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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

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.

{SWD(2014) 318 final}

1. INTRODUCTION

Addressing trafficking in human beings is about preventing and combating the crime as well as protecting and assisting its victims. With the intention of contributing to these objectives and strengthening the fight against irregular immigration, the Council adopted Directive 2004/81/EC regulating the granting of a temporary residence permit to third-country national victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the authorities for the investigation and prosecution of the alleged traffickers[1].

In the ten years following the adoption of this Directive, relevant steps have been taken in EU policy addressing trafficking in human beings. 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[2].

On 5 April 2011, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims was adopted[3]. 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[4]. Moreover, in 2012 the Commission presented the EU Strategy towards the eradication of trafficking in human beings 2012-2016[5], whose mid-term report is presented in a package with this Communication.

In the first report on the implementation of Directive 2004/81/EC in 2010[6], the Commission had also mentioned some ongoing initiatives contributing to strengthening the rights of victims of trafficking in human beings, which in the meantime have been completed. These include the adoption of a Directive on the rights, support and protection of victims of crime in 2012[7] and the completion of the Common European Asylum System in June 2013, setting common standards and providing for stronger co-operation to ensure fair treatment for asylum seekers[8].

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

[1] OJ L 261, 06/08/2004

[2] Like the previous report, this communication is based on a study carried out for the Commission. All Member States (MS) bound by the Directive have been given the opportunity to review the relevant factual information contained in this report. IE, DK and UK do not take part in the Directive. In this report 'MS' means the MS bound by the Directive.

[3] OJ L 101, 15/4/2011

[4] This report does not analyse provisions of national legislation implementing Directive 2011/36/EU but highlights the most relevant instances in which Directive 2011/36/EU impacts the application of Directive 2004/81/EC. The Commission will report on Directive 2011/36/EU's transposition in 2015.

[5] COM(2012)286

[6] COM(2010)493

[7] OJ L 315, 14/11/2012

[8] See http://europa.eu/rapid/press-release_MEMO-13-532_en.htm

beings have been published[9]. Moreover, since 2010 eight Ad Hoc Queries on trafficking in human beings and a focused study on "Identification of victims of trafficking in human beings in international protection and forced return procedures" have been published by the European Migration Network[10].

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[11]. According to the latest Eurostat Working Paper on trafficking in human beings, in the 23 MS 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 MS 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.

2. DEFINITIONS AND SCOPE OF APPLICATION

Following the entry into force of Directive 2011/36/EU, the relevant definition of "trafficking in human beings" for the application of Directive 2004/81/EC is the one contained in Art. 2 of Directive 2011/36/EU.

All MS must apply Directive 2004/81/EC to all third-country nationals concerned, including in cases of irregular entry into their territory.

According to Art. 3(2), MS can choose to apply the Directive also to those who have been subject to smuggling, i.e. facilitation of unauthorised entry, transit and stay, as defined by Directive 2002/90/EC. Ten MS[12] have made use of this opportunity.

Art. 3(3) allows MS to include children within the scope of the Directive. All except SK have done so, whereas in LT children are included under specific conditions.

3. VICTIM IDENTIFICATION AND PROVISION OF INFORMATION

Early identification of victims is crucial for the effective application of the Directive, allowing victims to be promptly informed of their rights, to initiate a recovery process and to reflect before deciding whether to cooperate with the authorities.

According to Art. 5, victims have to be provided with the necessary information on the possibilities offered by the Directive "when the competent authorities of the MS take the view that a third-country national may fall into the scope of it". The obligation to provide information is now also laid down in Art. 11(6) of Directive 2011/36/EU, which explicitly refers to Directive 2004/81/EC.

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[9] The first Eurostat Working Paper was published in 2013 http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA_13-005/EN/KS-RA-13-005-EN.PDF. The second one is being published at the same time as the present Communication

[10] All ad hoc queries as well as the mentioned study, which was published in 2013, are available here: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/index_en.htm

[11] Source: Eurostat database ((migr_resoth), last update 26 September 2014. Figures for AT are not yet available.

