21.08.2013.

⁷² E.g. only female officers can screen / assess women.

⁷³ Here, "competent authority" refers to the law enforcement official or other authority competent to supervise and enforce forced return process of applicants for international protection who are subject to a return order.

⁷⁴ E.g. unaccompanied minors; children; women; women from particular geographical regions; women or children who, for example, when describing the route from their country to origin to the EU Member State, refer to a known route used by traffickers.

person is a (potential) victim? Yes / No

- b. If yes, please give further details, provided the information is not considered of a sensitive nature. How have these been developed? Are they based, for example, on international standards?*

Q22b. Are other mechanisms⁷⁵ used by the competent authority to assess whether a person detected as a (potential) victim should be identified as such (or referred onto formal identification procedures)? Yes/No

- c. If yes, what are these?*

- d. If no, why not?⁷⁶*

Q22c. What happens if, following the assessment, the competent authority decides that the third-country national concerned is not a (potential) victim? Can the third-country national seek an alternative assessment elsewhere?

Q23. Have methods for the detection and/or identification of victims in forced return procedures been evaluated in your Member State? Yes/No

No, there has been no evaluation. One should also note that this situation has not yet arisen in Luxembourg.

Q23a. If yes, how well are they considered to be working? Is there any evidence to suggest that (potential) victims are going undetected / unidentified? Provide evidence.

Q23b. If no, please provide any other evidence of the effectiveness (or otherwise) of detection / identification in forced return procedures here.

3.3 Referral

Q24. If a rejected applicant is identified as a (potential) victim and there is the possibility to open up a procedure as foreseen under Directive 2004/81/EC, how does this work in practice?

There is no formal referral mechanism. As mentioned above, the Return Department will forward the file to the Third Country Nationals Department who then contacts the Judicial Police. Afterwards, the procedure for rejected applicants is the same as for international protection applicants and s/he will be granted a reflection period if s/he is identified as a victim of trafficking in human beings.

Please see section 2.

Q24a Can the rejected applicant (where relevant, with the support of his/her legal representative) decide whether or not s/he wishes to access the provisions of Directive 2004/81/EC or national equivalent measures? Yes/No

Q24b. How is referral to the procedure as foreseen under Directive 2004/81/EC organised?

⁷⁵ E.g. interviews.

⁷⁶ E.g. legislation foresees that the slightest indication that a person may be a victim of trafficking in human beings is sufficient for automatic identification.

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Please highlight which one option, or a combination thereof, is applicable in your Member State:

- a. The (potential) victim is given information on his/her rights and possibilities, but has to initiate alternative procedures on his/her own (where applicable with the help of his/her legal representative).
- b. The authorities competent for implementing the forced return procedure contact the authorities responsible for issuing a reflection period or residence permit. (If yes, please elaborate)
- c. There is a national referral/cooperation mechanism that helps him/her. (If yes, please elaborate).

Q24c. Can the applicant's dossier /evidence gathered to date by the law enforcement authorities be transferred to and used in the new procedure for a reflection period or residence permit as foreseen under Directive 2004/81/EC? Yes / No / in some cases (please elaborate)

Q25. Have systems of referral of (potential) victims from forced return procedures to other procedures been evaluated in your Member State?⁷⁷ Yes/No

Q25a. If yes, how well are they considered to be working? Provide evidence.

Q25b. If no, please provide any other evidence of the effectiveness (or otherwise) of such referral mechanisms.

No, there has been no evaluation so far.

3.4 Future measures

Q26. Are any future measures anticipated in relation to improving or facilitating the detection and identification of victims of trafficking in human beings in procedures for forced return? Yes/No

Please see Q.17

Q26a. If yes, please briefly describe the anticipated measures here: what type of mechanisms to be covered, actors involved, etc.

Q26b. If no, are there any obstacles to the introduction of measures?

Section 4

Detection, identification and referral of victims by other related actors

(Maximum 2 pages)

This section looks at detection, identification and referral of (potential) victims who are residing in (i) reception centres; and (ii) detention facilities awaiting forced return. It optionally looks at detection and referral by other actors.

