



European Migration Network
National Contact Point Luxembourg (LU EMN NCP)

IDENTIFYING VICTIMS OF TRAFFICKING IN HUMAN BEINGS DURING INTERNATIONAL PROTECTION AND FORCED RETURN PROCEDURES

1. Introduction

The summary report presents the findings of the study on “Identifying victims of trafficking in human beings during international protection and forced return procedures” conducted in 2013 and updated in 2017 by the National Contact Point Luxembourg in the *European Migration Network*.

Trafficking in human beings is “modern-day slavery”.¹ It constitutes a serious breach of fundamental rights and a serious form of crime. In the “Trafficking” Directive 2011/36/EU,² the European Union recognises the need to create mechanisms to detect and identify people who are victims of trafficking and to give these people access to support and protection in conjunction with the relevant aid organisations.

2. Legal framework

In Luxembourg, the Law of 9 April 2014 strengthening the rights of victims of trafficking in human beings transposed the “Trafficking” Directive while acknowledging that, at national level, condemnation of trafficking had already been added to the Penal Code by the Law of 31 May 1999 aimed at strengthening measures against trafficking of human beings and sexual exploitation of children, supplemented by the Law of 13 March 2009 on the trafficking of human beings and by the above-mentioned Law of 9 April 2014. It should be noted that the Law of 9 April 2014 introduced the offence of forced begging as a form of trafficking and the trafficking of children as a separate offence.

Article 382-1 of the Penal Code defines the offence of trafficking in human beings as follows:

(1) The offence of human trafficking consists in recruiting, transporting, transferring, harboring, accommodating, transferring or giving control over human beings with the purpose of:

- 1) the commission against this person of the offences of procuring, assault or of sexual offences;
- 2) the exploitation of that person’s work or services in the form of forced or compulsory work or services, servitude, slavery or similar practices and in general under conditions that are contrary to human dignity;
- 3) engaging persons in begging, exploiting their begging activity or making such persons available to a beggar in order to arouse public commiseration;
- 4) the removal of organs or tissues in violation of the relevant legislation;
- 5) having that person commit a crime or an offence against their will.

(...)

(4) As the offence of child trafficking is considered any act or transaction in which a child is handed over by any person or group of persons to another person or group of persons against remuneration or any other benefit. (...). “

The components of trafficking are as follows:

- **an action:** the recruitment, transportation, transfer, accommodation or reception of a person, or the act of passing on or transferring control over that person;
- **the use of certain means:** the threat of use or the use of force or other forms of constraint, by abduction, fraud, deceit, abuse of power or of a situation of vulnerability, or by offering or accepting payments or benefits to obtain the consent of a person with authority over another:

A specific aspect of Luxembourg legislation: the means of coercion constitute an aggravating circumstance in Luxembourg.

- **and the purpose of the exploitation:** exploitation of the prostitution of others or other forms of sexual exploitation, forced work or services, slavery or practices similar to slavery, servitude or the removal of organs, sale of children, begging.

Other fundamental aspects of Luxembourg legislation:

- The **victim's consent** does not exonerate the perpetrator or the accomplice, nor does it constitute an attenuating circumstance.³
- The victim of trafficking that takes part in unlawful activities **is not criminally liable** if forced to do so.⁴

In terms of rights of residence, the amended Law of 29 August 2008 pertaining to the free movement of persons and immigration (Immi-

gration Law) transposes Directive 2004/81 of the Council of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities. A sub-section 3 pertaining to residence permits for persons who are victims of trafficking in human beings has been added to the specific cases for residence permits. Articles 92 to 98 deal specifically with the possibility of granting the victim a period of reflection and the conditions for issuing, renewing and withdrawing the residence permit (see section 6).

3. Political framework

Trafficking in human beings is a growing issue of concern for the Luxembourg authorities. The policy on fighting against trafficking in human beings involves a horizontal approach and, inter alia, by implementing in accordance with the **Grand Ducal Regulation of 10 March 2014 on the composition, organisation and operation of the Committee for monitoring the fight against trafficking**, the “Committee for monitoring the fight against trafficking in human beings” introduced by the **amended Law of 8 May 2009 on support, protection and security for victims of trafficking. It is chaired by the Ministry of Justice and consists of various representatives of the competent state bodies, the National Rapporteur and the support services for victims of trafficking.** The committee is responsible for coordinating actions to prevent and assess the trafficking phenomenon, for gathering statistics and assessing the implementation of the relevant legislation on trafficking.⁵

This committee has developed a National Action Plan (NAP) for the fight against trafficking which was approved by the Government Council on 21 December 2016.⁶

A roadmap with the title “Procedures for inter-disciplinary cooperation regarding victims of trafficking in human beings” was initially developed by the police, a member of the Committee, in conjunction with the other key parties involved in combating and preventing trafficking in human beings. This confidential roadmap is intended only for the actors in the field and its aim is to define how victims of trafficking are treated and supported in order to acquire victim status as soon as they are detected.