[12] AT, BE, CZ, EL, EE, LU, MT, PT, RO, SE. In BE only persons subject to 'serious types of smuggling' are included, as defined in national law, whereas in EL the smuggling must be conducted by a criminal organization

The interpretation of the moment in time as of which the authorities are obliged to provide information is also clearer thanks to Art. 11(2) of Directive 2011/36/EU, according to which MS must provide victims with assistance and support "as soon as the competent authorities have a reasonable-grounds indication" for believing that a person might be a victim.

Ten MS have specified the timing of the information provision in legislation[13]. In the legislation of some MS[14] it is unclear if information is provided also to presumed victims or only upon official identification, or the start of the criminal proceedings. In some MS[15], legislations set forth additional conditions, such as for instance obtaining useful information on the alleged crime from the victim, or refer to the provision of information to the third-country nationals 'who cooperate with the authorities', which might raise concerns about the correct implementation of the Directive.

In RO the law does not specify which authority should provide information, nor the content and format. In AT information appears to be granted in practice but Art. 5 has not been explicitly transposed in national legislation, except through general rules of administrative law. In HR and PL there is no clear requirement in the law that information refer to all the possibilities offered by the Directive.

The relatively low number of residence permits demonstrates the need to further improve the identification of victims of trafficking, as has been recognised in the EU Strategy towards the Eradication of Trafficking in Human Beings. To date, at least 15 MS have set up National or Regional Referral Mechanisms (NRM) for victims[16]. In addition, Art. 11 of Directive 2011/36/EU obliges MS to "take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims"[17].

A minority of MS have specified the information format in legislation[18]. In practice, most countries provide information both orally and in writing[19]. Some[20] have stipulated in legislation that information has to be provided in a language that the person understands. Common practices include printed brochures[21], websites[22], and dedicated hotlines[23].

Finally, in some MS the same authority in charge of formal identification is also responsible for providing information[24], although this does not exclude the involvement of other authorities. In many cases information is also provided by civil society organisations[25].

[13] BE, BG, CZ, EL, IT, LT, LU, MT, NL, PT
[14] E.g. AT, EL, RO, SI
[15] CZ, LV, MT
[16] BE, BG, CY, CZ, DE, HR, HU, LV, LT, MT, NL, PL, PT, RO, SK
[17] In September 2013 the Commission adopted "Guidelines for the identification of victims of trafficking in human beings" offering practical support to consular services and border guards. See http://ec.europa.eu/antitrafficking/EU+Policy/Guidelines_identification_victims
[18] BE, CY, CZ, ES, LV, PL
[19] AT, MT, PT, SK and SI provide it orally
[20] BG, CY, CZ, DE, FR, PL, PT, ES
[21] E.g. BE, CZ, SK, ES, SE
[22] E.g. FI
[23] E.g. PL, HU, EL, PT, MT
[24] AT, FR, HR, EE, ES, LT, LV, LU, NL, PL, PT, RO, SE, SI
[25] In at least 16 MS (AT, CZ, DE, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, SI, SK) there are agreements with NGOs and associations that include provision of information. In most MS NGOs participate in the identification process in different ways

4. REFLECTION PERIOD

In order to be able to recover and make an informed decision, victims must be granted a reflection period, during which (and while awaiting a decision of the competent authority) they are entitled to assistance measures and are protected from the enforcement of expulsion orders.

All MS have transposed Art. 6 into national law, with the exception of AT and IT. For those MS, however, this period appears to be granted in practice or substituted by the possibility of being immediately granted a residence permit irrespective of cooperation with the authorities[26]. Most MS laws explicitly prohibit the implementation of expulsion orders[27].

It follows from its very nature and objectives that the reflection period cannot be made conditional on the victim's intention to cooperate. This provision is further reinforced by recital 18 of Directive 2011/36/EU, according to which at least during the reflection period assistance and support have to be provided *unconditionally*, including to victims who do not reside lawfully. It is only after completion of the identification process or expiry of the reflection period that MS are no longer obliged to provide support to a victim who "is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State".

