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Best interests of the child e tutela dei diritti dei minori nell'Unione europea

Il Focus contiene la versione, rivista e integrata, di alcune delle relazioni tenute nel corso del Seminario intitolato "Povertà e diritti dei minori" promosso dai Gruppi di interesse "Diritto internazionale ed europeo dei diritti umani" e "Diritti fondamentali e cittadinanza nello spazio europeo di libertà, sicurezza e giustizia" in occasione del Convegno SIDI 2024 di Palermo

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NEW PATHWAYS TO TRAFFICKING VICTIMS' PROTECTION? INTERSECTIONS AND SYNERGIES BETWEEN THE EUROPEAN PACT ON MIGRATION AND ASYLUM AND DIRECTIVE (EU) 2024/1712 FOR THIRD- COUNTRY NATIONAL VICTIMS

Georgina Rodríguez Muñoz*

SUMMARY: 1. Introduction. – 2. The impact of Directive (EU) 2024/1712: new horizons in complementing the trafficking and asylum systems. – 3. The European Pact on Migration and Asylum: a turning point for irregular third-country national victims of human trafficking? – 4. Final reflections.

1. Introduction

Human trafficking and migrant smuggling are two interconnected phenomena that have historically coexisted, often occurring simultaneously or stemming from similar underlying root causes. These causes frequently include the pursuit of new opportunities, as well as factors such as poverty and instability in the country of origin¹. Nevertheless, despite their shared characteristics, including the violence inflicted upon victims and, in some instances, their transnational nature, human trafficking and migrant smuggling are fundamentally distinct concepts.

The connection between human trafficking and migrant smuggling can be traced back to the approach taken by the United Nations, which was the first international organization to regulate both phenomena collectively². This endeavour occurred in 2000 through the establishment of two distinct Protocols under the United Nations Convention

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¹ INTERNATIONAL ORGANIZATION FOR MIGRATION, *Migrants travelling to Europe by land and by sea: journeys, vulnerabilities and needs of migrants arriving in Greece, Italy, and Spain*, 2023. The questionnaire also included a section to gather information on the risks migrants face, as well as any abuse, violence, or exploitation they may have encountered or observed on their journey. This part of the survey has eight specific questions that ask whether the respondent worked without fair pay, was forced into work, was offered in marriage (either themselves or a close family member, like a child or sibling), was held against their will, experienced physical violence, was coerced into traveling, was misled into traveling, or had limited access to travel documents. Around 56 percent reported experiencing at least one of these situations.

² A.T. GALLAGHER, *The International Law of Human Trafficking*, Cambridge, 2010, pp. 16-19.

Against Transnational Organized Crime³: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children⁴, and the Protocol against the Smuggling of Migrants by Land, Sea and Air⁵. Indeed, as Anne T. Gallagher emphasizes, it was the necessity to distinguish between these two phenomena that prompted the United Nations to establish a separate protocol for each figure⁶.

This initial connection has led to the inclusion of human trafficking sections in many political initiatives focused on regulating migration, despite the legal definitions and distinctions between the two phenomena. Consequently, efforts to address one often encompass elements related to the other. And the European Union is no exception⁷. From its earliest political initiatives, it integrated human trafficking into the management of migratory flows and its migration and asylum policies⁸. This approach has been consistently maintained in subsequent regulations. Similarly, the European Union's anti-trafficking framework has often been linked to migration issues. By associating human trafficking with irregular migration, this approach not only reinforced a securitarian and criminal perspective on trafficking regulations but also overlooked trafficking among European citizens⁹. The latest legislative developments in both areas are consistent with this trend.

On the one hand, the European Union's anti-trafficking instruments frequently include specific provisions concerning victims of trafficking who are third-country nationals. For instance, the recently adopted Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024, amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, incorporates some references to it¹⁰. Jointly, another paradigmatic example is Council Directive 2004/81/EC of 29 April 2004, on the residence permit issued to third-country

³ United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, UNTS vol. 2225, n. 39574, p. 209.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, complementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, UNTS vol. 2237, n. 39574, p. 319.

⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air complementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, UNTS vol. 2241, n. 39574, p. 480.

⁶ A.T. GALLAGHER, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, in *Human Rights Quarterly*, 2001, n. 23, pp. 975-1004.

⁷ Some examples include the renewed Action Plan of the European Union against Irregular Migration Trafficking (2021-2025), the New Pact on Migration and Asylum (2024), and the EU Strategy for a Security Union (2020).

⁸ M. BORRACCETTI, *Il contrasto alla tratta di persone a partire dal Consiglio europeo di Tampere 199: attualità e criticità*, in M. GIOVANETTI, N. ZORZELLA (a cura di), *Ius Migrandi. Trent'anni di politiche e legislazione sull'immigrazione in Italia*, Milano, pp. 686-702.

⁹ By way of example, the latest available statistics show that, in 2022, for the European Union as a whole, 25.1% of the recorded victims came from the reporting State, while 11.8% came from other European Union member States and 63.1% from non-European Union member States. Eurostat, *Trafficking in human beings statistics*, 2024.

¹⁰ Directive (EU) 2024/1712 of the European Parliament and of the Council, *amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, of 13 June 2024, in OJ L, 24 June 2024.

nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities¹¹. The very title of the regulatory instrument already conveys a functional view of the victim, linking human trafficking to irregular migration, a common trend within the European Union¹². This association has been the subject of repeated criticism¹³.

On the other hand, following lengthy and intense negotiations, the European Pact on Migration and Asylum was adopted in May 2024¹⁴. This so-called Pact represents a collection of regulatory instruments aimed at transforming the European migration and asylum system. Many of these instruments include specific provisions addressing the situation of human trafficking victims, particularly those who find themselves in an irregular situation within the European Union. Notably, the new Regulation (EU) 2024/1351 on asylum and migration management¹⁵, which supersedes the previous Dublin system, introduces, for the first time, an exception specifically for victims of human trafficking, as Professor Francesco Maiani observes¹⁶. Similarly, other regulations that are part of the Pact also address the vulnerabilities of individuals seeking international protection who may be potential victims of human trafficking.

Considering the entire applicable legal framework concerning victims of human trafficking who are in an irregular situation within the European Union, this study aims to analyse the legislative advancements introduced by the instruments derived from the European Pact on Migration and Asylum, along with the amended anti-trafficking Directive. Additionally, it seeks to evaluate the interconnections and synergies between these frameworks in enhancing the protection of these particular victims of human trafficking who find themselves in a highly delicate and vulnerable situation, often facing

¹¹ Council Directive 2004/81/EC, *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, of 29 April 2004, in OJ L 261, 6 August 2004, pp. 19-23.

¹² L. PALUMBO, *EU Instruments on Labour Exploitation and Trafficking: Preventing, Protecting, or Amplifying Situational Vulnerabilities?*, in L. PALUMBO (ed.), *Taking Vulnerabilities to Labour Exploitation Seriously: A Critical Analysis of Legal and Policy Approaches and Instruments in Europe*, pp. 113-142. As Palumbo notes, the Explanatory Memorandum for the Council Directive 2004/81/EC emphasized that the legal foundation of the Residence Permit Directive – formerly Article 63(3) of the Treaty establishing the European Community, now Article 79 TFEU – pertains to immigration policies focused on entry and residence conditions, along with efforts to combat irregular immigration and trafficking.

