


Procedure file

Basic information		
CNS - Consultation procedure Directive	2002/0043(CNS)	Procedure completed
Illegal immigration and trafficking in human beings: residence permit issued to victims		
Subject		
7.10.04 External borders crossing and controls, visas		
7.10.08 Migration policy		
7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		19/03/2002
		V/ALE SÖRENSEN Patsy	
	Former committee responsible		
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		19/03/2002
		V/ALE SÖRENSEN Patsy	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs and Internal Market		01/12/2003
	PSE KOUKIADIS Ioannis		
	FEMM Women's Rights and Equal Opportunities		18/12/2003
	PPE-DE FLEMMING Marialiese		
Former committee for opinion			
JURI Legal Affairs and Internal Market			26/02/2002
	PSE KOUKIADIS Ioannis		
	FEMM Women's Rights and Equal Opportunities		27/03/2002
	ELDR VAN DER LAAN Louisewies		
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2579	29/04/2004
	Justice and Home Affairs (JHA)	2538	06/11/2003
	Justice and Home Affairs (JHA)	2455	14/10/2002
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events			
11/02/2002	Legislative proposal published	COM(2002)0071	Summary
27/02/2002	Committee referral announced in Parliament		
14/10/2002	Debate in Council	2455	
12/11/2002	Vote in committee		Summary
12/11/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0397/2002	
05/12/2002	Debate in Parliament		
05/12/2002	Decision by Parliament	T5-0591/2002	Summary
11/11/2003	Formal reconsultation of Parliament		
11/11/2003	Amended legislative proposal for reconsultation published	14432/2003	Summary
19/02/2004	Vote in committee		Summary
19/02/2004	Committee report tabled for plenary, reconsultation	A5-0099/2004	
09/03/2004	Decision by Parliament	T5-0135/2004	Summary
29/04/2004	Act adopted by Council after consultation of Parliament		
29/04/2004	End of procedure in Parliament		
06/08/2004	Final act published in Official Journal		

Technical information	
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Stage reached in procedure	Procedure completed
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Documentation gateway					
Legislative proposal		COM(2002)0071 OJ C 126 28.05.2002, p. 0393 E	11/02/2002	EC	Summary
Economic and Social Committee: opinion, report		CES0690/2002 OJ C 221 17.09.2002, p. 0080	29/05/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading		A5-0397/2002	12/11/2002	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0591/2002 OJ C 027 30.01.2004, p. 0028-0140 E	05/12/2002	EP	Summary
Amended legislative proposal for reconsultation		14432/2003	11/11/2003	CSL	Summary

Committee final report tabled for plenary, reconsultation	A5-0099/2004	19/02/2004	EP	
Text adopted by Parliament after reconsultation	T5-0135/2004 OJ C 102 28.04.2004, p. 0029-0135 E	09/03/2004	EP	Summary
Follow-up document	COM(2010)0493	15/10/2010	EC	Summary
Follow-up document	COM(2014)0635	17/10/2014	EC	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 2004/81](#)

[OJ L 261 06.08.2004, p. 0019-0023](#) Summary

Illegal immigration and trafficking in human beings: residence permit issued to victims