4.1 Detection and identification of victims in reception centres / detention facilities

Q27. How are (potential) victims of trafficking in human beings detected in the following

⁷⁷ For example, if a national referral mechanism or (other) coordination mechanism exists, has this been evaluated?

situations:

- a. *Whilst residing in reception centres for applicants of international protection (where these exist in Member States)?*

So far, it has not been the case that a potential victim was detected in a reception centre.

- b. *Whilst detained in detention facilities for irregular migrants awaiting return (where these exist in Member States)⁷⁸?*

It also has not yet been the case that a potential victim was detected in the Retention Centre (*Centre de rétention*).

Q27a. Please state whether one of the scenarios below or a combination thereof is applicable to your (Member) State:

- a. *All residents / detainees are screened for indications of trafficking in human beings;*
- b. *All residents /detainees with a particular profile⁷⁹ for indications of trafficking in human beings;*
- c. *Victims self-report;*
- d. *Another actor in contact with the victim draws attention to the potential victimisation (if so, please refer to section 3.4 if (optionally) completed);*
- e. *Other (please specify).*

There is no proactive screening but detection could happen during a conversation with a person residing in a reception or detention centre. The social workers try to establish a relationship of trust, which often takes a long time. They are available if a person feels the need to talk and they are there to take care of the people residing in the reception or detention centre.⁸⁰

When the Retention Centre was created, the focus was laid on the psycho-social work.⁸¹ This means that the people working there spend a lot of time with the rejected applicants. There are sessions to talk and the people are being looked after. They are not proactively screened, but their behaviour in the Retention Centre is observed. The social workers try to get to know the person, built a relationship of trust, and then if a person tells his or her story, they might be able to look for signs of being a victim of trafficking.⁸²

The Retention Centre has also agreed to cooperate with the NGO *Femmes en détresse* (FED) if one of the staff suspects a person to be a victim. They would contact FED and arrange a

⁷⁸ In some (Member) States, third-country nationals awaiting return are not detained at all, whereas in some (Member) States, returnees are detained in regular prisons or in migration reception centres. These cases fall outside of the scope of this Study, and only detention facilities will be covered.

⁷⁹ E.g. unaccompanied minors; children; women; women from particular geographical regions; women or children who, for example, when describing the route from their country to origin to the EU Member State, refer to a known route used by traffickers.

⁸⁰ Retention Centre, Interview 25.07.2013.

⁸¹ Article 1 of the Law on the Creation and Organisation of the Retention Centre, Mémorial A n°119 of 29 May 2009, available at: <http://www.legilux.public.lu/leg/a/archives/2009/0119/a119.pdf#page=2>, last accessed 4.10.2013.

⁸² Retention Centre, Interview 25.07.2013.

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visit with the potential victim to inform him/her on his/her rights and possibilities.

However, the potential victim has to contact FED first, as FED cannot contact detainees or applicants for international protections on their own.⁸³

One also has to keep in mind that with regards to the Retention Centre, the people are already at the end phase of the procedure. If they have not been discovered so far, it will be even more difficult to do so at that stage. As the people in the Retention Centre are waiting for their return, they are sceptical; they do not necessarily trust the people working in the Retention Centre. Therefore, a representative from the Reception Centre insisted that, when it comes to international protection applicants, a relationship of trust should be built at the beginning of the procedure, and not only at the end when they are waiting for their return.⁸⁴

One of the major concerns expressed is that the people working in the reception and detention centres need to know more about who could be a victim and how a victim can be defined.⁸⁵

Q28. Is the practice described above based on established guidelines / protocol (if yes, please provide a reference / information)

There are no formal guidelines. As the Retention Centre is composed of a fairly small staff, there is room for exchange. If there were a case, they would have the time to sit down, together with the management, to discuss the problems and to try to find a solution. In their meetings they talk about what is going well, what can be approved, what went wrong and how it can be avoided next time.⁸⁶

There were some cases where a social worker had a doubt, but when further questions were asked, the person refused to talk. If it would happen more often the introduction of a formal protocol might become necessary.⁸⁷

Q29. Are there different protocols and/or practices for children and adults? Yes / No

No. One should also note that children can stay a maximum of 72 hours in the Retention Centre and therefore it is almost impossible to get to know them.

Q29a. If yes, please briefly describe how these differ.

Q30. Are there different protocols and/or practices for men and women? Yes / No

No, there is no difference in the treatment of men and women.