In June 2016, the Ministers of Justice and of Equal Opportunities presented the government’s strategy with regard to dealing with prostitution in Luxembourg. This strategy comprises: 1) the “Prostitution” National Action Plan (NAP); and 2) a bill to strengthen the fight against prostituting, procuring and trafficking human beings for sexual exploitation.^{7; 8}

In 2016, at BENELUX level, increasing cooperation in the fight against trafficking in human beings was a high-priority topic for the Luxembourg presidency. Two days of reflexion were organised in order to consider potential ways to improve interdisciplinary cooperation between the key actors in the field in the three Benelux countries.⁹ As of 2 December 2016, Luxembourg’s Justice Minister, his Belgian counterpart and a representative of the Netherlands signed a statement of intent with actions and measures aimed at increasing cooperation in the Benelux countries on this topic. Based on the exchanges

that took place during the those days, the three countries pledged to enhance cooperation between victim reception and support centres, the judicial authorities, the police, immigration and integration services as well as the social and work inspectorates.

The Benelux has put forward some practical actions:

1. The establishment of an ad hoc Benelux working group placed under the Benelux “Trafficking” working group, consisting of representatives of state bodies which will devise actions to promote cross-border, interdisciplinary cooperation: in particular, exchanging professional best practices, organising joint trainings, setting up national contact points to facilitate cross-border exchanges, improving cooperation between national referral mechanisms for victims of trafficking and seeing whether a Benelux legal instrument to further develop this cooperation would be useful.
2. The assessment of the information leaflet on Benelux cooperation on the treatment of victims of trafficking developed by the “Trafficking” working group in 2014. This leaflet provides information on the legal framework, the parties involved and referral mechanisms for victims in the three Benelux member states. It will continue to be promoted to professionals in the field and will be assessed with regard to its relevance and adapted if required.

4. The parties involved in Luxembourg in preventing and fighting against trafficking in human beings

a. Justice

The Grand Duchy of Luxembourg is divided into two judicial districts. At each district court (Luxembourg and Diekirch), the Public Prosecutor's office is responsible for prosecuting human trafficking offences. In each district, there are contact prosecutors for trafficking in human beings, whose role is to prosecute cases of trafficking as part of ongoing investigations.¹⁰

b. Grand-Ducal Police

The Judicial Police Department is a department of the Grand-Ducal Police which carries out Judicial Police duties.¹¹ One of its duties is to research and investigate serious or particularly complex offences, as is the case for trafficking in human beings. The police is the only competent authority for identifying the victims of trafficking. A victim of trafficking may be detected by any person, body or authority. The person must be referred to the police for identification purposes in order to obtain the requisite support and protection.

The police must notify the approved support services for victims of trafficking at the earliest opportunity of the presence of an identified victim in order for them to contact the victim to provide appropriate assistance. Similarly, victim support services notify the police as soon as possible if they detect a victim of trafficking. The police and support services liaise regularly and cooperate on an ongoing basis in order to ensure effective protection and support while taking care of victims.¹²

The police must inform the victim about the various options for bringing a civil action and the workings of the criminal justice procedure.

c. Inspectorate of Labour and Mines (Inspection de Travail et des Mines – ITM)

The ITM is the competent body for detecting illegal employment and protecting workers' rights. Although Luxembourg legislation does not define specific powers in this area, ITM inspectors may detect a victim during their inspections in the field and, specifically, in the course of detecting illegal workers. In this case, the inspector must contact the police immediately so that it can act to identify the victims of trafficking and instigate support and protection procedures.

d. Directorate of Immigration

The Directorate of Immigration of the Ministry of Foreign and European Affairs is the competent body for authorising, in accordance with the Immigration Law, an identified victim of trafficking who is a third-country national to stay in Luxembourg during a period of reflection.¹³ The Directorate of Immigration grants the victim a three-month period of reflection followed, under certain conditions, by the issuance of a residence permit (see section 6). It is contacted directly by the Judicial Police upon identification of the victim.

The Directorate of Immigration also issues work permits.

The Law of 18 December 2015 on international protection and temporary protection (Asylum Law)¹⁴ specifies an assessment of specific procedural safeguards that may be needed for vulnerable applicants for international protection¹⁵

(see section 5.a). This assessment may also be made by the Luxembourg Reception and Integration Agency of the Ministry of Family, Integration and the Greater Region (see below).

e. Luxembourg Reception and Integration Agency (OLAI)

The OLAI's main mission is to receive, assist and orient applicants for international protection (AIPs) and facilitate the integration process for foreigners and migrants.¹⁶ The OLAI manages a large number of accommodation facilities reserved for applicants for international protection in conjunction with other service providers.