PURPOSE: to introduce short-term residency permits to victims of illegal immigration and/or human trafficking with a view to enhancing measures to combat illegal immigration. **CONTENT:** the continuing rise of both illegal immigration and trafficking in human beings has led the European Council to seek more effective solutions to combating this illicit and shadowy activity. The most common forms of illegal immigration include networks of smugglers who exploit foreign nationals in the form of human trafficking. In most cases the networks operate for profits often with a complete disregard for the lives of their victims. Migrants are frequently exploited, condemned into servitude upon arrival and regularly become the victims of sexual or other forms of abuse. Given their illegal status and lack of papers victims dare not seek justice from local authorities. This leaves a situation whereby valuable information relating to criminals running the smuggling rings remains incomplete and the perpetrators thus unprosecuted. Active co-operation from victims is therefore not only desirable it is essential in the fight against illegal immigration. Whilst certain EU Member States such as Belgium, the Netherlands and Italy have already forged ahead with finding more targeted solutions to combating the exploitation of vulnerable victims caught up in the chain of this criminal activity, other Member States have little or no national legislation in place. This has led to a situation whereby this form of criminal activity is beginning to concentrate in countries with less stringent legislation thus contributing to a fragmentation in the EU's response. New tools designed to reign in on this growing and persistent problem were awarded to the European Union following the ratification of the Treaty of Amsterdam. This proposed Directive has thus been based on Article 63 (3) of the EC Treaty which stipulates that the Council is to adopt "measures on immigration policy within the following areas: (a) conditions of entry and residence; (b) illegal immigration and illegal residence." The Tampere European Council in 1999 gave the Commission the added mandate to propose legislation which in turn would "stop illegal immigration and to combat those who organise it and commit related international crimes". In view of the international nature of this particular crime and its trans-boundary implications the European Commission stresses that this proposal fulfils the principle of subsidiarity whilst at the same time being proportionate in its aims. The basic intention of this piece of legislation is to offer temporary residence permits for victims prepared to give evidence - this being conditional on them co-operating with the competent authorities against those suspected of committing the crimes in question. The permit would be issued to victims, defined as adults (or possibly minors who fulfil certain conditions laid down by domestic law) who are third-country national and have suffered harm directly caused by action to facilitate illegal immigration or trafficking in human beings. Police coming into contact with people who might reasonably be regarded as victims, will inform them of the existence of the temporary residence permit. Victims who agree to break off all relations with the suspected criminals will be granted a 30-day reflection period in which to decide, on the basis of all the facts, whether or not to take their co-operation with the police and judicial authorities any further. During this reflection period the Member State will allow victims to receive aid such as housing and medical care. Following the 30 day reflection period the authorities will have to decide whether or not to issue the victim with a six month residency permit. Conversely, the short-term residence permit may be withdrawn from victims who are found to have renewed contact with the suspects or who have not genuinely co-operated. The Directive is aimed at both "victims of action to facilitate illegal immigration" and "victims of trafficking in human beings" since these two crimes are considered particularly odious. Importantly, the Directive is limited in scope to the issuing of a residence permit - it does not seek to protect either victims or witnesses. Victim and witness protection are and remain matters of national legislation.?

Illegal immigration and trafficking in human beings: residence permit issued to victims

The committee adopted the report by Patsy SÖRENSEN (Greens/EFA, B) broadly approving the proposal under the consultation procedure, subject to a number of amendments designed to clarify and improve the text. It proposed changes to some of the definitions in order to bring them more into line with the UN Protocol against the Smuggling of Migrants and the Council framework decision on combating trafficking in human beings. While approving the idea of a reflection period of no longer than 30 days, in order to prevent misuse of the procedure, the committee nevertheless adopted an amendment saying that in exceptional cases this period could be extended. It also stipulated that not having any valid identity papers should not be a reason for refusing a short-term residence permit, as these papers were often taken by the trafficker or smuggler. Provision should also be made for appeal against any refusal to issue or renew a short-term residence permit and against withdrawal of a permit. Moreover, such decisions should be duly substantiated. Another amendment introduced a new clause specifying that Member States should ensure that any legal proceedings are not held in public, in order to protect the privacy and identity of those involved. Lastly, the committee advocated an active role for non-governmental organisations in providing protection for victims. ?

Illegal immigration and trafficking in human beings: residence permit issued to victims

The European Parliament adopted a resolution drafted by Patsy SORESENSEN (Greens/EFA, Belgium) on the Commission's proposal. (Please refer to the document dated 12/11/02.) The following amendments were also made: - when granting residence permits, Member States must consider granting family members accompanying the victim a residence permit; - Member States must ensure that their legal system provides for measures against traffickers which enable victims to secure recognition of the offence committed and/or compensation; - Member States must ensure that the victim is actually available to the authority responsible for the investigation or prosecution throughout the proceedings; - victims must have the opportunity to apply for protection under the asylum procedure of the Member State.?