¹³ S. MARCHETTI, L. PALUMBO, *10 Years After the Directive 2011/36/EU: Lights and shadows in addressing the vulnerability of trafficked and exploited migrants*, in *Population and Policy Brief*, 2022, 33, Max Planck Society/Population Europe; La Strada International, *States should offer trafficked persons access to a residence permit on personal grounds*, 2022.

¹⁴ A rigorous analysis of the instruments composing the Pact can be found in the *EU Immigration and Asylum Law and Policy* blog at <https://eumigrationlawblog.eu/>. For a general analysis, see: P. DE BRUYCKER, *Genealogy of and futurology on the pact on migration and asylum*, in *EU Immigration and Asylum Law and Policy*, 6 May 2024.

¹⁵ Regulation (EU) 2024/1351 of the European Parliament and of the Council, *on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013*, of 14 May 2024, in OJ L, 22 May 2024.

¹⁶ F. MAIANI, *Responsibility-determination under the new Asylum and Migration Management Regulation: plus ça change...*, in *EU Immigration and Asylum Law and Policy*, cit.

significant barriers to accessing justice and support services, as well as being at risk of further exploitation and abuse within the context of irregular migration.

2. The impact of Directive (EU) 2024/1712: new horizons in complementing the trafficking and asylum systems

Within the framework of the European Union, the fight against human trafficking has been regulated through various instruments, starting with the initial Council Framework Decision 2002/629/JHA, on combating trafficking in human beings¹⁷, and followed by the adoption of Directive 2011/36/EU, on preventing and combating human trafficking and protecting its victims¹⁸.

Nevertheless, an important legislative instrument that has gone largely unnoticed amidst the adoption of the European Pact on Migration and Asylum during the course of 2024 is the adoption of Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024, which amends Directive 2011/36/EU on preventing and combating human trafficking and protecting its victims¹⁹. As its title suggests, this instrument does not entail a complete overhaul of the European Union system for addressing human trafficking but rather a partial amendment to the key instrument governing the fight against human trafficking in the European Union, which is no other than Directive 2011/36/EU. Consequently, the newly available version of Directive 2011/36/EU encompasses all amendments made through the adoption of Directive (EU) 2024/1712, which came into effect on July 17, 2024.

The legislative process leading to the adoption of Directive (EU) 2024/1712 was characterized by extensive and prolonged negotiations, both interinstitutionally among the Council of the European Union and the European Parliament and internally within these specific European institutions. The intersection of human trafficking and immigration has been a focal point for some of the most vigorous debates, primarily due to the European Union's securitization approach to migratory phenomena²⁰. This

¹⁷ Council Framework Decision 2002/629/JHA, *on combating trafficking in human beings*, of 19 July 2002, in OJ L 203, 1 August 2002, pp. 1-4.

¹⁸ Directive 2011/36/EU of the European Parliament and of the Council, *on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, of 5 April 2011, in OJ L 101, 14 April 2011, pp. 1-11.

¹⁹ Directive (EU) 2024/1712 of the European Parliament and of the Council, *amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, cit.

²⁰ For studies on the securitization of migration and its impacts on victims of human trafficking, refer to: N. MAGUGLIANI, *The securitisation of migration: leaving protection Behind? The "Hotspot Approach" and the Identification of Potential Victims of Human Trafficking*, in *CCJHR Working Paper Series*, 2018, n. 7; C. CHURRUCÁ MURGUZA, *La gestión humana y eficiente de la migración: los hotspots – espacios de detención en las fronteras exteriores de la Unión Europea*, in J. ABRISKETA URIARTE (a cura di), *Políticas de asilo de la UE: convergencias entre las dimensiones interna y externa*, Madrid, pp. 39-68; V. MORENO-LAX, *The "Crisification" of Migration Law: Insights from the EU External Border*, in *Queen Mary Law Research Paper*, n. 403, 2023, pp. 1-31. Violeta Moreno-Lax indicates that other manifestations of policies and laws related to "crisification" may include externalization, "crimmigration" and the "datafication" of border and migration controls.

divergence of views is exemplified by the differing positions held by member States and the various amendments proposed by parliamentarians within the two participating committees: the Committee on Women's Rights and Gender Equality and the Committee on Civil Liberties, Justice and Home Affairs²¹.

To fulfil the primary objective of this study – namely, to explore the synergies between the anti-trafficking Directive and the instruments comprising the European Pact on Migration and Asylum – the following analysis will concentrate on the provisions of Directive (EU) 2024/1712 that pertain to the protection of trafficking victims from third countries within the European Union. Thus, this analysis will not encompass innovations applicable to all victims in general; rather, it will specifically focus on those provisions that have direct implications for victims of human trafficking who find themselves in an irregular situation within the European Union, thereby placing them in a position of heightened vulnerability²².

Directive (EU) 2024/1712, which amends Directive 2011/36/EU, has not constituted a significant advancement in the protection of trafficking victims²³. On the contrary, there has been considerable criticism directed at the European Union for its lack of ambition on such a critical issue²⁴. For instance, the United Nations Special Rapporteur on Trafficking in Persons, Siobhán Mullally, expressed concern regarding the “missed opportunity to strengthen the rights of victims, including the provision of unconditional assistance, effective access to justice, and the rights of residence for migrant and refugee victims”²⁵.

From the statements of the United Nations Special Rapporteur, it can be inferred that Directive (EU) 2024/1712 does not introduce any significant new provisions concerning the rights of trafficking victims. This is particularly evident in relation to victims who are neither citizens nor holders of long-term residence permits in the European Union. In addition to the challenges already associated with their status as victims of human

²¹ All information regarding the legislative procedure can be found by entering the reference: 2022/0426(COD) on the legislative observatory website of the European Parliament: <https://oeil.secure.europarl.europa.eu/oeil>.

²² However, as several studies have highlighted, in most EU countries unconditional assistance is inadequately applied, especially in the case of third-country nationals, see: M. GIAMMARINARO, *L'individuazione precoce delle vulnerabilità alla tratta nel contesto dei flussi migratori misti*, in *Questione Giustizia*, 2018, n. 2, pp. 129-134; S. MARCHETTI, L. PALUMBO, *10 Years After the Directive 2011/36/EU: Lights and shadows in addressing the vulnerability of trafficked and exploited migrants*, cit.

²³ A comprehensive and analytical study on the past and current legislative framework of the European Union in the fight against trafficking and its alignment with International Human Rights Law can be found in G. RODRÍGUEZ MUÑOZ, *La protección de la víctima de trata de personas en el ordenamiento jurídico internacional y su aplicación en la Unión Europea: hacia un estatuto de la víctima*, Girona, 2024.

