

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

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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.