The Law of 18 December 2015 on the reception of applicants for international protection and temporary protection (Reception conditions law) specifies that the detection of vulnerable persons and an assessment of their specific needs in terms of reception are conducted by the OLAI.¹⁷ These needs may be identified during an initial interview following the filing of the application for international protection, but also throughout the procedure (see section 5.a)

f. Health Inspectorate

According to Article 4 of the Law on asylum, all AIPs must undergo a medical examination conducted by a Directorate of Health doctor for public health reasons. This examination may include an examination for signs of persecution or serious harm that the applicant may have suffered. Article 16 (2) specifies, inter alia, that the detection of vulnerable persons and the assessment of their needs in terms of basic medical care should be conducted by the Directorate of Health doctor.

g. Ministry of Equal Opportunities and support services for victims of trafficking in human beings

The Ministry of Equal Opportunities (MEGA) is responsible for access to and coordination of support to all victims (women, men and children) of trafficking in human beings, in accordance with the amended Law of 8 May 2009 on the support, protection and security of victims of trafficking in human beings.¹⁸ This work is conducted by means of and in partnership with the support services for victims of trafficking, the Service d'Assistance aux Victimes de la Traite des Êtres Humains (SAVTEH) of the non-profit organisation Femmes en Détresse asbl and the Centre Ozanam pour les victimes de la Traite des Êtres Humains (COTEH) of the Fondation Maison de la Porte Ouverte and their reception facilities. These approved organisations in the context of trafficking in human beings have agreements contract with MEGA as well as the reception facilities which have agreements with the Ministries of National Education, Children and Youth, the Ministry of Family, Integration and the Greater Region, and the Ministry of Health.

There are two types of support services for victims with different aims:

a) ambulatory: caring for all victims of trafficking whatsoever (in particular, regardless of sex, age, origin or the place of trafficking);

b) stationary: sheltering and orienting victims of trafficking based on their intended audience (women, men, children) alongside persons in distress, including mainly victims of domestic violence.¹⁹

Both ambulatory support services for victims approved in 2013 by the MEGA, the SAVTEH and the COTEH, provide all victims, women, men and minors with ambulatory support in accordance with the above-mentioned amended Law of 8 May 2009 and, together with the police and the MEGA, coordinate ambulatory and stationary support services (healthcare, help, care, social support, protection, security).

These services provide personalised support and meet each victim's specific needs (e.g. psychological support). They help direct the victims to the competent bodies (i.e. support for social, medical, legal, administrative, linguistic procedures, with the police, Immigration and diplomatic authorities) in order to help them recover physically, psychologically and socially²⁰ and coordinate the overall care with all those involved and the partners able to support victims of trafficking.

They also coordinate the placement of victims in accommodation facilities depending on their sex and age and the places available in the facilities.

Both services are able to detect victims that contact them directly, or victims sent to them by other persons, NGOs, institutions or administrative bodies. Any person or institution can contact these services in the event of detecting a victim, or in the event of doubts regarding the detecting of a victim, particularly if the victim is hesitant or refuses to contact the police.

Upon detection of a victim, the SAVTEH and COTEH notify the police and work with the victim in order to convince him or her to meet the police for identification purposes. In this regard,

they provide psychosocial support (for about a month) for victims who, for various reasons (lack of trust, denial, traumatism, fear, threats, reprisals, etc.), do not want or can not go to the police authorities to be identified, in order to give them the confidence to do so.

They provide information and support to the various parties involved in the field and the people or institutions that are able to detect victims. They also provide support to the staff of the facilities accommodating victims of trafficking and train them if required.

Throughout the period of support, the SAVTEH and COTEH study the needs of victims of trafficking together with the police in order to provide them with the best possible protection.

The staff of accommodation/reception facilities for victims of trafficking approved by MEGA as well as the staff of accommodation/reception facilities or minors that work with the Ministry are trained on trafficking in human beings.

Each service has produced an information leaflet.

h. Committee for monitoring the fight against trafficking in human beings

The policy on the fight against all forms of trafficking is defined and coordinated in Luxembourg within the Committee for monitoring the fight against trafficking in human beings which comprises a representative of: 1) MEGA, 2) the Ministry in charge of Children and Youth; 3) the Ministry of Justice; 4) the Ministry in charge of the Police, 5) the Grand-Ducal Police; 6) the

Ministry in charge of Immigration; 7) the Ministry of Health; 8) the Ministry in charge of Employment; 9) the Ministry in charge of Small and Medium-Sized Businesses; 10) the ITM; 11) the OLAI; 12) a representative of the Luxembourg and Diekirch Public Prosecution Offices; 13) two representatives of the approved support services for victims of trafficking in human beings, namely the SAVTEH and COTEH.²¹ It is chaired by the Ministry of Justice and meets every 2 to 3 months. This committee is specifically responsible for establishing the monitoring and coordination of activities to prevent and assess the phenomenon of trafficking.²²

i. National Rapporteur

The Consultative Commission on Human Rights (Commission consultative des Droits de l'Homme - "CCDH") was designated as the National Rapporteur on trafficking in human beings by the Law of 9 April 2014 strengthening the rights of victims of trafficking in human beings. Its tasks consist of determining trends in this field, assessing the results of actions undertaken in Luxembourg to combat this phenomenon and gathering national statistics.

The National Rapporteur is also regularly invited to the proceedings of the Committee for monitoring the fight against trafficking. The CCDH must prepare a report at least every two years which it submits to the Chamber of Deputies. On 16 March 2017, it submitted its first report assessing the phenomenon of trafficking for the years 2014-2016.