²⁴ M. GIAMMARINARO, *Revising EU Directive on human trafficking? For bad or good reasons?*, 2021, in <https://giammarinaro.net/>; L. PALUMBO, *EU Instruments on Labour Exploitation and Trafficking: Preventing, Protecting, or Amplifying Situational Vulnerabilities?*, cit.; C. CARRASCO PÉREZ, *La tercera etapa de la Unión Europea en la lucha contra la trata de seres humanos: la Directiva (UE) 2024/1712 del Parlamento Europeo y del Consejo, de 13 de junio de 2024, relativa a la prevención y lucha contra la trata de seres humanos y a la protección de las víctimas*, in *La Ley Unión Europea*, 2024, n. 127.

²⁵ Through her official “X” account, the social network formerly known as Twitter, the rapporteur made a post expressing this concern on May 27, 2024.

trafficking, they face further difficulties due to their precarious situation in the State where they were identified, as they undergo a difficult and uncertain recovery process.

Directive (EU) 2024/1712 remains silent on this issue, referring to Council Directive 2004/81/EC, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities²⁶. As noted in the introductory section, Directive 2004/81/EC embodies a distinctly functionalist approach to the victim, linking human trafficking with irregular migration and granting residence permits solely to those who cooperate with authorities. This approach effectively sidesteps humanitarian considerations in the issuance of residence permits²⁷.

Given the challenges involved in securing residence permits for victims of trafficking who are nationals of third countries, international protection presents itself as an alternative avenue for those victims confronting precarious circumstances concerning their future in the host State²⁸. However, there are studies that demonstrate the complexity of the situation. In several European countries, obtaining access to asylum presents significant challenges for many victims of trafficking, particularly those subjected to labour exploitation²⁹. Furthermore, in many European member States, including Italy, access to assistance, support, and residence permits for victims of trafficking or other forms of exploitation typically necessitates cooperation with law enforcement authorities³⁰.

Preliminarily, it is important to emphasize that international protection operates independently and autonomously from the specialized protection framework designed for victims of human trafficking. The recognition of international protection through the granting of refugee status to victims of trafficking represents a scenario that extends beyond the initial motivations underlying the establishment of the 1951 Geneva Convention and the 1967 New York Protocol³¹. Nevertheless, given the inherent

²⁶ Council Directive 2004/81/EC, *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, cit.

²⁷ A similar idea or trend can be observed in the Council of Europe Convention on Action against Trafficking in Human Beings (2005). Article 14, which regulates residence permits for victims of human trafficking. The article provides for the possibility of granting permits either on humanitarian grounds or for cooperation with authorities, leaving full discretion to the member States in determining how these permits are regulated. As a result, States may choose to offer such permits only to victims who agree to cooperate with authorities. Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, CETS n. 167.

²⁸ R. FORIN, C. HEALY, *Trafficking along Migration Routes to Europe: Bridging the Gap between Migration, Asylum and Anti-Trafficking*, Vienna, ICMPD, 2018, p. 4.

²⁹ S. SAROLÉA, F. RAIMONDO, Z. CRINE, *Exploring vulnerability's challenges and pitfalls in Belgian Asylum system. Research report on the legal and policy framework and implementing practices in Belgium*, VULNER Research Report 1, 2021.

³⁰ L. PALUMBO, *Vulnerability to exploitation through the lens of intersectionality*, in *European Journal of Migration and Law*, 2023, n. 25, pp. 421-448.

³¹ Convention relating to the Status of Refugees, convened under General Assembly resolution 429 (V) of 14 December 1950, UNTS vol. 189, núm. 2545, p. 13; Protocol relating to the Status of Refugees, adopted by the General Assembly in resolution 2198 (XXI), 16 December 1966, UNTS vol. 606, núm. 8791, p. 267.

prejudicial nature of human trafficking and the instances in which victims may find themselves unprotected in their countries of origin, international protection through refugee status or an equivalent is becoming increasingly common³².

This idea has been present since the year 2000 in the discourse surrounding the fight against trafficking, emphasizing that the protection of victims should not come at the expense of the international protection to which they may be entitled³³. Whether through the avenue of asylum or through subsidiary protection within the framework of the European Union, the current and unquestionable right of the State to exercise control over its borders must be harmonized in a coherent manner with its responsibilities concerning the protection of Human Rights for migrants³⁴. This position has been supported by prominent scholarly opinion³⁵. Therefore, accepting this premise, this study will examine how the European Union facilitates this option for victims of human trafficking, with a particular focus on the innovations introduced by the enactment of Directive (EU) 2024/1712.

One of the most significant contributions of the amended trafficking Directive concerning the protection of trafficking victims is the introduction of Article 11a, entitled “*Victims of trafficking who may be in need of international protection*”. The first paragraph of this provision mandates that States ensure complementarity and coordination between the authorities responsible for combating trafficking and those managing asylum applications. The second paragraph acknowledges that victims retain the right to apply for international protection or an equivalent national status, even while receiving assistance, support, and protection as presumed or identified victims of human trafficking.

This article serves two primary objectives. First, it aims to foster collaboration between the relevant authorities, thereby enhancing information sharing and cooperative efforts. Second, it seeks to formally document and ensure the complementarity of the two processes, both of which encounter numerous practical challenges in its implementation. By a way of illustration, in several member States, a latent incompatibility exists between the pursuit of international protection and the provision of assistance and protection for

³² A. MORENO URPI, *¿Las víctimas de trata pueden tener acceso a la protección internacional? Análisis de las posibilidades de refugio o de protección subsidiaria en la Unión Europea*, in *Revista de Derecho Comunitario Europeo*, 2023, vol. 74, pp. 191-226.

³³ V. STOYANOVA, *Human trafficking and refugee law* in S.S. JUSS (ed.), *Research Handbook on International Refugee Law*, Cheltenham, 2019, pp. 324-342, 328.

³⁴ C. PÉREZ GONZÁLEZ, *La protección de los menores víctimas de la trata de seres humanos: algunas precisiones en torno al principio de diligencia debida*, in *Lex*, 2014, vol. 13, pp. 73-87, p. 81. This is also recalled by the United Nations General Assembly in its Resolution 67/172. See Resolution 67/172 of the United Nations General Assembly, December 20, 2012, on the protection of migrants (A/RES/67/172) § 3.

³⁵ A.T. GALLAGHER, *The International Law of Human Trafficking*, cit., p. 346; I. ATAK, J. C. SIMEON, *Human Trafficking: Mapping the Legal Boundaries of International Refugee Law and Criminal Justice*, in *Journal of International Criminal Justice*, 2014, vol. 12, pp. 1019-1038; F. NOVAK-IRONS, *Unable to return? The protection of victims of trafficking in need of international protection*, in R. PIOTROWICZ, C. RIJKEN, H.B. UHL (eds.), *Routledge Handbook of Human Trafficking*, London, 2017, pp. 198-212.

trafficking victims³⁶. This situation is largely a consequence of the ongoing criminalization of migratory flows³⁷. As a result, trafficking victims are often forced to choose between relinquishing their legally recognized assistance and protection or refraining from applying for international protection. This dilemma poses significant challenges for many trafficking victims who wish to participate in recovery programs while simultaneously seeking international protection, particularly once the reflection and recovery period concludes and they are not granted residence permits, facing a potential expulsion³⁸. In response to this critical issue, Article 11a aims to ensure and formalize the complementarity of both processes.

