

Guide of Promising Practices / Long — term protection for trafficked persons.

- Granting residence permits to trafficked persons
- Protection of victims of trafficking in asylum systems
- Rights of trafficked persons under Dublin III Regulation
- Special role of NGOs





Published by:



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Why?

Starting from the identification of gaps and barriers in the effective protection of trafficked persons, the guide shares promising existing practices in line with a coherent referral to the most appropriate channel of protection securing their rights and access to a durable solution.¹ Trafficked persons’ access to long term or permanent residence is critical for their safety, stability, and future perspective. The regularisation of their stay is an integral part of their right to effective remedies and access to justice and it should be granted in the practice.

Which problems is this guide targeting?

This guide concentrates on the gaps identified in the effective access to a long-term protection for victims of trafficking. The international and European standards lay out a solid base to ensure the safety and protection of victims and to provide them with assistance. The guide targets the issue of an effective access to a regular stay and protection, focusing on both residence permit scheme and international protection systems.

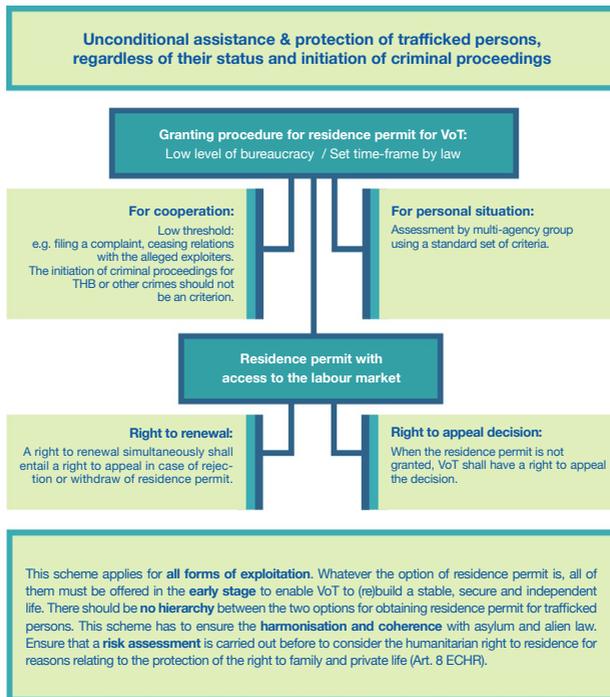
How and whom will this guide help?

This guide is directed to practitioners working directly with trafficked persons, legal counsellors in aliens’ law and asylum law as well as deciding authorities. The guide highlights crucial aspects in order to ensure the access to rights for victims of trafficking. The first part covers important steps that have to be considered in terms of a temporary residence permit for trafficked persons. The second one calls attention to the gaps in granting international protection to trafficked persons.

1 For a more detailed description of the challenges identified, please consult the full Policy Paper: http://www.lefoe.at/tl_files/lefoe/REST_Policy%20Paper%20January%202021.pdf

Granting residence permits to trafficked persons

In line with Art. 14 of the Council of Europe Convention², each Party shall issue a renewable residence permit to victims of trafficking, either because the authorities consider that their stay is necessary owing to their personal situation, or for the purpose of their cooperation with the authorities in investigation or criminal proceedings, or both³. The research carried out by the REST project⁴ illustrates a promising model, which considers both pathways to a residence permit and it presents a scheme respectful of victims' rights.