Q30a. If yes, please briefly describe how these differ⁸⁸

Q31. What are the next steps in terms of assessment and identification?

Q31a. Is there a standard set of indicators used to assess whether the suspected victim should be identified as a victim? Yes / No

a. If yes, please give further details, provided the information is not

⁸³ Femmes en détresse and Fondation Maison de la Porte Ouverte, Joint Interview 30.08.2013.

⁸⁴ Retention Centre, Interview 25.07.2013.

⁸⁵ Retention Centre, Interview 25.07.2013 and Luxembourg Welcome and Integration Agency, Interview 23.09.2013.

⁸⁶ Retention Centre, Interview 25.07.2013.

⁸⁷ Retention Centre, Interview 25.07.2013.

⁸⁸ E.g. only female officers can screen / assess women.

considered of a sensitive nature.

Q31b. Are other mechanisms⁸⁹ used to assess whether a suspected victim should be identified as such? Yes/No

- a. If yes, what are these?*
- b. If no, why not?⁹⁰*

4.2 Referral of (potential) victims in reception centres / detention facilities

Q32. What are the next steps in terms of referral?

- a. The (potential) victim is provided information on his/her rights and possibilities, but s/he has to initiate alternative procedures on his/her own (where applicable with the help of his/her legal representative).*
- b. The reception centre / detention facility manager or other contact point in these institutions contacts the authorities responsible for issuing a reflection period or residence permit. (If yes, please elaborate)*
- c. There is a centralised national referral / coordination mechanism/contact point that helps him/her. (If yes, please elaborate).*

In theory, the person in charge of the Retention Centre would contact the Directorate of Immigration, who then would contact the Police. If the presumed victim has a lawyer s/he would also be contacted. Everything the social worker does would be with the permission of the person concerned. They would guide the potential victim through each step so that s/he would not feel overwhelmed.⁹¹

Q33. Have systems of detection and referral by actors in reception centres or detention facilities to procedures for victims of trafficking in human beings been evaluated in your Member State?⁹² Yes / No

No, there has not been an evaluation so far.

Q33a. If yes, how well are they considered to be working? Provide evidence.

Q33b. Please provide any other evidence of the effectiveness (or otherwise) of such referral mechanisms here.

4.3 Role of other actors (optional)

Q34. Do other actors coming into contact with applicants and rejected applicants – e.g. legal representatives, civil society organisations, medical staff – formally detect (potential) victims amongst third-country nationals in international protection and/or forced return procedures and refer them onto other authorities competent to identify and assist⁹³? Yes / No

⁸⁹ E.g. interviews.

⁹⁰ E.g. legislation foresees that the slightest indication that a person may be a victim of trafficking in human beings is sufficient for automatic identification.

⁹¹ Retention Centre, Interview 25.07.2013.

⁹² For example, if a national referral mechanism or (other) coordination mechanism exists, has this been evaluated?

⁹³ **Only** describe detection amongst third-country nationals in international protection / forced return procedures; not for detection in general.

Q34a. If yes, describe the mechanisms for detection.

Q34b. If yes, describe what happens in terms of referral.

Generally victims that are already identified by the Police will be sent to one of the two accredited NGOs, *Fondation Maison de la Porte Ouverte* (FMPO) or FED. However, it is possible that victims are detected by employees of these NGOs during interviews. The staff of FMPO will then cautiously try to obtain more information by asking a certain set of questions relating to how the potential victim has entered the country, if s/he has legal papers, if s/he has debts and if s/he can move freely. But there are no established guidelines and as this is a sensitive issue, many details have to be taken into consideration. In the case of a minor, a legal guardian has to be present.⁹⁴

Victims can also be detected by the Inspectorate of Labour and Mines. Other actors, such as lawyers, or the potential victims themselves contact the Inspectorate, who then will do an inspection to control the working conditions. They often collaborate with the Police and do joint inspections. Victims are not proactively searched for; the Inspectorate examines registrations, working hours, accommodation and salary based on labour law. No investigations based on private backgrounds are made. There is no specific mechanism to detect victims but they would transmit the file to the Police.⁹⁵

Section 5

Training

(Maximum 2 pages)

Q35. What guidance and training do competent authorities (and optionally other actors) receive regarding the detection and identification of victims? Please specify the following for each type of training described:

- a. *Content of training, specifically:*
 - i. *Indicators for detecting / identifying victims*
 - ii. *Profiling techniques*
 - iii. *Gender-sensitive approaches for engaging with victims*
 - iv. *Building trust and engaging with (potential) victim*
 - v. *Others (please briefly describe)*
- b. *Type of stakeholder trained*
- c. *Type of training / guidance (e.g. Training module, Training workshop, Examination, Guidelines, Brochure, Other (please describe))*
- d. *Authority / organisation providing the training*
- e. *Frequency of the training (e.g. annually, one-off, induction training, etc.)*
- f. *Whether the training is obligatory. Yes / No.*

The Refugee Department organises training sessions for the employees who do the auditions and interviews of international protection applicants. There was for example a training on the interviewing techniques for unaccompanied minors. Another training on the interviewing

⁹⁴ Femmes en détresse and Fondation Maison de la Porte Ouverte, Joint Interview 30.08.2013.

⁹⁵ Inspectorate of Labour and Mines, Interview 22.08.2013.

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techniques for vulnerable persons, which includes victims of trafficking in human beings, is foreseen in October 2013. Some employees have also taken part in a “train the trainer” training and will now proceed to train the other interviewers. These training sessions are provided by EASO.⁹⁶

In 2009, the Police Academy (*Ecole de Police*) offered courses to police officers and it is foreseen that in 2014 courses will be held again. This could enhance detection as officers on the street might also be able to detect potential victims of trafficking in human beings.⁹⁷

During the visit of GRETA, the proposal was made to organise a training session for the staff at the Retention Centre. As the Retention Centre is a fairly new institution, having only been operational since August 2011, its staff has been receiving various other training sessions, but they are trying to organise a training session specifically on trafficking in human beings.⁹⁸

A representative from the Luxembourg Welcome and Integration Agency has also confirmed that they are planning to organise a training module for their employees.⁹⁹

A representative of the Ministry of Justice participates in expert meetings.¹⁰⁰

FED is planning a training session for various actors in October 2013 held by two staff members of KOK, a German NGO network against trafficking in women and violence against migrant women. FED and FMPO have participated in training sessions on prostitution; these trainings have taken place only irregularly. One training session has been organised by the Ministry of Equal Opportunities on trauma and forced prostitution.¹⁰¹

The Inspectorate of Labour and Mines has had no training regarding the detection of victims of trafficking in human beings so far. Nevertheless, it is interested in trainings and is planning to participate in trainings organised by the International Labour Organisation.¹⁰²

Finally, one should also mention that it is foreseen by law that the relevant personnel of the Police, the Directorate of Immigration and social services take part in training modules.¹⁰³

*Q36a. Specifically please describe whether your Member State has organised **joint training sessions** of trainees from different backgrounds – e.g. personnel involved in procedures for international protection, forced return and those for victims of trafficking in human beings.*

A few years ago the Ministry for Equal Opportunities organised a training session where the Police, the Directorate of Immigration and the Public Prosecutor’s Office were present.

*Q36b. Specifically please describe whether your Member State has organised **multi-disciplinary training** – i.e. as provided by a range of experts.*

The Police has been to seminars together with members from the Ministry of Family and Integration, the Ministry for Equal Opportunities as well as FED.

⁹⁶ Refugee Department, Interview 22.08.2013.

⁹⁷ Judicial Police, Interview 21.08.2013.

⁹⁸ Retention Centre, Interview 25.07.2013.

⁹⁹ Luxembourg Welcome and Integration Agency, Interview 23.09.2013.

¹⁰⁰ Ministry of Justice, Interview 29.07.2013.

¹⁰¹ Femmes en détresse and Fondation Maison de la Porte Ouverte, Joint Interview 30.08.2013.

¹⁰² Inspectorate of labour and Mines, Interview 22.08.2013.

¹⁰³ Article 9 of the Law of 8 May 2009 on Assistance, Protection and Security of Victims of Trafficking in Human Beings.

Last year the Police gave a training session to the persons in charge of various women's shelters. It is now planned that the Police also gives a training module to the persons working in various women's shelters in Luxembourg, so that they might be able to detect a potential victim of trafficking.

Section 6 Statistics

(Maximum 3 pages)

This section provides statistics that indicate the scale and scope of (potential) victims detected and identified in procedures for international protection and forced return.