Simultaneously, Article 11(4) of Directive (EU) 2024/1712 delineates the responsibilities allocated to National Referral Mechanisms³⁹ concerning the identification, assistance, and support of trafficking victims, with specific reference to those seeking international protection. This provision mandates that among the minimum functions to be performed by these Mechanisms, the establishment of cooperation agreements or protocols with asylum authorities is essential. Such agreements aim to ensure that victims who require international protection or wish to apply for it receive the necessary assistance and protection, considering the unique circumstances of each individual victim.

Moreover, Directive (EU) 2024/1712 encompasses several significant recitals that warrant examination. Recital (19) underscores the necessity for member States to recognize the specific vulnerabilities of trafficking victims who may seek international protection during asylum procedures. This acknowledgment entails the implementation of special procedural guarantees, as appropriate, in alignment with the new Regulation (EU) 2024/1348, establishing a common procedure for international protection in the

³⁶ *Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, adopted by the European Parliament on 1 February 2021, 2020/2029(INI), par. 33.

³⁷ A. SALINAS DE FRÍAS, *La insuficiente protección internacional de los migrantes irregulares víctimas de trata*, in *Revista Española de Derecho Internacional*, 2021, n. 2, pp. 161-175, p. 163.

³⁸ The reflection and recovery period for victims of human trafficking is a designated timeframe that allows victims to recuperate and escape the influence of their exploiters. Concurrently, it provides an opportunity for them to consider potential collaboration with the authorities responsible for prosecuting the crime. In the European Union, the reflection and recovery period is not regulated under the anti-trafficking Directive, but rather under the previously mentioned and controversial Council Directive 2004/81/EC, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

³⁹ According to Recital (15) of the amended Directive 2036/11/EU, a referral mechanism should operate as a transparent, accessible, and harmonized framework aimed at the early detection and identification of trafficking victims, as well as providing assistance, support, and facilitating their referral to appropriate national organizations and bodies. This framework should clearly delineate the roles and responsibilities of the participating authorities, including competent authorities, civil society organizations, and relevant stakeholders. It should outline structured procedures, communication channels, and cooperation protocols to ensure effective coordination. Such a referral mechanism is intended to cover all victims and all forms of trafficking, with consideration for the unique vulnerabilities of individual victims.

Union⁴⁰ and the new Directive (EU) 2024/1346, which establishes standards for the reception of applicants for international protection⁴¹. Additionally, Recital (21) of Directive (EU) 2024/1712 holds particular importance as it reaffirms the entitlement of trafficking victims to apply for international protection or an equivalent national status, thereby ensuring that these two processes are complementary and do not preclude one another.

In summary, the inclusion of these articles and recitals signifies one of the most substantial enhancements to the amended anti-trafficking Directive. These provisions highlight the necessity of maintaining coherence in the protection of trafficking victims while ensuring their access to international protection mechanisms or equivalent status, even as they are receiving assistance as potential trafficking victims. Consequently, it is now incumbent upon States to incorporate this cooperation and complementarity into their respective legal frameworks and, importantly, to ensure its effective implementation. This responsibility extends beyond merely adopting the necessary provisions; it also encompasses the establishment of mechanisms that guarantee the practical application of these measures.

Furthermore, the recitals included in Directive (EU) 2024/1712 are particularly noteworthy as they elucidate, or at least imply the compelling synergies and interactions between the trafficking Directive and the instruments arising from the European Pact on Migration and Asylum. The subsequent section will provide an analysis of the innovations introduced in the European Pact on Migration and Asylum that directly impact victims of trafficking from third countries who are in vulnerable circumstances. It will also explore the broader implications of these changes for their protection and support.

3. The European Pact on Migration and Asylum: a turning point for irregular third-country national victims of human trafficking?

The European Pact on Migration and Asylum, adopted in May 2024, constitutes a comprehensive framework intended to reform the European Union's approach to migration and asylum⁴². As defined by the European Commission, this Pact builds upon and amends prior reform proposals in migration issues, presenting an integrated approach aimed at strengthening and harmonizing key European Union policies related to

⁴⁰ Regulation (EU) 2024/1348 of the European Parliament and of the Council, *establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, of 14 May 2024, OJ L, 22 May 2024.

⁴¹ Directive (EU) 2024/1346 of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection*, of 14 May 2024, OJ L, 22 May 2024.

⁴² Nonetheless, it has faced significant criticism from the academic community, see: *EU Immigration and Asylum Law and Policy blog*, cit.

migration, asylum, border management, and integration⁴³. Indicated in the introductory section, the European Pact on Migration and Asylum encompasses various legislative instruments that explicitly reference victims of human trafficking within their specific regulatory frameworks. In fact, as Theodora Gazi has articulated, the primary objective of the legislative changes, in alignment with the Commission's intentions, was to ensure the effective protection of vulnerable applicants, including victims of human trafficking and other severe forms of violence⁴⁴. Consequently, the following analysis will examine some of the most significant advancements of these instruments.

In the preceding section, an analysis was conducted on how the anti-trafficking Directive, subsequent to its amendment in 2024, has incorporated and enhanced the complementarity between protection systems for victims of human trafficking and asylum systems. The ability of trafficking victims to apply for international protection is intrinsically linked to the location where these applications must be formally submitted. It follows logically that the State in which a victim has been identified and is undergoing the recovery process should serve as the appropriate jurisdiction for submitting their asylum application. This practice is generally observed when trafficking victims file their applications during the reflection and recovery period, a timeframe during which expulsion from the State's territory is explicitly prohibited⁴⁵.

Yet, despite it being explicitly prohibited, some States continue to ignore this obligation, as this logic conflicts with the State's imperative to protect its borders. Herein lies the relevance of the well-known Dublin System. Under the previous Regulation (EU) 604/2013⁴⁶, commonly referred to as the Dublin III Regulation, the priorities of the State were placed above the fundamental Human Rights of individuals, requiring victims to submit their applications for international protection in the initial State of entry into the European Union⁴⁷. This practice severely impeded victims' pathways to complete

⁴³ European Commission, *Pact on Migration and Asylum: A common EU system to manage migration*, of 21 May 2024.

⁴⁴ T. GAZI, *The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups?*, in *European Papers - A Journal on Law and Integration*, 2024, n. 9, p. 1.

⁴⁵ Article 6 of Council Directive 2004/81/EC.

⁴⁶ Regulation (EU) No 604/2013 of the European Parliament and of the Council, *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 (recast)*, of 26 June 2013, OJ L180, 29 June 2013, p. 31-59.

