

**Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities**

(2002/C 126 E/17)

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*(Submitted by the Commission on 11 February 2002)*

THE COUNCIL OF THE EUROPEAN UNION,

facilitating illegal immigration and trafficking in human beings <sup>(1)</sup>.

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) thereof,

(5) This Directive introduces a residence permit intended for the victims of these offences, which offers a sufficient incentive to them to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(6) To this end, it is necessary to define the short-term residence permit, to lay down the criteria for issuing it, the conditions of residence and the grounds for non-renewal and withdrawal.

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

(7) Victims must be informed of the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to cooperate with the police and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively. Given the extreme vulnerability of victims' situation they must have access to the assistance and care they require.

Whereas:

(1) The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat illegal immigration, is a constituent element of the European Union's objective of creating an area of freedom, security and justice.

(8) Confronted with a victim who clearly intends to cooperate and whose presence the judicial authority regards as useful to the proceedings, the competent administrative authority will issue a short-term residence permit for six months, renewable for six-month periods.

(2) At its special meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source, for example by targeting those who engage in trafficking of human beings and the economic exploitation of migrants. It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims.

(9) To enable victims to gain their independence and not return to the criminal network, the residence permit shall allow the holder to have access to the labour market and pursue vocational training and education. For the same reasons, the Member States may make the issue of the permit conditional on victims' participation in programmes aimed at integrating them or preparing them for assisted return.

(3) An indication of the growing concern about this phenomenon at international level was the adoption by the United Nations General Assembly of a Convention against Transnational Organised Crime, supplemented by a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air. These were signed by the Community and the fifteen Member States in December 2000.

(10) This Directive is without prejudice to other provisions on the protection of victims, witnesses or persons who are particularly vulnerable. Nor does it detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds.

(4) At European Community level, several instruments are in the process of being adopted to define the offences of

<sup>(1)</sup> Council Directive ... [on defining the facilitation of unauthorised entry, transit and stay], OJ L ... [JHA(2000)22]; Council Framework Decision of [...] [on combating trafficking in human beings], OJ L ... [COM(2000) 854, 22 January 2000].

- (11) This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.
- (12) The objective of introducing a short-term residence permit for victims who lodge a complaint or cooperate in the fight against traffickers or smugglers cannot be achieved adequately by Member States. Indeed, the criminal organisations operate by definition on an international scale. In order to fight against this phenomenon, an increasing number of Member States have introduced residence permits for those cooperating with the judicial authorities, with positive results. It would, however, be wrong if disparities between measures in different States were to lead to a shift in the activities of international networks to those Member States where they faced fewer difficulties and risks. As the objectives pursued, in view of the extent of the action, can be better achieved at the Community level, the Community can take measures in accordance with the subsidiarity principle as laid down in Article 5 of the Treaty. In accordance with the proportionality principle, as laid down in the same Article, the Directive does not go beyond what is necessary to achieve these goals,
- (c) 'trafficking in human beings' means the offences defined in Articles 1, 2 and 3 of the Council Framework Decision of [...] [on combating trafficking in human beings];
- (d) 'measure to enforce an expulsion order' means any measure taken by a Member State to enforce the decision of an administrative authority ordering the expulsion of a third-country national;
- (e) 'short-term residence permit' means any permit or authorisation issued by a Member State in accordance with its legislation, allowing a victim to reside in its territory in order to cooperate with the competent authorities.

### Article 3

#### Scope

1. This Directive shall apply to victims, as referred to in Article 1, having reached the age of majority.

2. Member States may decide to apply the provisions of this Directive to minors who fulfil certain conditions laid down in their national law.

HAS ADOPTED THIS DIRECTIVE:

### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

#### Purpose

The purpose of this Directive is to introduce a short-term residence permit for third-country nationals who are victims of offences constituted by the action to facilitate illegal immigration or by trafficking in human beings (hereafter referred to as 'victims') who cooperate in the fight against the perpetrators of these offences.

##### Article 2

#### Definitions

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons;
- (b) 'action to facilitate illegal immigration' means the offences defined in Articles 1 and 2 of the Council Directive . . . [on defining the facilitation of unauthorised entry, transit and stay];

### Article 4

#### Safeguard

This Directive shall be without prejudice to the protection extended to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.

### Article 5

#### Non-discrimination

Member States shall apply this Directive without discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation.

### Article 6

#### More favourable provisions

The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.

## CHAPTER II

## Article 10

**PROCEDURE FOR ISSUING THE SHORT-TERM RESIDENCE PERMIT***Article 7***Information given to the victims**

Persons who are identified by the competent authorities as victims within the meaning of Article 1 shall immediately be informed of the possibility of obtaining the short-term residence permit provided for by this Directive.

The information shall be provided by the authorities responsible for the investigation or prosecution, an association or a non-governmental organisation.

*Article 8***Reflection period**

1. Victims shall be granted a reflection period of 30 days to take the decision to cooperate with the competent authorities. This period starts from the moment they sever relations with those suspected of committing the offences referred to in Article 2(b) and (c).

