

Council Directive 2004/81/EC of 29 April 2004 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

COUNCIL DIRECTIVE 2004/81/EC

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,<sup>(1)</sup>

Having regard to the opinion of the European Parliament,<sup>(2)</sup>

Having regard to the opinion of the European Economic and Social Committee,<sup>(3)</sup>

Having consulted the Committee of the Regions,

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.
- (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.
- (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 15 Member States in December 2000.
- (4) This Directive is without prejudice to the protection granted to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.

- (5) 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.
- (6) This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.
- (7) Member States should give effect to the provision of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
- (8) At European level, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence<sup>(4)</sup> and Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings<sup>(5)</sup> were adopted to strengthen the prevention and the fight against the above offences.
- (9) This Directive introduces a residence permit intended for victims of trafficking in human beings or, if a Member State decides to extend the scope of this Directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse.
- (10) To this end, it is necessary to lay down the criteria for issuing a residence permit, the conditions of stay and the grounds for non-renewal and withdrawal. The right to stay under this Directive is subject to conditions and is of provisional nature.
- (11) The third country nationals concerned should 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 competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively.
- (12) Given their vulnerability, the third-country nationals concerned should be granted the assistance provided by this Directive. This assistance should allow them to recover and escape the influence of the perpetrators of the offences. The medical treatment to be provided to the third-country nationals covered by this Directive also includes, where appropriate, psychotherapeutical care.
- (13) A decision on the issue of a residence permit for at least six months or its renewal has to be taken by the competent authorities, who should consider if the relevant conditions are fulfilled.
- (14) This Directive should apply without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating the offences concerned.

- (15) Member States should consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfil the conditions set by it, for the members of his/her family or for persons treated as members of his/her family.
- (16) To enable the third-country nationals concerned to gain their independence and not return to the criminal network, the holders of the residence permit should be authorised, under the conditions set by this Directive, to have access to the labour market and pursue vocational training and education. In authorising access of the holders of the residence permit to vocational training and education, Member States should consider in particular the likely duration of stay.
- (17) The participation of the third-country nationals concerned to programmes and schemes, already existing or to be introduced, should contribute to their recovery of a normal social life.
- (18) If the third-country nationals concerned submit an application for another kind of residence permit, Member States take a decision on the basis of ordinary national aliens' law. When examining such an application, Member States should consider the fact that the third-country nationals concerned have been granted the residence permit issued under this Directive.
- (19) Member States should provide the Commission, with respect to the implementation of this Directive, with the information which has been identified in the framework of the activities developed with regard to the collection and treatment of statistical data concerning matters falling within the area of Justice and Home Affairs.
- (20) Since the objective of introducing a residence permit for the third-country nationals concerned who cooperate in the fight against trafficking in human beings cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at the Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (21) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (22) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

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*Status: This is the original version (as it was originally adopted).*

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- (1) [OJ C 126 E, 28.5.2002, p. 393.](#)
- (2) Opinion delivered on 5 December 2002 (not yet published in the Official Journal).
- (3) [OJ C 221, 17.9.2002, p. 80.](#)
- (4) [OJ L 328, 5.12.2002, p. 17.](#)
- (5) [OJ L 203, 1.8.2002, p. 1.](#)