⁴⁷ However, it is possible that not all European Union member States were deemed safe, which consequently hindered the relocation of victims to submit their applications for international protection. For example, in 2011, the European Court of Human Rights determined that Greece was not a safe country in the context of expulsion procedures for asylum seekers due to a range of concerns regarding the inadequate treatment of asylum seekers and deficiencies within the Greek asylum system. See: S. MORGADES-GIL, *ECHR - Judgment of 21.01.2011 (Grand Chamber), M.S.S. v. Belgium and Greece, 30696/09 - 'Articles 3 and 13 ECHR - Prohibition of torture and inhuman or degrading treatment - Regulation (EC) No. 343/2003 determining the State responsible for examining an asylum application (Dublin II)' - The effective functioning of the European asylum policy in relation to the guarantee of the right not to suffer inhuman or degrading treatment as stipulated by the ECHR*, in *Revista de Derecho Comunitario Europeo*, 2012, vol. 41, pp. 183-204. Thus, the principle of mutual trust that guides the application of European Union law has yielded to the necessity of upholding the standard of protection of the right not to suffer inhuman or degrading treatment, as established by the ECtHR, in cases of the transfer of asylum seekers between

recovery and reintegration into society, fundamentally contradicting the comprehensive, Human Rights-based approach that the European Union professed to uphold. Fortunately, the situation has changed due to one of the key instruments that comprise the European Pact on Migration and Asylum: Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013.

Prior to conducting a comprehensive analysis of the changes introduced by the new Regulation, it is essential to examine the former Dublin system and the relevant case law associated with it. Such an examination will offer critical context for understanding the rationale, scope, and implications of these recent amendments.

The European Union operates within a complex and highly politicized framework of border controls at both its internal and external borders⁴⁸. This framework is intricately connected to the processes of admission, reception, and settlement of applicants for international protection, commonly referred to as the Dublin System⁴⁹. Under the previous Regulation (EU) 604/2013⁵⁰, known as Dublin III, individuals seeking to apply for international protection within the European Union were mandated to submit their applications in the member State of their initial arrival. Victims of human trafficking, despite their vulnerable and precarious circumstances, were not exempt from this stipulation.

Victims of human trafficking who are not citizens of the European Union often face exploitation across many member States, resulting in their identification occurring in a different State from the one in which they initially entered the European Union. The forced relocation of such victims – during both the early phases of recovery and reflection programs, as well as after these programs conclude – can severely impede their fragile recovery process as they strive to adapt to their environment and navigate the associated

Member States under the Dublin System. The ECtHR established this standard based on the assessment of real and personal risk in its judgments *M.S.S. v. Belgium and Greece* (2011) and *Tarakhel v. Switzerland* (2014). Despite some initial hesitation grounded in the principle of mutual trust between States, the Court of Justice of the European Union ultimately accepted this framework. This issue has been further explored in S. MORGADES-GIL, *The 'internal' dimension of the safe country concept: The interpretation of the safe third country concept in the Dublin system by International and Internal Courts in European Journal of Migration and Law*, 2020, vol. 22, pp. 82-113.

⁴⁸ M. PI LLORENS, E. ZAPATER DUQUE, *La externalización del control de la inmigración irregular a la Unión Europea a través del soft law: los MOU de Italia y Malta con Libia*, in J.M. CORTÉS MARTÍN, L. PÉREZ-PRAT DURBAN (coords.), *Un mundo en continua mutación: desafíos desde el Derecho internacional y el Derecho de la UE: Liber Amicorum Lucía Millán Moro*, Pamplona, 2022, pp. 749-774.

⁴⁹ E. GUILD, *¿Por qué el asilo es un tema tan polémico en la Unión Europea?*, in J. ABRISKETA URIARTE (coord.), *Políticas de asilo de la UE: convergencias entre las dimensiones interna y externa*, cit., pp. 21-37, pp. 21-25; V. MORENO-LAX, *Mutual (Dis-)Trust in EU Migration and Asylum Law: The Exceptionalisation of Fundamental Rights*, in S. GONZÁLEZ PASCUAL, M. IGLESIAS SÁNCHEZ, (eds.), *Fundamental Rights in the EU Area of Freedom, Security and Justice*, Cambridge, 2020, pp. 77-99.

⁵⁰ Regulation (EU) No 604/2013 of the European Parliament and of the Council, *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 (recast)*, cit.

complexities. In this context, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has explicitly indicated that the Dublin System contradicts the obligation to protect victims of human trafficking⁵¹.

Moreover, such displacement significantly heightens the risk of re-victimization, particularly if the trafficking organization operates in multiple member States. This scenario undermines the fundamental principle of *non-Refoulement*, which is enshrined in primary European Union Law⁵² and recognized as a peremptory norm of International Law⁵³.

The regulation regarding the submission of applications for international protection in the first State of arrival under the previous Dublin III Regulation included very few exceptions, which have been interpreted by the Court of Justice of the European Union (CJEU) as expected. The jurisprudence of the CJEU has determined that only “exceptional situations” can serve as valid exceptions to forced relocation. For instance, in the case of *C.K. and Others v. Slovenia* (2017)⁵⁴, the CJEU underscored the absolute nature of the *non-Refoulement* principle and its intrinsic connection to human dignity. The Court noted that, under certain circumstances, the act of relocation itself could expose individuals to a genuine risk of experiencing inhumane or degrading treatment⁵⁵. Similarly, as highlighted by Professor Violeta Moreno-Lax, if there exists a concrete and substantiated likelihood of significant and enduring deterioration in the health of the applicant, then the act of relocation must be deemed incompatible with Article 4 of the Charter of Fundamental Rights of the European Union (CFR)⁵⁶.

⁵¹ GRETA Evaluation Report on Sweden, 19 October 2023 (GRETA(2023)14). GRETA is established under Article 2 of the Council of Europe Convention on Action against Trafficking in Human Beings. Its main function is to monitor the implementation of this convention by member States, evaluate policies and practices related to combating human trafficking, and provide recommendations to enhance victim protection and the effectiveness of the measures adopted. GRETA also produces periodic reports and conducts country visits to assess compliance.

⁵² Article 19 of the Charter of Fundamental Rights of the European Union.

⁵³ Several prominent scholars have posited that the principle of non-refoulement has achieved the status of *jus cogens*. J. ALLAIN, *The jus cogens nature of non-refoulement in International Journal of Refugee Law*, 2001, n. 4, pp. 533-588; C. COSTELLO, M. FOSTER, *Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test*, in *Netherlands Yearbook of International Law*, 2016, vol. 46, pp. 273-327; V. MORENO-LAX, *Mutual (Dis-)Trust in EU Migration and Asylum Law: The Exceptionalisation of Fundamental Rights*, cit.

⁵⁴ Court of Justice, judgement of 16 February 2017, *C.K. and others*, case C-578/16 PPU, ECLI:EU:C:2017:127.

⁵⁵ Court of Justice, *C.K. and others*, cit., par. 95.

⁵⁶ The burden of proof initially lies with the applicant; subsequently, the competent authorities are obligated to evaluate this evidence and ultimately dispel any serious doubts regarding the implications of the relocation. However, this factor alone does not invariably exclude relocation. If the transferring member State, in conjunction with the responsible member State, can take appropriate precautions and ensure that the asylum seeker receives medical attention during and after the relocation, the transfer may proceed. Even if these precautions are deemed inadequate, the relocation is not categorically annulled but rather suspended until the applicant's health condition renders them fit for such a transfer V. MORENO-LAX, *Mutual (Dis-)Trust in EU Migration and Asylum Law: The Exceptionalisation of Fundamental Rights*, cit., p. 94.