Q37. Has your Member State conducted any research into the scale of victims of trafficking in human beings in international protection procedures and/or procedures for forced return? Yes / No

So far, no reports or studies on this topic have been undertaken.

Q37a. If yes, briefly describe it here, providing the reference to the Study, its aims, and any key findings relevant to this present study.

*Q38. Please complete the table in **Annex 1** as far as possible, based on statistics available in your (Member) State.*

In 2013, 2 victims of trafficking in human beings have been identified so far, but no reflection period was granted.

Section 7 Conclusions

(Maximum 2 pages)

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

Due to the low number of identified victims of trafficking in human beings in international protection procedures in Luxembourg, there were some difficulties in answering the questions of this common template. Since 2008, 5 victims have been identified by the Refugee Department of the Directorate of Immigration and only 1 victim was granted a reflection period. When it comes to forced return procedures, the reception facilities and the Retention Centre, no victims of trafficking in human beings have been detected so far.

In Luxembourg, the Police is the only authority which can identify a victim of trafficking in human beings. As there is no legislation in place which lays down the procedure, an informal standard practice has been established by the actors involved in the detection and identification of potential victims. In 2012, the Judicial Police drafted a proposal on the procedures, which is currently being used as a reference document. Many actors have expressed the need for a formalisation of the various steps of the process and for a clear definition of the role of each actor and their responsibilities.

International protection applicants are not proactively screened. Instead, they have to self-

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report or can be detected via indirect statements. Also, Luxembourg does not have a formal national referral mechanism. The two procedures (application for international protection and victim of trafficking in human beings) run in parallel and the victim subsequently has access to the assistance measures provided by both procedures. However, it would again be necessary to formally coordinate the assistance in order to guarantee that the victim is aware of his/her rights and has access to them.

For the time being, assistance also remains conditional upon the cooperation of the victim. The Bill on Reinforcing the Right of Victims of Trafficking in Human Beings intends to change this aspect and therefore guarantee assistance to victims independently of their cooperation. Only when it comes to the granting of the residence permit the cooperation on behalf of the victim remains compulsory.

So far, an external evaluation has been done by GRETA, but the report has not yet been published. The aforementioned bill also foresees a national rapporteur who could act as an external evaluator.

With the Law of 8 May 2009 on Assistance, Protection and Security of Victims of Trafficking in Human Beings the creation of a Monitoring Committee on Combating Trafficking in Human Beings is foreseen. However, the necessary Grand-Ducal Regulation, which will provide the formal basis of the Committee and determine its operating mode, has not yet been published.

ANNEX 1**Table 1 – Statistics on third-country national victims of trafficking in human beings identified in procedures for international protection and forced return**

	2008	2009	2010	2011	2012	Source / further information
<i>Third-country nationals identified as (potential) victims and who have withdrawn from or stopped procedures for international protection</i>						
Number of third-country nationals who have <u>withdrawn</u> from or <u>stopped</u> (EU harmonised) international protection procedures (or – where relevant – have stayed in international protection procedures) ¹ and who have (later) been granted a reflection period as a (potential) victim of trafficking in human beings (e.g. under procedures outlined in Directive 2004/81/EC, Directive 2011/36/EU or other national provisions).	0	0	0	1 (Female, 16, Cameroon)	0	Source: Judicial Police
Where possible, please disaggregate for: - Gender, age, nationality of the person identified						
Number of third-country nationals who have <u>withdrawn</u> from or <u>stopped</u> (EU harmonised) international protection procedures and who have (later) applied for a (temporary or permanent) residence permit as a victim of trafficking in human beings cooperating with the authorities (i.e. under procedures outlined in Directive 2004/81/EC or alternative procedures where your (Member) State does not implement this Directive ²).	0	0	0	0	0	
Where possible, please disaggregate for: - Gender, age, nationality of the person identified						
Number of third-country nationals who have <u>withdrawn</u> from or	0	0	0	0	0	

¹ The measure provided here depends on the (Member) State's response to Q11a – i.e. whether the applicant has to withdraw from the procedure for international protection in order to be granted a reflection period and/or residence permit under Directive 2004/81/EC.

²Denmark, **Ireland** and the **United Kingdom** are not signatory to and therefore do not transpose Directive 2004/81/EC; however, each of these offers alternative procedures for granting residence permits.