2 Council of Europe Convention on Action against Trafficking in Human Beings (2005). Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>

3 Out of the 42 countries evaluated by GRETA during 2019, 22 had legislation envisaging the issuing of residence permits to Victims of Trafficking, both for their personal situation and for cooperation with law enforcement. 9th General Report on GRETA's activities (2019), available at: <https://rm.coe.int/9th-general-report-on-the-activities-of-greta-covering-the-period-from/16809e169e>

4 REST full research: <https://documentation.lastradainternational.org/lsidocs/3387-REST%20Report%20Residence%20Permits%20-%20International%20Protection%20and%20Victims%20of%20Human%20Trafficking%20-%20FEB%202021.pdf>

In order for the model to be promoted and implemented, the following examples of promising practices used in different European countries in each of its stages have been identified:

Harmonization law

In line with a Human Rights approach, the national legislation needs to be harmonized with international and European standards both in the anti-trafficking and human rights field. This includes assuring the access to both grounds (personal situation and cooperation) within the residence permit scheme that is applicable for all types of exploitation. In the Netherlands, Serbia and Spain the national legislation explicitly provides both possibilities⁵.

Promising Practice on Harmonization of law from Spain:

 As in **the Spanish law**: *“The competent authority may declare the victim exempt from administrative responsibility and may provide, at their choice, the assisted return to their country of origin or residence and work authorisation in exceptional circumstances when it is deemed necessary because of their cooperation for purposes of the investigation or criminal actions, or in response to their personal circumstances, and facilities for their social integration, in accordance with the provisions of this law. Similarly, as long as the residence and work authorisation procedure is granted because of exceptional circumstances, a provisional residence and work authorisation may be provided under the terms set by the regulation (...).”* (Ley Orgánica 4/2000. Art. 59bis, underline is from the authors)

Provision of information

The first step while presuming a situation of trafficking is to **inform** the person about all the possibilities available, including having access to a recovery and reflection period, a temporary residence permit for reasons of cooperation and/or for reasons related to his/her personal situation, as well as his/her prospects of being granted asylum or subsidiary protection, or of a safe and dignified return to the home country. This information should be provided in clear and accessible manner for all presumed trafficked persons. In Italy, for example, there are multi-lingual leaflets with information about the rights as victim of trafficking which facilitates its understanding.

5 In France, the law provides for the option of granting a temporary residence permit to trafficked persons who do not cooperate with the judicial services but this is available only to victims of trafficking for the purpose of sexual exploitation, who commit to a “process of exiting prostitution”.

Unconditional assistance and recovery and reflection period

Presumed trafficked persons should receive the guaranteed support and assistance free of charge, using a human rights-based approach and based on the principles of voluntariness and anonymity. Irrespective of their decisions, victims of trafficking have the right to receive **unconditional support and assistance**, regardless their status in the country of residence and/or their willingness to cooperate with the authorities.

Once there are reasonable grounds to believe that the person is trafficked, states must provide the person with a recovery and reflection period, offering them time and space to recover and escape the influence of their traffickers. It also grants the opportunity for victims to decide on their options. This right should be **explicitly included** in the national legislation and the practitioners in contact with victims should be aware of that provision. .

Promising Practice on unconditional assistance in Austria:

 *In Austria, the recognized victim protection facility offers unconditional support, based on the principles of anonymity, voluntariness and free of charge accordingly to the permanent contract with the Austrian State. This allows the victim protection facility to offer all services, irrespective of the victims' willingness to cooperate with authorities.*

Low threshold for the application and determination of the residence permit

The procedure of granting residence permits for trafficked persons on both grounds needs a low level of bureaucracy, with clear criteria that are regulated by law. In addition, it needs control mechanisms for the implementation of those criteria in practice. The two main challenges are obligatory conditions often stipulated by national law - the level of cooperation expected and the availability of identity documents of the victim. Two promising practices from the Netherlands and Spain can offer alternatives to tackle those obstacles.

Promising Practices on applying low level bureaucracy for victims of trafficking from the Netherlands and Spain:

 *The Dutch residence system keeps bureaucratic hurdles at a low level. The statement of a victim with the police is automatically considered to be an application for a residence permit and the competent authority has to decide within 24 hours.*

 *In **Spain**, the requirement of a valid passport could be replaced by a registration card, provided by the government for the first identification, to allow victims to access support and more time to obtain their identity documents*

— Assessment of individual situation

In some cases, trafficked **persons cannot cooperate due to exceptional circumstances**, because of serious threats against them and/or due to medical or psychological constraints or due to being a minor. It is necessary to take into consideration their safety and state of health.