Following a thorough examination of various rulings by the Court of Justice of the European Union (CJEU), including the case of *Abubacarr Jawo v. Germany* (2019)⁵⁷, the jurisprudence of the Luxembourg Court indicates that only specific violations of Article 4 can be considered as exceptional grounds for preventing relocation. Such violations occur when “the indifference of the authorities of a member State leads to a person, who is entirely reliant on public assistance, being placed, against their will and personal choices, in a situation of extreme material deprivation”. Moreover, this deprivation must be significant enough to “undermine their physical or mental health or place them in a state of degradation incompatible with human dignity”⁵⁸.

The relocation of trafficking victims significantly disrupts their intricate recovery process, posing substantial challenges to their physical and mental health and increasing their vulnerability to secondary victimization. It is crucial to determine whether the conditions in the member State responsible for processing the asylum application subject the victim to a State of “extreme material deprivation”. Thus, the potential risk of negatively impacting the healing process through relocation is insufficient, on its own, to prevent the transfer of victims to another member State. This scenario directly contradicts the Human Rights principles upheld by the European Union.

In light of this situation, an alternative avenue to prevent the relocation of the victim was the assertion that the victim could fall back into the hands of their previous or new exploiters. Given that human trafficking is a phenomenon characterized by inhumane or degrading treatment and, in some cases, torture, this could potentially serve as an exceptional reason to avoid relocation. Yet, as noted by Professor Violeta Moreno-Lax, the jurisprudence of the CJEU indicates that only the most severe category of mistreatment, namely torture, would be considered an exceptional reason for transferring the responsibility of processing the asylum application to the member State in which the victim was located⁵⁹. Consequently, this presented a challenging burden of proof for trafficking victims who found themselves compelled to relocate in order to seek international protection.

This situation stands in stark contradiction to the principles enshrined in the Charter of Fundamental Rights of the European Union, which emphasizes the importance of human dignity and protection against expulsion to a State where individuals may face the risk of inhumane or degrading treatment. Additionally, it does not further align with the jurisprudence of the European Court of Human Rights (ECtHR), which similarly underscores the necessity of safeguarding individuals from such violations⁶⁰. The

⁵⁷ Court of Justice, Grand Chamber, judgement of 19 March 2019, *Abubacarr Jawo*, case C-163/17, ECLI:EU:C:2019:218.

⁵⁸ Court of Justice, Grand Chamber, *Abubacarr Jawo*, cit., par. 92.

⁵⁹ V. MORENO-LAX, *Mutual (Dis-)Trust in EU Migration and Asylum Law: The Exceptionalisation of Fundamental Rights*, cit., p. 94.

⁶⁰ European Court of Human Rights, Decision as to the admissibility of Application n. 42367/98 by Mohammed Lemine Ould Barar against Sweden, 19 January 1999. The case of *Ould Barar v. Sweden* was one of the first cases the ECtHR addressed concerning the deportation of migrants where there is a real risk of subjecting the individual to treatment that violates the European Convention on Human Rights. This case helped establish important precedents on the parameters regarding the protection of migrants from

principles articulated in both legal frameworks highlight the obligation of member States to ensure the protection and humane treatment of all individuals, particularly those in vulnerable situations such as victims of human trafficking⁶¹, and all the positive obligations arising from Article 4 of the European Convention on Human Rights, which prohibits human trafficking⁶².

In this context, the introduction of Regulation (EU) 2024/1351 on asylum and migration management is both timely and essential. Significantly, Article 18(3) of the Regulation includes a provision that exempts victims of trafficking from the general requirement mandating that applications for international protection be submitted in the member State of first entry. Additionally, the Regulation clarifies that victims of trafficking will not face the repercussions of non-compliance with Article 17, which delineates the obligations of applicants and their duty to cooperate with competent authorities. Consequently, the usual consequences associated with non-compliance – specifically, the forfeiture of the right to reception conditions as outlined in Articles 17 to 20 – are expressly waived for this particularly vulnerable group.

In this context, Steve Peers has emphasized that, according to the CJEU's interpretation of the Dublin III Regulation, European Union *acquis* concerning trafficking victims necessitates the implementation of stronger remedies⁶³. The relevant jurisprudence stems from the case of *Staatssecretaris van Justitie en Veiligheid* (2023)⁶⁴, which involved three third-country nationals whose applications for international protection had been rejected by the Netherlands. Following this rejection, each applicant submitted a new request for a temporary humanitarian residence permit, citing their status as victims of human trafficking. However, the Dutch authorities chose not to consider this second application, despite the applicants' intention to alter the grounds of their request. The Netherlands interpreted the criteria set forth in Article 29 of the Dublin Regulation (Regulation (EU) 604/2013) as inapplicable to this context.

deportation to countries where they might face inhuman or degrading treatment. Moreover, in the case of *Chowdury and others v. Greece*, the Court acknowledged that migrant workers, particularly those in irregular situations, are especially susceptible and vulnerable to exploitation. This recognition reinforced the need for enhanced protective measures for migrants, highlighting the state's responsibility to safeguard them against exploitation and trafficking. The case involved 42 irregular migrants from Bangladesh who were subjected to forced labour on a strawberry farm in Greece. The workers were employed under exploitative conditions, denied pay, and forced to work under threats of violence. The ECtHR found that Greece had violated Article 4 of the European Convention on Human Rights – prohibition of slavery and forced labour – by failing to protect the workers from trafficking and forced labour and to provide an effective remedy. European Court of Human Rights, First Section, judgment of 6 June 2017, application no. 21884/15, *Chowdury and others v. Greece*, par. 97.

⁶¹ Articles 1, 19.2 and 53 of the Charter of Fundamental Rights of the European Union.

⁶² For a detailed study on the obligations arising from Article 4 of the European Convention on Human Rights regarding the protection of victims of human trafficking, see: L. PARLATO, *Trafficking in Human Beings: The ECHR and States' Positive Obligations*, in F. LO PICCOLO *et al.* (eds.), *In and Out: Rights of Migrants in the European Space*, pp. 197-209.

⁶³ S. PEERS, *The new EU asylum laws: taking rights half-seriously*, in *Yearbook of European Law*, 2024, pp. 1-71, p. 22.

⁶⁴ Court of Justice, judgment of 30 March 2023, *Staatssecretaris van Justitie en Veiligheid*, case C-338/21, ECLI:EU:C:2023:269.

Following a detailed analysis of the specific case, the CJEU ruled that the protection of victims of human trafficking was a priority⁶⁵. As a result, the transfer of the third-country nationals to the responsible State for the examination of their application for international protection was suspended until the reflection period mandated by Directive 2004/81 concluded. Moreover, the CJEU ruled that Directive 2004/81/EC did not prevent member States from granting the right to appeal a rejection decision with a suspensive effect on a previously adopted transfer decision under the Dublin Regulation. Consequently, the suspension of the transfer period pending an appeal decision, as outlined in Article 29(1) of the Dublin Regulation, did not apply in cases involving a request for review of a rejection decision concerning humanitarian residence permits for victims of trafficking.