It is a member of the informal network of national rapporteurs on "human trafficking" at EU-level.

5. Detection and identification of victims during international protection procedures

Victims of trafficking in human beings may be detected in a variety of circumstances by any person or grouping of the various actors involved.

This leaflet focuses on a specific situation, namely the detection and identification victims of trafficking among persons having applied for international protection or after a negative decision, persons subject to forced return. Consequently, victims of trafficking in human beings detected and identified outside this context are not studied in this situation and are not included in the statistical data.²³

There are various reasons why a victim of trafficking in human beings may be involved in an international protection procedure: either because the victim is exposed to the risk of persecution or serious harm by their traffickers, or because the victim fears persecution by various parties if they return to their country of origin, or else because the networks of traffickers use this means to enable their victims to enter the country of their choice and acquire the right to reside there.

A victim of trafficking in human beings may also make an application for protection because of needing support and protection.

a. Detection and identification procedure

Since the Asylum Law and the Reception Conditions Law of 18 December 2015 came into force, particular attention is paid to identifying and protecting vulnerable persons, including victims of trafficking in human beings.

Article 19 (1) of the Asylum Law transposes Article 24 of the directive on specific procedural safeguards for vulnerable AIPs. This article introduces the obligation for the Minister in charge of asylum “to proceed within a reasonable time and before a first instance decision is taken with an assessment of the specific procedural safeguards that may prove necessary for certain applicants owing in particular to their age, their sex, their sexual orientation or their gender identity, handicap, serious illness, mental health issues or the effects of torture, rape or other serious forms of psychological, physical or sexual violence.”

In addition, in order to assess the specific procedural safeguards, the Minister in charge of Immigration and Asylum has the option to call for advice from a healthcare professional or other expert.²⁴

Persons identified as requiring specific procedural safeguards are granted appropriate support and in particular sufficient time to create the conditions needed for them to have effective access to the procedures and to enable them to provide the supporting documentation required for their application.²⁵

The accelerated procedure is thus not applied in the case of applicants requiring specific procedural safeguards because they are victims of torture, rape or another serious form of psychological, physical or sexual violence.

Article 16 (1) of the Reception Conditions Law stipulates that the detection of vulnerable persons and assessment of their specific needs in terms of reception must be made within a rea-

sonable time depending on the circumstances. This assessment is made by the social workers of OLAI, the persons in charge of accommodation facilities, the Health Inspectorate or any other person competent to receive AIPs.

In order to assess the specific procedural safeguards in the context of an application for international protection, the officers of the Asylum Unit of the Directorate of Immigration use a specific questionnaire to enable them to detect vulnerable persons, in the knowledge that, in certain cases, applicants are not necessarily aware of being potential victims of trafficking in human beings. A victim may nonetheless be detected by an officer on the basis of indirect statements or based on evidence brought forward. However, this does not mean that, during interviews, applicants do not need to make statements regarding any exploitation to which they themselves have been subject.

The above-mentioned roadmap, constituting the Luxembourg mechanism for identifying and orienting victims, must be used by all the competent authorities concerned in identifying, orienting, supporting and caring for victims of trafficking in human beings. That is why it contains specific directions relating to applicants for international protection.

In practice, statements made by the victims themselves are rather uncommon for many reasons:

- vulnerability (handicap, illiteracy, pregnancy, under-age, ethnic minority, social group, non-existent or incorrect identity papers and/or residence permits, handicap, orphaned child, etc.);

- lack of language skills;
- lack of information and knowledge of legal rights;
- lack of awareness of victim status, failure to understand the conditions of exploitation regarded as normal in view of the victims' background, culture, origin, environment or education;
- distrust/fear of the police and the authorities;
- fear of identification as an illegally staying person followed by being returned to their country of origin;
- memory loss and psychological trauma;
- fear and the risk of threats and reprisals on them or their family by the perpetrators;
- (potential) social stigma.

b) Identification

In Luxembourg, an alleged victim may be detected by any person or any service, such as the approved support services for victims of trafficking, an officer of the Asylum Unit of the Directorate of Immigration, the ITM or Customs, an OLAI social worker or a partner of the OLAI in the reception of AIPs, by the Health Inspectorate or a worker at the Detention Centre. If the Asylum Unit of the Directorate of Immigration detects a victim, the case is forwarded to the Foreigners Unit - competent for third-country nationals and therefore in charge of victims of trafficking. Both the Asylum Unit and the Foreigners Unit may contact the above-mentioned support services at any time in order to liaise with them in regards to detecting or confirming the detection of potential victims among applicants for international protection.