Promising Practices on the assessment the individual situation from the Netherlands and France:

 *In **the Netherlands**, a temporary residence permit can be granted (Schrijvend Pad) when victims face threats or suffer trauma and psychological problems resulting from the trafficking situation and therefore cannot be expected to cooperate with the authorities.*

 *In **France**, a case study showed how coordination between specialised police and NGOs on trafficked cases has helped to protect the victims and grant them a ‘Humanitarian residence’ in case the investigation was unsuccessful. This was made possible by the good communication between CCEM and the contact point in the Paris prefecture and the specific involvement of the Central Office for Combating Illegal Labour (OCLTI).*

— Multi-disciplinary approach

To ensure there is no hierarchy between both types of residence permits, neither that a law enforcement approach prevails over the protection of the victim, **multi-agency actors** should be included in the assessment of the personal situation and the decision-making process. In France there are focal points of administrative authorities in all provinces who determine these procedures of granting residence in exchange of cooperation. As for granting a residence permit considering the personal situation, the involvement of different agencies in the decision-making process allows an assessment of the highly complex and individual situation of trafficked persons.

Social inclusion

A central point on the assistance of the victim of trafficking is the **access to the labour market**. Therefore, the residence permits for victims of trafficking should offer the full access to the labour market without the need for an additional working permit, and without any restriction on branch, sector, etc. Both the residence and work authorisation should be stated in the document, but not their status as victim of trafficking.

Promising Practices on social inclusion from the Netherlands, Serbia, and Spain:

 *In the Netherlands, the residence permit issued for THB victims ensures the access to all services and assistance on the same footing as Dutch nationals.*

 *In Serbia, there is a Memorandum of understanding between the Centre for the Protection of Victims of Trafficking, responsible for the identification of victims, and the National Employment Agency which should give trafficked persons priority access to employment programs.*

 *In Spain not only the access to the labour market is ensured, but also the access to government funded labour market integration measures. To facilitate the labor insertion of women victims of gender violence, including victims of trafficking for sexual exploitation, the law provides bonuses for companies to hire them.*

Long-term protection in residence schemes

There are some promising practices of offering a residence permit for a **long-term stay** for victims of trafficking, based on relevant provisions of the special scheme for trafficked persons or through a compatibility with the general alien's law and the asylum systems (e.g. France, Italy and Spain).

Promising Practices on long term protection in residence schemes from Spain, France and the Netherlands:

 *In **Spain**, a definitive residence and work permit for 5 years is ruled by law.*

 *In **France**, trafficked persons may apply for a permanent residence permit if the prosecution ended with a conviction of traffickers.*

 *In **the Netherlands** victims of THB with a temporary residence permit can apply for a permanent humanitarian residence permit when the Public Prosecution*

Service has decided to prosecute in respect of the reported criminal offence. Also, after holding a residence permit without interruption for at least 3 years on the grounds of THB and the criminal investigation is ongoing.

Rights to appeal

Because of the very nature of a temporary residence permit - it will expire at a certain point - once the requirements for its issuing are no longer met. However, considering the entitlement of such a residence permit as a right of the person, the appeal in front of a higher instance to review the first administrative decision must be ensured.

Risk assessment

The return of trafficked persons to their country of origin is regulated both by UN and CoE standards. Where repatriation would pose a serious risk for the safety of victims of trafficking or their families, states are required to provide legal alternatives⁶. A **risk assessment** should be done prior to a deportation, considering the country of origin but also and especially, the individual circumstances, as risks upon return (such as reprisal by traffickers, prosecution or an open debt), as well as the prospects of social reintegration in line with the protection of the right to family and private life.

Promising Practice on risk assessment from the Netherlands:

 **The Dutch** residence scheme for trafficked persons has established a form of risk assessment in line with the CoE Convention on Action against Trafficking in Human Beings. When the risk is met, victims of trafficking can apply to a residence permit on humanitarian grounds.