Illegal immigration and trafficking in human beings: residence permit issued to victims

The Council, at its meeting held on 6 November 2003, reached political agreement amending the text of the Commission's initial proposal on certain important points. Because of these substantial amendments, the Council decided to consult the Parliament again, in accordance with Article 67 of the EC Treaty.

The terms of the new text by Council strengthen the European Union's legislative framework for combating illegal immigration by granting a residence permit of limited duration to the victims of action to facilitate illegal immigration and of trafficking in human beings. The granting of the residence permit, to which a certain number of benefits is attached, is subject to conditions designed to encourage such people to cooperate with the competent authorities against those suspected of committing the crimes in question.

This is a very important legal instrument in the fight against trafficking in human beings and illegal immigration, which will be beneficial both to the victims and to the Member States' competent authorities. Victims, should they decide to cooperate with the competent authorities, will receive an appropriate assistance and be issued a residence permit allowing them to stay legally on the territory of the Member State concerned during the relevant proceedings.

The formal adoption of this Directive will take place after the two outstanding Parliamentary reservations have been withdrawn.

Illegal immigration and trafficking in human beings: residence permit issued to victims

The committee adopted the report by Patsy SÖRENSEN (Greens/EFA, B) amending the proposal under the consultation procedure (renewed consultation). The committee retabled some, but not all, of the amendments it had adopted in 2002, which were aimed at improving the legal situation of the victims. The main amendments were as follows: - the reflection period (the duration of which the Council was proposing should be decided by the Member States) should be 30 days and, in exceptional cases, such as physical or psychological distress or for reasons relating to the safety of third parties, this period should be extended; - victims should be able to benefit from free legal aid (the Council wanted to leave it up to the Member States to decide whether to provide this); - to protect witnesses against intimidation and/or reprisals, Member States should protect the privacy and identity of those who take part in court proceedings and guarantee that such proceedings are not held in public; - when issuing a residence permit, Member States should consider issuing family members accompanying the victim a residence permit for the same limited period; - the absence of papers or possession of false papers should not constitute obstacles to the issuing and renewal of a residence permit; - if, after the expiry of the residence permit, the victim submits an application for another type of residence permit, then the Member States should take into account the victim's cooperation when considering this application; - should the authorities decide not to renew or to withdraw a third-country national's residence permit, they should assess the risks to that person's safety regardless of whether he or she intends voluntarily to return; - a decision not to renew or to redraw the residence permit may be the subject of an appeal to a court. ?

Illegal immigration and trafficking in human beings: residence permit issued to victims

The European Parliament adopted a resolution drafted by Patsy SORESENSEN (Greens/EFA, B) making some amendments to the Commission's proposal. (Please see the document dated 19/02/04.) Parliament also specified that Member States must ensure that unaccompanied minors are accommodated on the basis of arrangements in the following order of preference: - with adult relatives; - with a foster family; - in institutions which specialise in accommodating minors; - in other forms of accommodation suitable for minors. In addition, holders of the residence permit shall be authorised to have access to the labour market, to vocational and language training.?

Illegal immigration and trafficking in human beings: residence permit issued to victims

PURPOSE: To define the conditions for granting residence permits of limited duration to third country nationals willing to co-operate in the fight against human trafficking or actions which facilitate illegal immigration.

LEGISLATIVE ACT: 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 immigrations, who co-operate with the competent authorities.

CONTENT: This Council Directive has come about in order to define the conditions for granting residence permits of limited duration to those who are willing to co-operate in the fight against human trafficking. It does not apply to the United Kingdom and Ireland, nor does it apply to Denmark. It has come about in response to the Tampere European Council, which called on the Member States to concentrate on detecting and dismantling criminal networks engaging in the trafficking of human beings and who exploit migrants for economic purposes. The Directive strengthens and complements Council Directive, 2002/90, defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/629 on combating trafficking in human beings.