This service then sends the case to the Organised Crime Unit of the Judicial Police, which is

responsible for identifying victims. It does not undertake any further investigation.²⁶ The Public Prosecutor is also informed of the case in order to commence proceedings. With the help of a list of typical indicators, statements, items of evidence brought forward and an immediate investigation, the judicial police officer makes a decision regarding the identification of the presumed victim. Items that help to identify a victim include:

- the presence or absence of identity documents;
- the person displays signs of fear, distress and anxiety;
- the person has difficulty answering questions;
- the person makes statements that are inconsistent or based on indoctrination;
- the person does not know where he/she works;
- the person did not arrange his/her own transportation;
- the person is always accompanied when leaving the premises;
- the person shows signs of fear of the person accompanying him/her;
- the person is subject to coercion by another person;
- the person is a minor;
- the place where the person was found;
- the person's physical appearance, mental state, vulnerability;
- the lack of a fixed place of residence;
- the person sleeps and lives at his/her place of work;
- the lack of income and a contract of employment;
- the person does not have direct access to his/her wages;

Statistics on identifying victims of trafficking in human beings during international protection procedures											
	2008	2009	2010	2011	2012	2013	2014	2015	2016		
Number	0	1	0	1	1	2	5	2	5		
Sex	/	Female	/	Female	Male	Female	Female (1)/ Male (4)	Female	Female (4)/ Male (1)		
Age	/	33	/	16	33	30/46	Over 18	Over 18	Over 18 (3)/ Under 18 (2)		
Nationality	/	Cameroon	/	Cameroon	Burkina Faso	Morocco/ Cameroon	India/ Pakistan/ Bangladesh	Gambia/ Brazil	China/ Guinea-Bissau/ Pakistan/ Albania		
Period of reflection	I	No		Yes	No	No/No	6	1	1		
"Victim of trafficking" residence permit	/	No	/	No	No	No/No	0	0	0		
International protection	/	No	/	No	No	No/No	No/No	No			

Source: Ministry of Justice 2008 – 2016 © LU EMN NCP

- their arrival in the territory;
- their length of stay and
- the country of origin.

However, it is not enough just to have such a list. Differences of interpretation can emerge if they are not accompanied by guidelines.

An analysis of the components of trafficking (actions, means and aims) is carried out. It is a broad interpretation in order to protect potential victims and avoid exacerbating a trafficking situation, if it exists. The victim is identified as a presumed victim. It is the judicial authorities that, after the period of reflection, confirm or deny the status of victim of trafficking.

Formal identification as a victim of trafficking enables support measures to be triggered. The police informs the SAVTEH and COTEH as soon as possible and liaises with them to arrange for care for the victims. As stated above, a person may, before being identified, receive psychosocial support from these services whose role is to instil trust so that the person accepts the need for contact with the police in order to be identified as a victim of trafficking.

6. Residence permit for victims of trafficking in human beings

There are two scenarios:

a) When reviewing the application for international protection, a person is detected then identified as a victim of trafficking

If the identified victim is in an international protection procedure and do not withdraw from it, they remain in it and retain their status as an applicant for international protection together with that of victim of trafficking. The person continues to benefit from the specific procedural safeguards and social rights granted on the basis of their specific needs in terms of reception as an applicant for international protection while receiving the support intended for victims of trafficking. The person is therefore not subject to a period of reflection. In the event of international protection being granted, the person benefits from rights similar to those of nationals (residence permit of at least three years, family reunification, access to education and vocational training, to the public health system, the labour market without being subject to the labour market test).

If the application for international protection is rejected, the identified victim of trafficking continues to benefit from the status of victim of trafficking and can apply for a residence permit for victims of trafficking in human beings in accordance with Articles 95 et seq. of the amended Law of 29 August 2008 on the free movement of persons and immigration, or a residence permit for private reasons.

b. Residence permit for victims of trafficking in human beings

Articles 92 to 98 of the amended Law of 29 August 2008 on the free movement of persons and immigration set out the procedure to be followed for granting a period of reflection and a residence permit for victims of trafficking that are third-country nationals. Once the victim is identified by the Organised Crime Unit of the Judicial Police, the latter immediately notifies the support services for victims of trafficking. The Directorate of Immigration is notified accordingly and issues a certificate for the period of reflection valid for 90 days so that the person can escape from the influence of the perpetrators of the offence and recover. Since the Law of 9 April 2014, cooperation with the authorities in charge of the investigation is no longer a prerequisite for granting a period of reflection. The victim can not be removed from the territory during this period. A residence permit valid for six months and renewable for a further period of six months may subsequently be issued if certain criteria are met.

Before the period of reflection expires, the Directorate of Immigration contacts the police again to determine whether a residence permit for the victim of trafficking may be issued. Before making this decision, the police, in conjunction with the Public Prosecutor, must answer three questions:

- Has the victim filed a complaint or made statements with regard to the allegedly guilty persons or networks?
 - Or is the victim's physical presence required for the investigation or proceedings?
- Has the victim broken all ties with the alleged

perpetrators of the offence?

- Should the victim be considered a risk to public order or national security?

The answers to these questions determine whether a residence permit for a victim of trafficking in human beings is issued. If the decision is negative, the Judicial Police notifies all the parties involved accordingly.

After the residence permit for victims of trafficking has expired, the person in question may apply for an authorisation and a residence permit for private reasons. This residence permit is valid for one year and is renewable if, when reviewed, the victim's situation has not changed. The person may also apply for a residence permit for salaried worker without being subject to the condition of priority employment of EU nationals.