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stopped (EU harmonised) international protection procedures and who have (later) been granted a (temporary or permanent) residence permit as a victim of trafficking in human beings (i.e. under procedures outlined in Directive 2004/81/EC or alternative procedures where your (Member) State does not implement this Directive). Where possible, please disaggregate for: - Gender, age, nationality of the person identified						
<i>Third-country nationals identified as (potential) victims and who have been rejected from procedures for international protection following a (final) negative decision</i>						
Number of third-country nationals who have been <u>rejected</u> from (EU harmonised) international protection procedures <u>following a (final) negative decision</u> on their application and who have (later) ³ been granted a (non-EU harmonised) protection status or residence permit (e.g. on humanitarian grounds) ⁴ as a victim of trafficking in human beings (e.g. due to humanitarian reasons). Where possible, please disaggregate for: - Gender, age, nationality of the person identified						No data available
Number of third-country nationals who have been <u>rejected</u> from (EU harmonised) international protection procedures <u>following a negative decision</u> and who have – following official identification procedures - (later) been granted a reflection period as a (potential) victim of trafficking in human beings (e.g. under procedures outlined in Directive 2004/81/EC or Directive 2011/36/EU or other national provisions). Where possible, please disaggregate for:	0	0	0	0	0	

³ **Note:** in some (Member) States, where all third-country nationals applying for international protection are assessed against all categories of international protection simultaneously in the same process, this reference to two separate processes may not be relevant. (Member) States with single procedure are not required to provide an answer here, and can state “Not Applicable” in the box.

⁴ Where possible, please specify the type of protection status / residence permit.

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- Gender, age, nationality of the person identified						
Number of third-country nationals who have <u>been</u> rejected from (EU harmonised) international protection procedures <u>following a negative decision</u> and who have – following official identification procedures - (later) been granted a residence permit as a <u>victim of trafficking in human beings</u> (i.e. under procedures outlined in Directive 2004/81/EC or alternative procedures where your (Member) State does not implement this Directive).	0	0	0	0	0	
Where possible, please disaggregate for: - Gender, age, nationality of the person identified						
Statistics on referrals to national referral mechanisms (where existing in (Member) States)						
If an national referral mechanism (NRM) exists in your (Member) State, please provide statistics on:						
- Number of third-country nationals referred by the authorities responsible for <u>examining and deciding upon applications</u> for international protection to the NRM	0	1 (Female, 33, Cameroon)	0	1 (Female, 16, Cameroon)	1 ((Male, 30, Burkina Faso)	
- Number of third-country nationals referred by the authorities responsible for <u>enforcing forced returns</u> to the NRM	0	0	0	0	0	
- Number of third-country nationals referred by the authorities responsible for <u>managing reception centres</u> to the NRM	0	0	0	0	0	
- Number of third-country nationals referred by the authorities responsible for <u>managing detention facilities</u> to the NRM	0	0	0	0	0	
- Number of third-country nationals referred by <u>legal representatives</u> to the NRM	0	0	0	0	0	
- Number of third-country nationals referred by <u>civil society</u> to	0	0	0	0	0	

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the NRM						
- Number of third-country nationals referred by <u>other actors</u> to the NRM	0	0	0	0	0	
Where possible, please disaggregate for:						
- Gender, age, nationality of the person identified						
General statistics⁵						
Number of third-country nationals who have been granted a (non-EU harmonised) protection status or residence permit as a victim of trafficking in human beings (e.g. due to humanitarian reasons). ⁶						No data available
Number of third-country nationals who have been granted a reflection period as a victim of trafficking in human beings (e.g. under procedures outlined in Directive 2004/81/EC or Directive 2011/36/EU).	0	0	0	1	0	
Number of third-country nationals who have been granted a residence permit as a victim of trafficking in human beings (i.e. under procedures outlined in Directive 2004/81/EC or alternative procedures where your (Member) State does not implement this Directive).	0	0	0	0	0	
Number of third-country nationals referred to procedures for victims of trafficking in human beings through the NRM	0	1	0	1	1	

⁵ The purpose of presenting these general statistics is to allow for the possibility to present the statistics above as a proportion of wider groups of (potential) victims of trafficking in human beings.

⁶ Where possible, please specify the type of protection status.