6 See OHCHR (2010), Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary, HR/PUB/10/2, Principle 11.

Protection of victims of trafficking in asylum systems

The system of international protection in international law has a potential of long-term protection for victims of trafficking. Handling asylum claims of trafficking victims is complex due to the vulnerability of trafficked persons. Good practices on the implementation of procedural guarantees along the different stages of the asylum procedure show some promising ways to tackle the challenges towards a coherent implementation of this legislative framework. Furthermore, they show ways to deal with asylum seekers that are victims of trafficking.

Determination of International protection for victims of trafficking

Victims of trafficking should have the possibility to obtain a refugee status, when the individual situation requires it.

In Austria, Italy, France, Germany, Serbia, Spain, UK, the refugee status has been granted to trafficked persons, based on the determination of a causal link between a persecution, or the absence of state protection, and one of the 1951 Refugee Convention grounds, belonging the person to a particular social group. Also, in various cases, the determining authority considers the severity of discrimination of victims of trafficking for the specific purpose of sexual exploitation, who may lack of State protection and be rejected and or punished by their families and stigmatised in their communities, finding themselves in an intolerable situation amounting to persecution.

There are also promising examples on complementary protection on account of a risk of serious harm and a lack of effective protection in case of return to their country of origin. Being a victim of trafficking and reporting the situation to the police, might expose the person at heightened risk of serious harm.

Cooperation with specialised victim protection organisations

The determining authorities should appraise the vulnerability, fears and trauma of victims of trafficking and the particular challenges they face. This appreciation

and understanding can be strengthened by a **cooperation and communication** between the specialised NGOs and the asylum authorities. NGOs supporting and explanatory documentation can contribute to substantiating the individual claim of the trafficked person and to establishing the nexus element of the claim by proving insightful information on the conditions in the country of origin, the influence of traditional practices (e.g. Jujú), gender awareness and the government's unwillingness or inability to protect the person.

Promising Practices on the access to support from specialised organisations in Austria, France, and Spain:

 *In many positive cases of **Austria**, **France** and **Spain**, the trafficked person was supported both by a victim support NGO and by an NGO specialised in providing legal aid to asylum seekers. The combination of victim support (shelter, counselling, psychosocial assistance) and specialised legal assistance is effective in responding to the specific need of trafficked asylum seekers.*

Recognition of victims of trafficking as vulnerable groups

While recognising the growth of human trafficking in mixed migration flows, it is important to harmonize the anti-trafficking law and the migration law, i.e. to explicitly refer to **victims of trafficking as vulnerable groups** entitled to special procedural and reception guarantees in asylum procedures⁷. In the implementation of the relevant provisions of national legislation, the vulnerability assessment should be done on an ongoing basis, given that some special needs may emerge at different stages of the asylum process.

Early identification

The condition to provide support and procedural guarantees is the detection and identification of special needs. Thus, the **screening and identification** are essential in every stage of the asylum procedures (registration, reception, lodging of the application, personal interview, pre-removal detention), in which a multi-agency approach is encouraged to, among others, establish a level of trust with the victims of trafficking. The sooner the identification takes place, the better the specific needs can be assessed.

Promising Practices on the early identification of trafficked persons in asylum procedures in France, and Spain:

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As per the Reception Conditions Directive (RCD) and the Asylum Procedures Directive (APD)

 An experience of 2019 in **Spain** exemplifies this idea. The Department of Migration of the Ministry of Labour, Migration and Social Security launched a pilot procedure for the detection of indicators of trafficking and referral to support of presumed trafficked persons seeking asylum at the Madrid Barajas Airport. It was based on cooperation between the Asylum Office and five NGOs with the objective to ensure a timely referral and access to support. Where asylum officers detect signs of trafficking among asylum applicants, they inform the Red Cross, who then contacts one of the specialized NGOs in assistance to victims of trafficking to assess his/her situation and confirm whether there is evidence of trafficking. In a further stage of the asylum procedure, Austria shows a promising practice regarding the contact to presumed victims of trafficking in pre-removal detention centres. These referrals are a positive outcome of efforts invested in multidisciplinary training of asylum officers and staff from reception and detention centres, as well as NGOs offering legal advice.