The residence permit for victims of trafficking may nonetheless be withdrawn if:

- the victim has actively, deliberately and on their own initiative renewed contact with the alleged perpetrators of the offence,
- the victim stops cooperating,
- the judicial authorities decide to drop the prosecution of the alleged traffickers,
- it is observed that the victim's cooperation is fraudulent or that the complaint is fraudulent or groundless, or
- there are reasons connected with public order or national security.

Another important point is that in Luxembourg, as in other Member States, the residence permit for victims of trafficking confers a less favourable

ble status than that of international protection: it is valid for six months (renewable), whereas the residence permit for beneficiaries of international protection is valid for three years (also renewable).

7. Support measures

According to the “Trafficking” Directive, a person should benefit from support and assistance once there are reasonable grounds for believing that the person may be a victim of trafficking in human beings, regardless of the person’s willingness to cooperate with the investigation, prosecution or trial.²⁷

If the police has evidence that the person is a victim, it notifies the person of their rights and establishes as soon as possible a contact with the approved support services for victims of trafficking, the SAVTEH and COTEH, who contact the victim and the OLAI. The Public Prosecutor is also notified.

The amended Law of 8 May 2009 on support, protection and security for victims of trafficking in human beings stipulates that a victim, to enable their physical, psychological and social recovery, is entitled to:

- accommodation, social and socio-educational support, material and financial support, medical, psychological or therapeutic support depending on their needs;
- linguistic support; and
- legal support.

Any presumed victim of trafficking (i.e. identified by the police) is entitled to support regardless of age, sex, country of origin (EU or third country) and the country where they were exploited. Applicants for international protection are entitled to the same support. The SAVTEH and COTEH provide ambulatory care and coordinate ambulatory and stationary support for victims of trafficking. They work closely with the OLAI services responsible for caring for applicants for international protection in order to provide the victim with appropriate support. This assistance is also provided in close conjunction with the police, which ensures the protection of the victim from potential reprisals, threats or intimidations.

Victims of trafficking that have applied for international protection remain in the reception facilities for applicants for international protection in which they are accommodated. Nonetheless, depending on the victims’ specific needs and depending on their age, sex, background and the vulnerability or risk of their situation, they may be placed in facilities approved by the MEGA or the Ministry of National Education, Children and Youth (MENJE), or placed in a secret location by the police for safety reasons, if applicable.

8. Detection and identification during the Dublin procedure

Besides the international protection procedure, a victim of trafficking in human beings may also be detected during a Dublin procedure.²⁸

To date, no victims have been detected during this procedure in Luxembourg. As the use of the Dublin Regulation is assessed after the first interview, it may be the case that the victim makes statements about their itinerary and background and so the exploitation could be recorded. This is, however, not the case in all Member States and consequently the point at which the use of this Regulation is reviewed may have a major impact on the detection of a potential victim.

If a potential victim is detected, the transfer to the Member State responsible for reviewing the application is suspended by Luxembourg. The same applies if, during a review procedure for an application for international protection, the Organised Crime Unit of the Judicial Police contacted by the Directorate of Immigration identifies the applicant for international protection as a presumed victim of trafficking. In this case, the victim can no longer be removed from the territory.

9. Detection and identification during the forced return procedure

In the case of the forced return procedure, the study did not take the return of rejected applicants for international protection into account. As in the case of the Dublin procedure, no victims of trafficking in human beings have been detected in Luxembourg for the time being. The procedure to be followed is the same as for persons that are undergoing the review procedure for their application for international protection. As soon as an officer of the Return Unit of the Directorate of Immigration detects a potential victim, the case is passed to the Foreigners Unit which then contacts the Organised Crime Unit of the Judicial Police responsible for identifying the victim.

Dublin Regulation: Regulation which lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

Dublin Transfer: It is defined as:

- The transfer of responsibility for the examination of the merits of an application for international protection from one Member State to another Member State
- The (physical) transfer of an applicant to the Member State who is considered to be responsible for examining the merits of an application following a Dublin procedure.

10. Detection by other parties

Even though registering applications for international protection and personal interviews represent significant opportunities for the detection of potential victims, the applicant also comes into contact with other parties that may detect prior instances of victimisation. For instance, while staying in a reception facility, the staff plays an important role as it can establish a relationship of trust with the potential victim. Medical staff, social workers, psychologists, legal representatives and representatives of non-governmental organisations who may come into contact with potential victims are also concerned. The same applies to the socio-educational staff of the Detention Centre who is in contact with rejected applicants.

In Luxembourg, no victims of trafficking have been detected at accommodation facilities for applicants for international protection or at the Detention Centre, even though social workers both in the accommodation facilities and the Detention Centre try to establish trusting relationships in order to enable people to tell their story and to state that they are victims.

According to the CCDH report, only one case has been detected by approved non-governmental organisations.

For the time being, the ITM has not detected any victims of trafficking in human beings during inspections.