Neither the time when the reflection period should start (upon detection or official identification of victims) nor its duration are stipulated by the Directive[28], but it obliges MS to determine these in national law. In practice, around half of the MS officially grant the reflection period only upon formal identification[29]. Thirteen MS provide for at least 30 days[30], in some cases extendable for vulnerable categories or in view of the victim's personal circumstances, while others opt directly for longer periods of 45[31], 60[32] or 90 days[33]. There is considerable variation as to the maximum duration, which can range from one month with no anticipated extensions[34] to several months[35], or may even be extended on a case-by-case basis[36], and as to the type of residence status granted[37].

Finally, MS may decide to terminate the reflection period if the person concerned has actively, voluntarily and on her/his own initiative renewed contact with the perpetrators, or for reasons of public policy or protection of national security (Art. 6(4)). Most MS have

[26] In AT a reflection period of 30 days has been introduced by the Federal Ministry of the Interior but only by internal decree

[27] This is not the case in BG. In some MS, protection from expulsion while victims await the decision of the authority on the residence permit might be problematic

[28] It should be noted that a reflection period duration of at least 30 days is prescribed by Art. 13.1 of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197), which entered into force on 1 February 2008. To date, all MS except three (CZ, HR and EE) have ratified the Convention. EE signed but did not ratify

[29] BG, CZ, FI, DE, EL, ES, HR, HU, LV, LU, PL, PT, RO, SK, SE

[30] BG, CY, CZ, EE, EL, FI, FR, HU, LT, LV, PT, ES, SE

[31] BE

[32] HR, MT

[33] LU, NL, PL, RO, SI, SK and DE (three months)

[34] E.g. CZ, FR, HU, LV

[35] E.g. a three-month standard duration plus a two-month extension in EL, mostly for children

[36] E.g. AT, CY, SE

[37] In some MS more favourable conditions are granted to children as regards the duration or extension of the reflection period, or the status granted during it. See infra, Chapter 8

transposed this provision.[38] In some cases[39], grounds for termination go beyond the criteria laid down in the Directive and may be excessively broad.

5. TREATMENT BEFORE THE RESIDENCE PERMIT IS ISSUED

Art. 7 concerns the treatment of victims during the reflection period and while awaiting the decision of the competent authority. Its content is further specified by a joint reading with Directive 2011/36/EU.

Firstly, Directive 2011/36/EU stresses that support and assistance during the reflection period must be provided unconditionally to all victims, irrespective of their residence status. However, upon expiry of the period or completion of the identification process, Directive 2011/36/EU applies *"without prejudice to Directive 2004/81/EC or similar national rules*" (Art. 11(3)). Therefore, if the victim is not considered eligible for a residence permit or does not have lawful residence in that MS, or has left the territory of that MS, the latter is not obliged to continue providing assistance and support on the basis of Directive 2011/36/EU (recital 18).

Secondly, concerning the content of support, assistance and protection given to victims, Arts. 11 to 16 of Directive 2011/36/EU reinforce what is provided by Directive 2004/81/EC.

5.1 Standards of living ensuring subsistence

Prior to the issuance of a residence permit, MS are obliged to grant victims who do not have sufficient resources a standard of living ensuring subsistence, as well as access to emergency medical treatment and attention to the special needs of the most vulnerable, including psychological assistance where appropriate.

Accommodation appears to be provided in practice in most MS, mostly through specific facilities[40]. However, in HU it is unclear whether the obligation upon the victims to submit a certificate, provided to them by national authorities upon application, already entails a degree of cooperation before assistance and accommodation can be granted, and in BG and RO, the duration of accommodation in shelters is fixed at 10 days, which is less than the duration of the reflection period, and can be extended by request of the victims or the judicial authorities.