The provisions of the Directive are to act as an incentive to victims of human trafficking by offering them a temporary residence permit in return for information on those involved in illegal immigration. This Directive lays down the criteria for issuing a residence permit, the condition of stay and the grounds for non-renewal and withdrawal. Thus, the right to stay is subject to conditions and is provisional in nature. The provisions set out in the Directive are as follows:

- For the sake of consistency and clarity the subsequent terms have been defined: third-country nationals, action to facilitate illegal immigration, trafficking in human beings, measure to enforce an expulsion order, residence permit and unaccompanied minor.
- The Directive covers all third-country nationals, regardless of whether they have entered the territory illegally, who are victims of human trafficking, who have been the subject of an action to facilitate illegal immigration or who have reached the age of majority according to the Member State concerned.
- Member States should inform those falling under the scope of this Directive of the possibility to co-operate and offer them a reflection period allowing them the chance to recover and escape the influence of the criminal gangs. The length and duration of the reflection period shall be determined by national law. Whilst the reflection period does not give them the right to residence it does allow for access to medical treatment (including psychological assistance) as well a safe and protected environment in which to live. The reflection period can be terminated at any point where the competent authorities have established that a person has renewed contact with the perpetrators of the offences.
- Following the reflection period, the authorities may wish to consider prolonging the residence permits for up to six months in cases where they consider the person's stay could offer further useful opportunities for the investigation of judicial proceedings, in cases where he/she has shown a clear intention to cooperate and in cases where they have severed all relation with those suspected of enacting criminal activities.
- Minors can fall under the scope of the Directive, in which case the Member States must take the best interests of the child into account. Minors should have access to the education system under the same conditions as nationals. Member States will be responsible for establishing the identity of the minors, their nationality and if they are unaccompanied or not.
- Those co-operating with the authorities will be granted access to work, vocational training and education during the period of their residence permit.
- When the residence permit expires ordinary aliens' law applies.
- The residence permit may be withdrawn at any time if the holder has actively, voluntarily and on their own initiative renewed contact with those suspected of committing the offences, if the authorities decide that the victim's co-operation is fraudulent or wrongful, for reasons relating to national security, when the victim ceases to co-operate or when the competent authorities decide to discontinue the proceedings.

TRANSPOSITION: 6 August 2006.

ENTRY INTO FORCE: 6 August 2004

Illegal immigration and trafficking in human beings: residence permit issued to victims

This Commission report to the European Parliament and the Council concerns the application of Directive 2004/81 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.

Background: on 29 April 2004, the Council adopted Directive 2004/81/EC which applies to all Member States except Denmark, Ireland and the UK. The report was prepared in accordance with Article 16 of the Directive and is based on a study on the implementation of the Directive.

Monitoring and state of transposition: Member States were required to complete transposition by 6 August 2006. The Commission assisted in this process by organising meetings with national experts. Following the expiry of the transposition deadline, infringement procedures were initiated against 14 Member States. Subsequently, in accordance with Article 226 of the Treaty, the Commission sent eight reasoned opinions. Decisions to bring cases before the European Court of Justice were taken for two Member States: one was withdrawn and a judgment was given for one.

According to the report, all Member States bound by the Directive have communicated their transposition measures. As regards the scope of application, all Member States apply the Directive to third-country nationals who are, or have been victims of offences related to trafficking in human beings, even if they have illegally entered their territory.

Statistics and figures: only a limited number of Member States were able to provide data on the number of residence permits granted as a result of transposition of this Directive, and even fewer of them informed the Commission about the number of reflection periods.

The available data on residence permits for victims of trafficking show that the impact of the Directive varies considerably. In certain Member States, the number of permits was significant (BE, IT, NL, FR, DE), in some cases exceeding 100 per year. In others, the figures were considerably smaller, in most cases between 1-20 per year (CZ, FI, HU, PL, SE). In other Member States, no residence permit was granted on this basis or no information was provided (BG, EE, ES, LV, LT, RO, SI, SK). It must be noted that the available data may not be fully comparable, since some Member States are able to grant humanitarian residence permits whose issue is not restricted to victims of trafficking or is not dependent on their cooperation with the competent authorities. With a view to obtaining more complete and reliable statistics on the application of this Directive, the Commission will examine technical options for the collection of data on residence permits granted under the norms transposing this Directive.