The authority responsible for:						
applications for international protection	Dublin cases	carrying out returns	identifying vulnerable persons as part of reviewing AIP and assessing social support	official identification	issuing a residence permit	granting support measures
Directorate of Immigration – Asylum Unit	Directorate of Immigration – Asylum Unit	Judicial Police – Immigration Police	Directorate of Immigration OLAI Health Inspectorate	Judicial Police Department – Organised Crime Unit	Directorate of Immigration – Foreigners Unit	Ministry of Equal Opportunities

11. Unaccompanied minors

With regard to immigration, and more specifically applicants for international protection, considerable efforts need to be made to increase the proactive detection of victims. This also involves unaccompanied minors whose future is frequently unclear.²⁹

It is important that their vulnerability and specific needs are taken into account. According to Article 92(2) of the Immigration Law, Article 3 of the amended Law of 8 May 2009 and Article 20 of the Asylum Law on asylum, an ad hoc administrator or a guardian is to be appointed by the guardianship judge to assist, represent and look after the needs of child victims throughout the procedure. The Judicial Police identifies the minor as a presumed victim and conducts the examination required to prove that he or she is a minor. The victim benefits from the amended Law on Youth Protection. The minor is then taken into care on an ambulatory and stationary basis by the SAVTEH and COTEH support services. Child victims are entitled to support until their majority. They have access to the educational system.

A guardian is appointed to deal with day-to-day matters.³⁰ If the child victim is already in a facility for unaccompanied minors, he or she will be placed as soon as possible by the support services in a facility approved by MEGA or the MENJE alongside minors in distress or victims of violence which is better suited to the specific needs of child victims of trafficking.

The Government Council has decided to create a commission whose function is to assess the best

interests of foreign unaccompanied minors applying for international protection, in view of the fact that the Immigration Law stipulates that a return order may only be taken for an unaccompanied minor if such removal is in their interest without, however, specifying how to determine the child's best interest. This Commission will include the child's representative and representatives of the ministries and services concerned. It will also be responsible for conducting an individual assessment of the child's best interest in order to be able both to issue a return order and remove child applicants whose status is illegal and to issue them a residence permit.³¹

12. Training of the parties involved

To enable the detection of victims of trafficking in human beings, the parties involved must be made aware and receive specialised training in order to recognise the constituent elements of trafficking.

The amended Law of 8 May 2009 stipulates that the members of the police specialised in the fight against trafficking, the Directorate of Immigration and the support services should receive specific training.

Training courses have been organised on a regular basis since the end of 2016. The Ministry of Justice, the MEGA, the Judicial Police Department and the two support services for victims of trafficking provide basic training on trafficking in human beings to all interested agents of the State at the National Institute of Public Administration (Institut National d'Administration

Publique - INAP). These sessions are attended in particular by a part of the staff of the Detention Centre as well as by members of the police, Customs and the ITM, the OLAI, the municipalities' social offices, by the staff of accommodation facilities for adults and children in distress approved by the State, and by reception facilities for applicants for international protection. These will be continued in 2018. In-depth training on detecting victims of trafficking organised and funded by the MEGA³² has also been set up. Various agents of the State have also followed specific training tailored to their respective fields of expertise given by NGOs and institutions abroad (ITM, judicial authorities, Police, NGOs).

There is also an increasing number of seminars and/or working groups that are organised internationally with the cooperation of several Member States with the aim of sharing experiences and reviewing other States' approaches. These events can be considered as highly beneficial because cooperation at European (or even international) level is encouraged and can only improve the knowledge of trafficking in human beings.

An information and awareness campaign on the phenomenon of trafficking in human beings was launched in December 2016 by the Committee for monitoring the fight against trafficking in human beings. The campaign is intended to be sustainable, with a two-pronged overall message: it is about making the general public aware and informing it about the various forms that trafficking in human beings can take in order to increase awareness of the trafficking phenomenon in citizens' day-to-day lives. The emphasis was placed on an audiovisual media campaign that included radio advertisements, screenings in cinemas and

a poster campaign targeting various aspects of trafficking. It also manifested itself online by the creation of the website www.stoptraite.lu and a social media presence.



The website informs the general public and actors in the field about the phenomenon of trafficking in human beings, its various forms and enables them to take action by contacting either the police or the two support services, the SAVTEH and COTEH.

The campaign was relaunched in the summer of 2017.

It should be noted that the above-mentioned training courses and campaigns are in response to one of the various measures adopted by the above-mentioned National Action Plan against trafficking in human beings.

13. Conclusion

This report on victims of trafficking shows that Luxembourg, like most Member States, has implemented a system that enables victims of trafficking in human beings to be detected, identified and directed towards the appropriate procedures. Victims detected during international protection and forced return procedures are few, however. This raises the question of the number of victims that are not detected and who are then deprived of their rights.

In practice, there are still shortcomings, particularly in terms of proactive detection and training of the parties involved.

However, the Luxembourg government has adopted a proactive stance in order to resolve these issues by adopting and implementing the National Action Plan against trafficking in human beings, the “Prostitution” action plan and the statement of intent containing actions and measures aimed at increasing Benelux cooperation with regard to trafficking. Based on the exchanges that took place during the reflexion days, the three countries pledged to enhance cooperation between victim reception and support centres, the judicial authorities, the police, immigration and integration services as well as the social and labour inspectorates.