2. During this period and while awaiting the decision of the authority responsible for the investigation or prosecution in accordance with Article 10(1), they shall have access to the assistance and care referred to in Article 9 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The State may at any time terminate the reflection period if the person has renewed contact with the authors of the offences referred to in Article 2 points (b) and (c) or for reasons relating to the protection of public order and national security.

*Article 9***Assistance and care**

1. Without prejudice to the application of measures relating to the protection of victims and witnesses, Member States shall ensure that victims have access to suitable accommodation, emergency medical and psychological treatment and medical care that cannot be postponed, and to the necessary support in the form of social welfare and means of subsistence if they do not have sufficient resources. They shall attend to the special needs of the most vulnerable.

2. Member States shall provide victims with free legal aid and translation and interpreting services.

**Issue and renewal of the residence permit**

1. The authority responsible for the investigation or prosecution shall decide on the following matters, at the latest ten days after the expiry of the 30-day reflection period:

- (a) whether the presence of the victim is useful;
- (b) whether the victim has shown a clear intention to cooperate substantiated, for example, by an initial, material declaration to the authorities responsible for the investigation or prosecution, or the lodging of a complaint, or any other act provided for by the Member State's legislation;
- (c) whether the victim has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2.

2. The short-term residence permit shall be issued if:

- (a) the authority responsible for the investigation or prosecution rules favourably on the criteria listed in paragraph 1;
- (b) there are no objections on the grounds of the protection of public order and national security.

3. The short-term residence permit shall be valid for six months. It shall be renewed for periods of six months if the conditions set out in paragraph 2 continue to be satisfied.

4. When Member States grant a short-term permit to a person identified as a victim of one of the offences referred to under article 2(b) and (c) with members of his/her family or persons treated as members of his/her family, they shall take this element into account when examining the possibility of granting them a residence permit on humanitarian grounds.

*Article 11***Format of the residence permit**

The short-term residence permit may be issued in the form of a sticker or a separate document. It shall be issued according to the rules and standard format laid down in Council Regulation No ... [laying down a uniform format for residence permits for third-country nationals] <sup>(1)</sup>. Under the heading 'Type of permit' Member States shall enter the words 'Short-term residence permit'.

## CHAPTER III

**CONDITIONS OF RESIDENCE***Article 12***Work, training and education**

The Member States shall authorise the holders of a short-term residence permit to have access to the labour market, vocational training and education.

<sup>(1)</sup> OJ L ... [COM(2001) 157].

*Article 13***Medical and psychological care**

1. Member States shall ensure that holders of a short-term residence permit have access to primary medical care, in addition to the assistance and care referred to in Article 9.
2. Member States shall meet the special needs of victims, such as pregnant women, the disabled or victims of rape or other forms of sexual violence and, if Member States take advantage of the option provided in Article 3(2), minors.

*Article 14***Victims who are minors**

If Member States take advantage of the option provided in Article 3(2), the following provisions shall apply:

- (a) Member States shall take due account of the best interests of the child when applying the provisions of this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.
- (b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.
- (c) Besides, in the case of victims who are unaccompanied minors, Member States shall take the necessary steps to establish their identity and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary.

*Article 15***Rehabilitation programmes for victims**

Member States may make the issue of short-term residence permits conditional upon the victims' participation in a programme aimed either at their integration in the host country and, where appropriate, vocational training, or their assisted return to the country of origin or another country willing to accept them.

## CHAPTER IV

**NON-RENEWAL AND WITHDRAWAL***Article 16***Non-renewal**

1. The short-term residence permit shall not be renewed if the conditions of Article 10(2) cease to be satisfied, if a judicial

decision has terminated the proceedings or, if relevant, the beneficiary does not take part in the rehabilitation programme referred to in Article 15.

2. When the short-term residence permit expires ordinary aliens law shall apply. If victims submit an application for another type of residence permit, Member States shall take account of their cooperation when considering their applications.

*Article 17***Withdrawal**

The short-term residence permit may be withdrawn at any time:

- (a) if the holder has renewed contacts with those suspected of committing the offences in question, or
- (b) if the judicial authority considering the case believes that the victim's cooperation or complaint is fraudulent or wrongful, or
- (c) for reasons relating to the protection of public order and national security.

## CHAPTER V

**FINAL PROVISIONS***Article 18***Penalties**

Member States shall determine the system of penalties applying to violations of the national provisions enacted pursuant to this Directive and shall take all necessary measures to ensure the implementation of these provisions. The penalties envisaged must be effective, proportionate and deterrent. Member States shall communicate these provisions to the Commission at the latest by the date specified in Article 21. Any later amendment affecting these provisions shall be communicated without delay.

*Article 19***Exchange of information**

Every year the Member States shall communicate up-to-date information to the Commission on the following:

- (a) the number of short-term residence permits issued, the proceedings initiated and their outcome;
- (b) the rehabilitation programmes referred to in Article 15, together with an assessment of their effectiveness in rehabilitating victims.

*Article 20***Report**

1. No later than 30 June 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.

2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

*Article 21***Transposal**

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this

Directive no later than 30 June 2003. They shall immediately inform the Commission accordingly.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference when they are officially published. The precise nature of such a reference shall be decided by the Member States.

*Article 22***Entry into force**

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

*Article 23***Addressees**

This Directive is addressed to the Member States.

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