Medical treatment, often going beyond emergency care[41] that is prescribed by Art. 7(1), appears to be provided by all MS. In practice most MS seem to attend to the special needs of the most vulnerable, including psychological support and counselling services, although several[42] have not explicitly transposed this requirement into national law.

[38] BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, LT, LU, LV, MT, NL, PL, RO, SE, SI, SK
[39] E.g. FI, NL, SI
[40] AT, BG, BE, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SE, SK
[41] AT, BE, CY, CZ, EL, ES, FI, HR, LT, NL, PT, RO, SE, SK
[42] BE, BG, CZ, EL, FR, NL, HU, LT, LU, LV, PL, SI

Most MS also provide some forms of financial support for all or most vulnerable victims.[43]

5.2 Safety and protection needs

Adequate risk and needs assessment is crucial to guaranteeing the safety of victims and effective cooperation with authorities (Art. 7(2)). Most MS have introduced explicit legislation, protocols or guidelines on safety and protection needs[44] and/or perform a risk and needs assessment in practice.[45]

The obligation to conduct an individual assessment of the victim's personal circumstances and risks, provided for by Directive 2011/36/EU (Art. 12(3) and (4)), further reinforces victim protection.

5.3 Translation, interpretation and free legal aid

Art. 7(3) obliges MS to provide translation and interpretation services to third-country nationals concerned, but only where appropriate. In CZ it is unclear whether interpretation is provided for free and if it is also before the criminal proceedings. In BG the law appears to guarantee interpretation and translation only during the criminal proceedings.

Overall, most MS foresee translation or interpretation but practical implementation varies considerably and access for victims, in particular outside the criminal proceedings, might be problematic.

The optional provision of free legal aid under Art. 7(4) has been transposed in most MS[46]. Art. 12 of Directive 2011/36/EU reinforces this requirement by making provision for legal counselling free of charge and, where appropriate, legal representation, if the victim does not have appropriate financial resources.

6. RESIDENCE PERMIT: ISSUE, NON-RENEWAL AND WITHDRAWL

To issue a residence permit MS must cumulatively consider the opportunity presented by prolonging the third-country national's stay on the national territory for the investigations or judicial proceedings, as well as whether he or she is willing to cooperate with the competent

[43] E.g. AT, BE, CY, CZ, DE, FI, EL, HR, HU, LT, LU, MT, NL, PL, RO, SI, SK, SE. In IT it is not laid down in law but can be granted in practice. In PL victims can apply for social benefit after having been formally identified and then granted permission to stay on the territory for a reflection period

[44] AT, BE, BG, EL, ES, FI, FR, HR, LV, MT, PT, SK

[45] AT, BE, CY, EE, ES, FI, EL, LV, LU, MT, NL, SE already undertake or plan to undertake risk assessments. CZ, EE, ES, FI, EL, LU, LV, MT, NL, and SK already undertake or plan to undertake needs assessments.

[46] BE, BG, CZ, DE, EL, ES, FI, FR, HR, LT, LU, LV, MT, NL, PL, PT, RO, SE and SI have explicitly transposed this article covering the period both before and after the issue of the residence permit. In other cases there are specific legal provisions on the availability of legal counselling after the residence permit but not before (HU), even though it can be provided in practice (EE). In CY and LV free legal aid is provided once the person is formally recognised as a victim

authorities and has severed all relations with the presumed perpetrators. These conditions apply without prejudice to reasons of public policy and protection of national security[47].

In a few MS[48] legal proceedings against the alleged offender must have started before the victim can be issued with a residence permit. Cooperation with the authorities is also variously interpreted, ranging from having to provide information to filing official complaints or testifying in court. However, Art. 12 of Directive 2011/36/EU has further reinforced victim protection by setting out explicit measures for those involved in criminal investigations and proceedings, in addition to the guarantees provided by Directive 2012/29/EU on the rights of victims of crime.