1 The EU strategy to eradicate trafficking in human beings for the period 2012-2016, COM(2012) 286, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:FR:PDF>

2 As of 22 August 2016, 26 Member States had transposed the Directive into national law. See answer given by Mr. Avramopoulos to a Parliamentary question (E-004074/2016).

3 Articles 382-2 of the Penal Code.

4 Articles 71-2 of the Penal Code.

5 Response by the Justice Minister to Parliamentary question no. 2239.

6 http://www.mj.public.lu/services_citoyens/stop_traite/Plan_action_national_traite.pdf

7 The bill was approved and became the law of 28 February 2018 on strengthening the fight against prostituting, procuring and trafficking human beings for sex and amending: 1) the Code of Criminal Procedure; 2) the Penal Code.

8 <http://www.mega.public.lu/fr/societe/prostitution-traite-etres-humains/index.html>

9 See Ministry of Justice; The Benelux Justice Ministers wish to increase cooperation with regard to the fight against trafficking in human beings, 2 December 2016. <http://www.benelux.int/files/5814/8067/7039/signedocument.pdf>

10 Benelux, Information leaflet on Benelux cooperation on the reception of victims of trafficking in human beings, Brussels, November 2015, p. 14.

11 Article 1 of the Code of Criminal Procedure.

12 Benelux, Information leaflet on Benelux cooperation on the treatment of victims of trafficking in human beings, Brussels, 2016, p. 16.

13 Article 93 of the amended Law of 29 August 2008 on free movement of persons and immigration.

14 Law of 18 December 2015 on international protection and temporary protection.

15 Article 19 (1) of the Law of 18 December 2015.

16 Article 3, paragraph 2 of the amended Law of 16 December 2008 on the reception and integration of foreigners in the Grand Duchy of Luxembourg.

17 Article 19 (1) of the Law of 18 December 2015 on international protection and temporary protection.

18 <http://legilux.public.lu/eli/etat/leg/loi/2009/05/08/n1/jo>
<http://legilux.public.lu/eli/etat/leg/loi/2014/04/09/n1/jo>

19 Benelux, Information leaflet on Benelux cooperation on the treatment of victims of trafficking in human beings, Brussels, 2016, p. 20. These services are defined by the Law of 8 May 2009 on support, protection and security for victims of trafficking in human beings. They are managed by NGOs under contract to the State on the basis of the amended Law of 8 September 1998. The agreement for ambulatory services or the supplementary agreement for stationary support services for victims of trafficking is granted on the basis of the Grand-Ducal Regulation of 11 September 2014, on 1. Execution of Article 2, paragraphs (1) points a) and (2) and (4) of the Law of 8 May 2009 on support, protection and security for victims of trafficking in human beings

2. Amendment of the Grand-Ducal Regulation of 19 March 1999 on the granting of government approval for managers of services for women, girls, women and children and the amended Grand-Ducal Regulation of 19 March 1999 on the granting of government approval for managers of services working in the interest of equality for men and women.

20 Benelux, Information leaflet on Benelux cooperation on the treatment of victims of trafficking in human beings, Brussels, 2016, p. 21.

21 Grand-Ducal Regulation of 10 March 2014 on the composition, organisation and operation of the Committee for monitoring the fight against trafficking in human beings.

22 Article 10 of the amended Law of 8 May 2009 on support, protection and security for victims of trafficking in human beings and which amended the new Civil Procedure Code.

23 Some points in this summary report are nonetheless relevant for victims identified outside international protection procedures, particularly in terms of residence permits (for victims that are third-country nationals) and support measures.

24 Article 19 (2) of the Law of 18 December 2015 on international protection and temporary protection

25 Article 19 (3) of the Law of 18 December 2015 on international protection and temporary protection

26 Response by the Justice Minister to Parliamentary question no. 1160 of 19 June 2015.

27 Article 1 of the Grand-Ducal Regulation of 11 September 2014.

28 Since 1 January 2014: Regulation (EU) No. 604/2013 of the European Parliament and Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (revised), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:FR:PDF>

29 Advisory Commission on Human Rights, Report on trafficking in human beings in Luxembourg, Luxembourg, 2017, p. 5.

30 Article 3 of the amended Law of 9 April 2009.

31 Government Council, Summary of work, 7 July 2017, published on 7 July 2017.

32 It is called „Approaching and working with the victims of trafficking, the worker's attitude and understanding of the phenomenon“ and is given by Christian Meulders, the manager of the not-for-profit organisation SÛRYA (a social organisation in Liège, Belgium, specialised in the reception, support and shelter of victims of international trafficking in human beings).

Key publications:

- **Coopération Benelux en vue de l'accueil des victimes de la traite des êtres humains**
- **Stratégie gouvernementale en matière de la prostitution au Luxembourg,**
Ministère de la Justice
- http://www.mj.public.lu/services_citoyens/stop_traite/index.html,
Ministère de la Justice
- www.stoptraite.lu

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