

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

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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 Decisions to bring cases before the European Court of Justice were taken for two Member States: one was withdrawn and a judgment was given for one.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.