Main conclusions: even though the available figures cannot in themselves allow for a full assessment of the effectiveness of this Directive, its impact does appear to be insufficient in the light of the overall data on victims of trafficking in the EU. While the identified victims in some Member States number several hundred or even upwards of two thousand per year, the number of residence permits based on this Directive is rarely higher than twenty per year. Even if a proportion of victims would not qualify under this Directive (e.g. because they are not third-country nationals), the difference between identified victims and those who made use of the specific residence permits is remarkable.

This may indicate that the potential of the Directive in dismantling networks of traffickers while protecting the rights of victims is not being put to full use.

Although some of the deficiencies indicated in this report are not manifestly serious, there are some which may prevent the Directive being applied correctly. Moreover, as indicated by Member States, some victims may be reluctant to rely on the mechanisms. However, it may also be assumed that giving victims more effective access to information on the opportunities that are available would raise the Directive's profile and help it to work better. Improving the supply of information would need increased efforts by the competent authorities of the Member States and non-governmental organisations and associations. Another way of getting victims to take full advantage of the scheme would be if the provisions of the Directive relating to how victims are treated in the course of the reflection period or for the residence permit were fully complied with. The statistics also show that making it possible to grant temporary residence permits to victims who for various reasons do not cooperate with the competent authorities may significantly increase the number of victims who benefit from the legal stay in the Member States.

Future developments: the fight against trafficking in human beings is a top priority in the area of freedom, security and justice. Several important initiatives, also affecting immigration policy, have been taken to step up the action against this type of crime. The Commission Communication of 10 June 2009, adopted with a view to the Stockholm Programme, stressed that there must be zero tolerance of trafficking in human beings and adequate resources should be invested in order, inter alia, to simplify the conditions for issuing residence permits to victims. It was made clear that all competences of the Union should be used in the most optimal way in order to reach a well coordinated and consolidated EU policy. The Commission was called on to propose further steps to protect and assist victims through an array of measures.

The rights of minors received particular attention in this context. It was indicated in the Stockholm Programme that children in particularly vulnerable situations will receive special attention, notably in the context of immigration policy (unaccompanied minors, victims of trafficking, etc.). According to the Action Plan on Unaccompanied Minors, the EU and Member States should reinforce action regarding child victims of trafficking in human beings by assistance which should at least include the measures provided for by Directive 2004/81.

The Commission has already taken action to respond to these calls. On 29 March 2010, it presented a [legislative proposal](#) which will strengthen protection of and support for victims. In addition, a new integrated strategy on fighting trafficking in human beings and on measures to protect and assist victims is scheduled for 2011. Moreover, the 2008 and 2009 Commission proposals amending the Reception Conditions and the Qualification Directives specify that victims of trafficking must be considered as vulnerable persons whose special needs must be appropriately addressed. The Commission intends to examine additional measures that could be taken to strengthen immigration legislation on fighting trafficking in human beings and to protect and assist victims.

In this context, the Commission may consider the need for amendments to the Directive, including the possibility of issuing a temporary residence permit based on the vulnerable situation of the victim and not necessarily in exchange for cooperation with competent authorities. Other amendments might include:

- having a specified length of reflection periods for victims;
- strengthening the framework of treatment, in particular for minors; and
- reinforcement of the obligation to inform victims of their rights.

The Commission will examine all cases where problems of application of this Directive have arisen. This may imply contacting Member States and/or launching the necessary procedural steps for non-compliance, where appropriate, in accordance with Article 258.

Illegal immigration and trafficking in human beings: residence permit issued to victims

The Commission presented a communication on the application of Directive 2004/81 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.

The present Communication takes stock of the progress achieved and provides an updated overview of the main legal and practical issues relating to the application of Directive 2004/81/EC.