 In **France**, the law requires that where asylum applicants are victims of trafficking, the competent authority OFII should consider their special needs in determining their reception conditions. It is also possible for OFII to refer trafficked asylum seekers either to facilities of the National Reception and Protection Programme for Victims of trafficking (AC.Sé) or to other specialised victim support NGOs

Recognition of all forms of exploitation

The awareness and recognition of indications of trafficking might embrace all types of exploitation. This could be reached through **trainings** (with dedicated tools and guidelines) to the actors in the asylum system. Moreover, the guarantees for the personal interview under the Asylum Procedure Directive (APD)⁸, are particularly relevant to enable victims of trafficking to speak about their experience and to identify the specific circumstances of trafficking.

Promising Practices on trainings for asylum actors from Austria and the Netherlands:

 In **Austria**, the specialized NGOs is actively involved in the development and holding of trainings for actors in the asylum system. There are also ongoing efforts from NGOs in cooperation with the European Asylum Support Office to tackle the gaps in the asylum system regarding vulnerable applicants.

 In **the Netherlands**, relevant actors are regularly trained and provided with

specific indicators and tools to detect signs of trafficking in human beings. For example, a toolkit has been developed through the STEP Project involving the Central Agency for the Reception of Asylum Seekers, the Dutch Red Cross, the Dutch Refugee Council and the specialised anti-trafficking NGOs CoMensha and Nidos.

Referral and early assistance

Upon the detection of indications of trafficking, a proper **referral** to victim support facilities should take place in order to inform the person on the rights and options both as victim of trafficking and as vulnerable asylum applicant and, if needed, to provide assistance and protection, responding appropriately to the victim's health, psychosocial and legal needs.

A proper **legal assistance**, familiar with both the asylum regime and trafficking framework should be provided in cases of asylum applicants being trafficked. Trafficking in human beings is a complex crime, coupled with trauma experienced by the individuals, which makes a proper examination on the merits of the claims necessary. The cooperation and coordination between providers of legal assistance in asylum and victims' support organisations is therefore highly recommended, since the consultation of experts can be crucial in fostering a proper understanding of victims' behaviour and in assessing their credibility.⁹

Respecting procedural rights in asylum procedures under anti-trafficking laws

Ensuring **fair and efficient asylum procedures** is essential in the process of determining an individual's need for international protection. These include, among others, the reception conditions, and the possibility of exempting the applicant from accelerated procedures.

In this process, a **compatibility** between the protection system for victims of trafficking (including the specific residence permit scheme) and the asylum system is crucial, as well as the cooperation between the asylum actors, the National Referral Mechanism (or similar mechanism) and the specialised agencies and organisation.

Promising Practice from Spain:

 *In Spain, the two protection frameworks can run in parallel. An example illustrates the importance of this: a trafficked person escaping an exploitative situation may be exposed to the risk of retaliation by their traffickers, because of a debt or due to his/her cooperation with the police. While the requirements for a residence*

9 APD, Art. 10d.

permit might not be met any more, he/she might seek for international protection due to the risk of suffering serious harm in case of return.

Rights of trafficked persons under Dublin III Regulation¹⁰

As each asylum claim lodged within the EU territory undergoes a jurisdiction examination, it is crucial to observe the implementation of the Dublin III Regulation on victims of human trafficking.

On the **identification** of presumed trafficked persons, promising practices exclusively come from the referral of the organisations working in pre-removal facilities to the specialised NGOs. This takes place, for instance, in France with the notification from CIMADE to specialised anti-trafficking NGOs for further assistance. Also, in Austria, where upon notification, the specialised NGO arranges an appointment with the woman in the detention centre and informs her about her rights and possibilities in Austria and depending on her decision, further steps are taken.

