

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

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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 permit's 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 Directive's 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.