One of the challenges highlighted in the 2010 Commission report was the limited availability of comparable data. Since then, two new Eurostat Working Papers on trafficking in human beings have been published. Moreover, since 2010 eight Ad Hoc Queries and a focused study have been published in the subject.

The latest available figures show that, in the EU, 856 first residence permits were granted in 2013, 1 124 in 2012 and 1 194 in 2011.

According to the latest Eurostat Working Paper on trafficking in human beings, in the 23 Member States that were able to provide data 2 171 non-EU citizens were identified/presumed victims of trafficking in 2012 and 2 002 were identified/presumed victims in 2011. 19 Member States provided data for 2011 and 2012 on the number of victims who were granted a reflection period, which amounted to 1 110 victims in 2012 and 1 011 victims in 2011.

Despite some progress in recent years, the availability of data concerning the application of this Directive has to be further improved.

The main recommendations are as follows:

Residence permits and cooperation with the authorities: available figures already show that the possibility of issuing permits to third-country nationals in exchange for cooperation with the authorities is under-utilised. A temporary residence permit, only valid for the duration of investigations or criminal proceedings, might not constitute an incentive strong enough for vulnerable individuals.

Some Member States are already providing unconditional residence permits to all victims or to some of them, due to their personal circumstances or vulnerability. However, in most cases these are exceptions to a scheme of permits granted upon cooperation, so victims do not know whether or not they will receive the permit.

Less strict criteria for conditionality upon cooperation and other more favourable conditions, such as the dissociation of a permits validity from the duration of the proceedings or a longer minimum duration, could also contribute to assisting victims recovery and thus fostering their cooperation.

Link to Directive 2011/36/EC: while Directive 2004/81/EC sets out specific rules concerning residence permits and treatment of third-country nationals cooperating with the authorities, [Directive 2011/36/EU](#) applies as a horizontal framework to both EU and non-EU citizens.

The latter reinforces some of the provisions contained in Directive 2004/81/EC, including a strengthened protection and assistance framework for children. Therefore, the two texts have to be read jointly.

Moreover, in 2012 the Commission presented the [EU Strategy towards the eradication of trafficking in human beings 2012-2016](#), whose mid-term report is presented in a package with this Communication.

Several provisions of Directive 2004/81/EC are closely linked with and will be strengthened by the application of Directive 2011/36/EU and the implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings.

Therefore, the Commission will be able to fully evaluate the necessity and added-value of issuing application guidelines or amending Directive 2004/81/EC only after the analysis of Directive 2011/36/EU's transposition, which is expected in 2015. The Commission will consider exploring ways for consolidating EU legislation on trafficking in human beings, including with regard to residence permits to victims that are third country nationals.

Transposition: the Commission intends to engage in bilateral exchanges with Member States with a view to achieving full and correct implementation of Directive 2004/81/EC as regards in particular:

- early identification of victims and provision of information;
- a reflection period during which (and while waiting a decision of the competent authorities) victims are entitled to assistance measures and are protected from the enforcement of expulsion orders;
- the treatment of victims during the reflection period and while awaiting the decision of the competent authority to issue a residence permit (living conditions, safety and protection needs; translation, interpretation and free legal aid);
- issue, non-renewal and withdrawal of residence permits;
- the treatment after the residence permit is issued;
- the treatment of children.

This process will also contribute to implementing the actions identified by the Task Force Mediterranean, set up in October 2013 with the aim of preventing the loss of migrants lives at sea by, inter alia, stepping up the fight against migrant trafficking and smuggling.

Practical measures: apart from legislation, practical measures, such as strengthening identification processes, conducting individual risk assessments for all victims prior to and during their cooperation, or improving procedures for timely grant of the reflection periods and residence permits, have a significant impact on the effectiveness of the Directives application.

In order to combat human trafficking more effectively, the Commission can facilitate further exchange of information and good practices in the framework of existing structures and involving Member States, civil society, EU agencies and international organisations to address trafficking in human beings more effectively.