Notwithstanding the significance of the CJEU rulings on these issues during the reflection period, the lack of adequate protections afterward underscored an urgent need for strengthened regulations to safeguard trafficking victims, particularly those seeking international protection as a means to remain within the European Union and prevent future re-victimization. In this context, Article 18(3) is particularly significant, as it provides essential protections for trafficking victims against further removals when applying for international protection. This amendment constitutes a pivotal advancement in the European Pact on Migration and Asylum, particularly regarding victims of trafficking, an often marginalized and largely overlooked group. In this context, the inclusion of a reference to this issue within Directive (EU) 2024/1712 would have been highly pertinent. However, Recital (20) of Directive (EU) 2024/1712 introduces complexities that hinder the effective implementation of the exception allowing victims of trafficking to bypass the requirement of submitting their applications for international protection in the first member State of entry.

Throughout the legislative process culminating in the adoption of Directive (EU) 2024/1712, the issue of the forced transfer of trafficking victims to the first member State of entry for the purpose of seeking international protection was not adequately addressed. Notably, the initial proposal of the European Commission failed to include this critical concern⁶⁶, despite numerous reports from civil society emphasizing its significance. The Council of the European Union, acting as a co-legislator, similarly overlooked this issue⁶⁷. Fortunately, the European Parliament acknowledged the importance of this matter in its final position, subsequently prompting interinstitutional negotiations⁶⁸.

⁶⁵ S. SCARPA, *To Stay or Not to Stay? Dublin Transfers of Presumed Trafficking Victims (C-338/21)*, in *EU Law Live*, 2024.

⁶⁶ Communication from the Commission to the European Parliament and the Council, *Proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, of 19 December 2022, COM(2022) 732 final.

⁶⁷ *Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims - General approach*, adopted by the Council of the European Union on 9 June 2023, 10350/23.

⁶⁸ *Amendments by the European Parliament to the Commission proposal*, adopted by the European Parliament on 16 April 2024, A9-0285/2023.

In the text presented, the European Parliament included two recitals – 10a and 10c – that specifically addressed the risks faced by victims due to the application of the Dublin System. The first recital emphasized the obligation of all member States to adhere to the principle of *non-Refoulement*, as outlined in the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union. The second recital underscored the necessity for member States to exercise heightened vigilance in preventing the re-exploitation of victims during transfers executed under Regulation (EU) 2024/1351. Specifically, it urged member States to avoid transferring victims to the locations of their initial exploitation or where their perpetrators were situated.

Finally, the proposals put forth by the Parliament were partially reflected in Recital (20) of Directive (EU) 2024/1712. This recital articulates that, to prevent the re-exploitation of victims within the Union, it is imperative that when transferring victims under the new Regulation 2024/1351, member States refrain from transferring them to any member State where there are well-founded reasons to believe that, because of the transfer, the victims would be exposed to a genuine risk of violations of their fundamental rights. Such violations could constitute inhumane or degrading treatment as delineated in Article 4 of the Charter of Fundamental Rights of the European Union.

On one hand, the reference to the transfer of victims under Regulation (EU) 2024/1351 may result in confusion, potentially leading to the oversight that victims of trafficking are exempt from the obligation to submit their applications for international protection in the first member State of entry. Such misunderstandings can impact all legal actors, ranging from those tasked with transposing the regulation into national law to those responsible for its practical implementation, thereby hindering efforts to prevent the transfer of victims. In this context, an explicit textual reference to the new exception outlined in Article 18(3) of Regulation (EU) 2024/1351 would have been particularly advantageous.

On the other hand, it is crucial to note the absence of explicit and literal references to the principle of *non-Refoulement*, which raises significant concerns from a Human Rights perspective. In contrast, the amended Directive indirectly integrates respect for this principle within Recital (20). This subtle incorporation may diminish the clarity and emphasis on the obligation to protect individuals from being returned to situations where they face a risk of inhumane or degrading treatment.

The amended Directive demonstrates clear inadequacies in this context. It would have been advisable to incorporate a clear reference to the new exception established in Regulation (EU) 2024/1351, thereby ensuring that all matters concerning victims of trafficking are comprehensively addressed within a single legislative framework. The fragmentation of measures across various regulatory instruments – especially regarding trafficking victims who are not citizens of the European Union – results in a lack of coherence in their implementation, ultimately leading to diminished protection for these vulnerable individuals.

Continuing with the analysis of the instruments within the European Pact on Migration and Asylum that intersect with the protection system for victims of trafficking, it is worth noting that Directive (EU) 2024/1712 references several legislative instruments composing the Pact. One such instrument is Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU⁶⁹. This new legislative framework includes two explicit references to human trafficking. The first reference can be found in Article 13(7), which pertains to the requirements for personal interviews related to international protection. This provision stipulates that staff responsible for conducting interviews, including experts deployed by the Asylum Agency, must possess general knowledge of factors that may adversely affect the applicant's capacity to engage in the interview process, such as indications that the individual may have previously experienced torture or may be a victim of human trafficking.

The second reference can be observed in Article 36(6), which pertains to decisions on applications. In cases involving applications submitted on behalf of minors or dependent adults, where the grounds for these applications align precisely with those of the adult responsible for the minor or dependent adult, the determining authority may, following an individual assessment for each applicant, issue a single decision that encompasses all applicants. This is contingent upon the condition that such a consolidated decision does not result in the disclosure of specific circumstances regarding an applicant that could jeopardize their interests, particularly in cases involving gender-based violence, human trafficking, and persecution based on gender, sexual orientation, gender identity, or age. In instances where the aforementioned risks are present, a decision regarding an application for international protection shall be issued in writing and notified to the applicant as soon as possible, in accordance with the national law of the relevant member State⁷⁰. In this context, if a representative or legal advisor is legally representing the applicant, the competent authority may notify the decision to that individual rather than directly to the applicant.

Another significant legislative tool within the European Pact on Migration and Asylum that intersects with the issue of trafficking victims is Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection⁷¹. Article 24 of the instrument addresses applicants with special reception needs, stipulating that member States must consider the specific circumstances of such applicants. Notably, it highlights that certain individuals, including those identified as victims of human trafficking, are more likely to require specialized reception conditions.

⁶⁹ Regulation (EU) 2024/1348 of the European Parliament and of the Council, *establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, cit.

⁷⁰ Article 36.1 of Regulation (EU) 2024/1348.

⁷¹ Directive (EU) 2024/1346 of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection*, cit.

Subsequently, Article 26 of the (EU) 2024/1346 Directive underscores the critical importance of the best interests of the child as a fundamental principle guiding member States in the implementation of provisions that may impact minors. It mandates that member States provide an adequate standard of living that facilitates the physical, mental, spiritual, moral, and social development of minors. Moreover, in assessing the best interests of the child, member States are obligated to consider specific factors that may affect the welfare of the child. Of particular note are safety and security considerations, especially in circumstances where there is a risk of the minor experiencing any form of violence or exploitation, including human trafficking.