Some MS either do not make permits conditional upon cooperation[49] or allow exceptions to this requirement based on the victims' personal circumstances[50]. On the contrary, others[51] have introduced additional conditions to those specified in the Directive to issue a residence permit, for instance proof of accommodation or payment of a fee. The provision of additional requirements giving wide-ranging discretion to the authorities, especially when no exceptions are allowed, might unjustifiably prevent access to permits and therefore raise concerns as to the correct implementation of the Directive.

The Directive sets a minimum duration of six months for the permit. This requirement is not met in the legislation of BG, EE, HR, HU, NL[52]. Three MS[53] grant directly by law a one-year permit, whereas others[54] set it on a case-by-case basis, based on the length of the proceedings or individual circumstances.

Art. 8 mandates MS to renew a permit if the conditions under Art. 8(2) continue to apply. However, such renewability is not clearly set in law in PL and it appears to be optional in LT. In some MS the permit can lead to permanent residence under certain conditions[55].

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[47] AT, BE, CY, DE, EE, FI, FR, LU, MT, SE, SI explicitly provide the possibility of refusal for such reasons. In others, this is a general principle applying to the issue of residence permits

[48] AT, CY, EE, FR, SK. It is unclear whether this is also the case in HU

[49] AT, ES, FI, HR, IT, PT. In FI such permits are issued on a continuous basis giving full entitlement to family reunification. In HR the victim has to agree to participate in an assistance and protection programme.

[50] BE, EL, FR, LU, HU, NL and SE. BE and EL grant unconditional permits to minors. In HU these permits are granted to stateless persons, and in SE to aliens (including victims of trafficking) at risk of being traumatised or socially rejected if returned to their country of origin, within the asylum procedure. FR grants temporary residence permits to victims "for reasons relating to private or family life" in some cases only, at the discretion of the prefectural authority. In other countries, like DE, general rules on residence conditions allow granting permits on humanitarian grounds, which might include victims of trafficking, under specific conditions. It should also be borne in mind that, according to the Council of Europe Convention n. 197 '(e)ach Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: a) the competent authority considers that their stay is necessary owing to their personal situation; b) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings' (Art. 14.1). See *infra*, footnote 28

[51] E.g. BG, CZ. Some countries require identity proof for the issue of the permit but allow for exceptions (e.g. BE, BG, EL, ES, LT, NL, PL)

[52] In HU the permit is valid *up* to six months and in NL up to one year

[53] AT, EL, PT. In practice, duration is usually one year also in NL and in FR, where a circular has extended the 6 months duration set by the law

[54] E.g. CY, DE, NL

[55] AT, BE, CZ, DE, ES, FI, LU, NL, PL. Victims can apply for a residence permit of unlimited duration after one (PL), three (AT) or four (FI) years of residence. In BE victims can apply for permanent residence, if the trial led to conviction or upon decision of the competent judicial authority. The same applies in NL, in addition to the possibility to apply for permanent residence if the judicial case takes longer than three years, if the return to the

Finally, Art. 14 states that permits may be withdrawn at any time, if the conditions for issuing them are no longer fulfilled. A minority of MS[56] have adopted more extensive grounds for withdrawal, such as for instance reasons of public health, which often apply to all residence permits. In some cases these might exceed the scope of the Directive.

7. TREATMENT AFTER THE RESIDENCE PERMIT IS ISSUED

Under Art. 9, after the residence permit has been issued, victims without sufficient resources must be granted at least the same treatment as provided by Art. 7.

Furthermore, for the duration of the residence permit, victims should have access to the labour market, vocational training and education under rules set by national law (Art. 11).

Access to the labour market, vocational training and education seems to be provided in the great majority of MS, although in some cases access to the labour market might be problematic[57].

Art. 12 grants victims access to programmes for the recovery of a normal social life, including for instance improvement of professional skills. In the MS that have implemented targeted programmes for victims[58], stakeholders involved are generally positive about them. In HR participation in the assistance and protection programme for victims of trafficking is a condition for the issuance and renewal of the permit.

8. CHILDREN

MS applying the Directive to children must take their best interests into account, ensure that procedures are appropriate and provide them with access to education on the same grounds as nationals, possibly with restriction to the public system (Art. 10). All MS provide access to education.