As an obligation of the states, victims of trafficking should be granted a **reflection and recovery period**. During this period, the person shall not be removed and should be entitled to assistance in the physical, psychological, and social recovery.

A trafficked asylum seeker might be in danger if returned under Dublin III to the country of exploitation. Either because of the risks assessed in the interpretation of Art. 3 & 4 of the ECHR¹¹, or because of an ongoing investigation in the country, the states shall make use of the **Art. 17 on Sovereignty** (Dublin III), which permits a Member State to take responsibility for examining an application, on a discretionary basis, even if it is not responsible under the criteria laid down in the same regulation.

Promising Practices on suspended Dublin III procedures from Austria and, France:

 *In Austria, several removals under Dublin III were suspended due to an application of a residence permit as victim of trafficking (with an ongoing investigation). By suspending the removal decision, Austria recognises the full competence of the asylum claim.*

 *In France, Dublin transfers have been suspended to avoid the risk of infringing*

10 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 27 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 stateless persons. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0604-20130629&from=EN>

11 European Convention on Human Rights (2010), Art. 3 on Prohibition of Torture and Art. 4 on Prohibition of slavery and forced labour.

The **legal assistance** is crucial from early stages to assist victims of trafficking in understanding the procedure and to let them provide relevant information about their trafficking experiences and the risks they may face in case of transfer to the first country of entry. The legal representation ensures the possibility to timely appeal and to present arguments and facts against a Dublin removal to the first country of entry.

The existence of a real risk of serious harm needs to take into account the personal circumstances of the applicant. A proper **Risk-Assessment** is, thus, compulsory for the state to ensure compliance with non-refoulement obligations. Promising practices have been seen in cases where the assessment of the real harm takes into account the personal situation of the applicant and the evidence submitted by reputable NGOs, together with the information that the states must gather regarding risks upon return. The determining authority should include the specific information regarding the situation of victims of trafficking in the country of origin in their **country reports**.

When the **transfers to another EU country** take place, an exchange of information and coordination of assistance to respond to the specific reception, health and safety needs as victims of trafficking is decisive. Currently, where this exchange of information happens, it is mainly due to the cooperation among NGOs. The Dublin Units have to ensure the **continued protection within the EU**. More cooperation of Dublin Units with specialised NGOs is encouraged, proactively ensuring the information on reallocation, follow-up on adequate reception of the country of reception, etc.

Special role of NGOs

Many countries are already carrying out **trainings** on trafficking in human beings to different police units and actors involved in the grant of residence permits and asylum. It is encouraged to focus on shared initiatives, where the specialised NGOs are involved in these trainings, as well as establish a system of monitoring on those trainings to evaluate their impact. Trainings should target a double effect: Raising awareness and sensibilisation on the one hand but also strengthening the responsibility (and accountability) of every actor in contact with a trafficked person.

 *The **Austrian** experience showed a positive impact on the identification of VoT with an ongoing asylum claim, with an increase of referrals from authorities, lawyers, reception centres due to trainings efforts.*

The analysis and further lobby initiatives are built on the knowledge and practice of NGOs supporting trafficked persons. A systematic **collection of data**¹² provides the possibility of making arguments, recognising where changes are needed, reflecting on the achievements in the recent years and identifying changing trends. For example: monitoring the Dublin removals among the beneficiaries of each organisation is encouraged. This practice of collecting – and systematising – data strengthens the advocacy for the implementation of existing provisions.

The **cooperation between NGOs assisting asylum claims and anti-trafficking NGOs** is crucial for the protection and support for trafficked persons, as well as for the understanding of such a complex phenomenon as trafficking. Coordinating the legal aid and assistance, as well as providing the expertise of trafficking as supportive document of the asylum claims, could have a significant effect on the protection of trafficked persons.

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In line with the General Data Protection Regulation (GDPR) of the European Union.