Finally, Article 28 addresses the needs of victims trafficking who are seeking international protection. The provision for victims of torture and violence now explicitly includes victims of human trafficking, broadening the scope to cover additional forms and motivations for violence⁷². These motivations include violence driven by sexual, gender, racial, or religious biases. This article mandates that such individuals receive necessary medical and psychological treatment, along with rehabilitation services and counselling when required, to address the harm caused by these acts. Additionally, where necessary, individuals must be provided with oral translation services in accordance with Article 25(2)(c). Access to these treatments and care should be facilitated as soon as the needs of these individuals have been identified. Moreover, those who work with the individuals referenced in paragraph 1, including health professionals, are required to receive appropriate training and ongoing education regarding the specific needs of these victims and suitable treatments, including necessary rehabilitation services.

However, as Professor Steve Peers indicates, it is notable that Directive (EU) 2024/1346 omits any reference to the exceptions set out in the 2024 Dublin Regulation regarding victims of trafficking and broader Human Rights protections⁷³. Nonetheless, despite these references being both absent and yet essential, the observed additions within Directive (EU) 2024/1346 are not only welcome but also essential, as they help raise awareness and improve the visibility of human trafficking for personnel responsible for migration and asylum management. This shift towards a more empathetic framework is particularly important considering the often-overlooked experiences of trafficking victims, who face unique vulnerabilities. The recognition of their specific needs within legislative and procedural contexts fosters a more comprehensive understanding among practitioners, ultimately leading to more effective protection measures.

Indeed, this consideration of the inherent and unique vulnerabilities of each trafficking victim is also reflected throughout Directive 2024/1712, demonstrating a synergy among these instruments and the intention – at least on paper – to move towards a more tailored and individualized protection framework for each victim of trafficking. This is particularly pertinent for those who find themselves in even more precarious situations due to their irregular status in the European Union member State, facing a

⁷² S. PEERS, *The new EU asylum laws: taking rights half-seriously*, in *Yearbook of European Law*, cit., p. 39.

⁷³ *Ibid.*

potential expulsion due to the limited availability of residence permits for trafficking victims.

Nonetheless, it remains to be seen how effectively member States will implement these provisions, as past practices have not been particularly encouraging⁷⁴. The successful integration of these principles into national policies and procedures will ultimately determine the extent to which these instruments enhance the protection for trafficking victims. The challenge lies not only in the legislative framework but also in the training and awareness of personnel involved in migration and asylum processes, as their understanding and responsiveness to the unique circumstances of trafficking victims will play a crucial role in translating these provisions into effective practice.

4. Final reflections

In summary, based on the observations presented in this study, it can be affirmed that the synergies and intersections between the victim protection system for trafficking victims and the migration and asylum system in the European Union have increased following the adoption of Directive (EU) 2024/1712, which amends Directive 2011/36/EU, along with the various instruments derived from the European Pact on Migration and Asylum.

The adoption of Directive (EU) 2024/1712 has led to significant advancements in the protection of trafficking victims who find themselves in an irregular situation within the European Union member State that is hosting them after their detection or formal identification. Among these advancements, the inclusion of provisions aimed at ensuring complementarity between international protection and assistance for trafficking victims stands out. While this may appear to be a standard measure, it is, in fact, an extremely positive development. In many member States, practices have shown that a latent incompatibility existed, often forcing victims to choose between the international protection system and the protection system designated for victims of trafficking in persons.

On another note, among the various instruments that constitute the European Pact on Migration and Asylum, Regulation (EU) 2024/1351, concerning asylum and migration management, is notable for its potential to provide solutions and improvements to the protection system for trafficking victims. Regulation (EU) 2024/1351, which replaces the previous Dublin III Regulation, establishes the criteria for determining the member State where individuals wishing to submit their application must do so. Generally, this is the member State of first arrival, where the applicant is required to file their request for international protection, a practice that has traditionally been upheld with few exceptions.

⁷⁴ Commission Staff Working Document, *Evaluation of the Proposal for a trafficking Directive*, of 19 December 2022, SWD(2022) 427 final. This document provides information regarding the transposition of specific articles of Directive 2011/36/EU. In the sections pertaining to the protection of victims, there is a notable absence of effective transpositions.

Human trafficking often involves transnational elements, resulting in many identified victims lacking the citizenship of the respective member State or the possession of a valid residency permit. In such situations, after completing the recovery and reflection periods, victims face the risk of expulsion due to their lack of residency permits for trafficking victims. Under the Dublin III Regulation, these particular group of trafficking victims were required to relocate in order to apply for international protection. This practice significantly hindered their journey towards full recovery and reintegration into society, exposing them to the risk of becoming victims of further Human Rights violations.

Fortunately, the new Regulation (EU) 2024/1351 introduces an exception to this obligation for victims of trafficking, allowing them to submit their applications in the member State where they are following their recovery process. While this measure is a welcome development, it should be noted that many of these challenges could be mitigated by granting residency permits to trafficking victims. As well as a greater clarity regarding the mention of the new exception into the anti-trafficking Directive.

Additionally, other instruments included in the European Pact on Migration and Asylum, such as Regulation (EU) 2024/1348, which establishes a common procedure for international protection within the Union, and Directive (EU) 2024/1346, which sets standards for the reception of applicants for international protection, explicitly reference victims of trafficking. This demonstrates once again the interaction and synergies between the two systems. Specifically, these references highlight the need to consider the inherent vulnerabilities of this particular group when assessing their applications for international protection, as well as the urgency with which their cases should be addressed.

These synergies and interrelations between both systems – previously almost non-existent on paper – mark positive initial steps toward recognizing the necessity of cooperation and knowledge sharing in this area, ultimately leading to the achievement of a Human Rights-based approach. Nonetheless, despite some positive developments, numerous opportunities have been missed in the reform process of the regulatory framework addressing human trafficking within the European Union. Therefore, while these connections are commendable, it is imperative to advance towards a comprehensive approach to human trafficking within the European Union that guarantees adequate protection for all victims, particularly those who are most vulnerable due to their migration status.

ABSTRACT: Victims of trafficking find themselves in an extraordinarily vulnerable position, having suffered severe violations of their human dignity and personal freedoms. This vulnerability is further intensified for those victims who are in an irregular situation within the European Union, as it complicates their ability to seek protection and support. Consequently, this paper offers a critical analysis of the legislative advancements introduced by instruments stemming from the European

Pact on Migration and Asylum, as well as Directive (EU) 2024/1712, which amends Directive 2011/36/EU concerning the anti-trafficking framework in the European Union. The study aims to clarify the interactions and synergies between the trafficking and asylum systems, emphasizing both the – minimum – progress achieved and the persistent challenges in ensuring adequate protection for trafficking victims.

KEYWORDS: Human trafficking – irregular migration – trafficking victims – protection – Dublin system.