Some MS adopted specific provisions on the principle of the best interests of the child[59], others considered that this was already in force in national law, including through the ratification of the UN Convention on the Rights of the Child, and thus did not require further legislative action. However, the latter option might not always sufficiently clarify the extent of applicability of the Convention with regard to the specific provisions of the Directive[60]. In

country of origin entails risks for the victim, or concerns about family unity, etc. In CZ permanent residence may be applied for at the end of the trial

[56] BG, FI, HR, HU, LT, PL, SE, SI

[57] E.g. in MT access to the labour market appears to be formally conditional upon obtaining the approval of the competent authority. In SK it is granted on terms unequal to nationals and in LU it is permitted only for salaried activities

[58] E.g. AT, CZ, ES, FI, HR, IT, LV, NL, PL and SK

[59] BE, CY, EE, ES, FI, MT, PT, RO, SE

[60] See also UN Committee on the Rights of the Child, General Comment n. 5 (2003)

any case, all MS are bound by the respect for the principle of the best interests of the child when implementing EU law.[61]

Art. 10(c) focuses on unaccompanied children and obliges MS to ensure legal representation in accordance with national law as well as to establish their identity, nationality and unaccompanied status, and to locate their families as soon as possible. Not all MS have explicitly introduced these requirements into national law[62]. In September 2012, the Commission adopted a mid-term report on the implementation of the Action Plan on Unaccompanied Minors 2010-2014[63], endorsing the view that children's best interests prevail over their migratory status, and which was welcomed by a European Parliament resolution in September 2013[64].

Among the concerns raised about the practical application of Art. 10 are proper identification, the establishment of appropriate procedures taking into account the best interests of the child, in particular for unaccompanied children, as well as children running away from or absconding from care facilities. On the other hand, good practices concerning specific procedures to safeguard children participating in criminal proceedings have been put in place (e.g. FI, IT).

Some MS apply more favourable conditions to children, such as longer reflection periods[65], unconditional residence permits[66] or dedicated accommodation shelters[67].

Finally, Arts. 13 to 16 of Directive 2011/36/EU specifically target child victims, addressing assistance, support and protection. Their implementation will impact positively on the situation of third-country national children and the way Directive 2004/81/EC is applied to them.

9. CONCLUSIONS

Despite some progress in recent years, the availability of data concerning the application of this Directive has to be further improved. However, 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, who need time to recover from a traumatic experience before considering whether to embark on formal cooperation with law enforcement and judicial authorities. Some MS are already providing unconditional residence permits to all victims or

[61] Article 24 of the Charter of Fundamental Rights of the EU

[62] In BG, FR, LU and MT legislation does not explicitly mention the establishment of identity, nationality, unaccompanied status and/or the need to locate families as soon as possible. In FI and PL legislation in some cases only refers to unaccompanied minors seeking international protection. Legal representation is not clearly demonstrated in BG

[63] COM(2010)213

[64] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0387+0+DOC+XML+V0//EN

[65] BE, BG, CY, EL, ES, FI, HR, PL, PT, SE

[66] E.g. BE, EL. In PL, a minor under 15 can be exempted from the obligation to cooperate. In FR, minors are not subject to return procedures (specific procedures are in place for minors older than 16 and accessing the labour market). See also footnote 50 for MS providing unconditional permits in general

[67] E.g. BE, BG, ES, EL, HR, IT, NL, RO

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. In addition, it is unclear how often they are actually granted and on what basis the assessment of vulnerability and personal circumstances is carried out. 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.

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. As a result of these instruments, national legislation is being or will soon be altered. 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.

In the meantime, the Commission intends to engage in bilateral exchanges with MS with a view to achieving full and correct implementation of Directive 2004/81/EC. 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.

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. The Commission can facilitate further exchange of information and good practices in the framework of existing structures and involving MS, civil society, EU agencies and international organisations to address trafficking in human beings more effectively.