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A5-0397/2002

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## REPORT

on a 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  
(COM(2002) 0071 – C5-0085/2002 – 2002/0043(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Patsy Sørensen

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 21 February 2002 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission 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 (COM(2002) 0071 – 2002/0043(CNS)).

At the sitting of 27 September 2002 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0085/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Patsy Sørensen rapporteur at its meeting of 19 March 2002.

It considered the Commission proposal and the draft report at its meetings of 9 July, 3 October and 12 November 2002.

At the latter meeting it adopted the draft legislative resolution by 28 votes to 5.

The following were present for the vote: Giacomo Santini, acting chairman; Lousewies van der Laan, vice-chairman; Patsy Sørensen, rapporteur; Giuseppe Brienza, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Margot Keßler, Timothy Kirkhope, Eva Klant, Alain Krivine (for Giuseppe Di Lello Finuoli), Baroness Sarah Ludford, Lucio Manisco (for Ole Krarup), Bill Newton Dunn, Arie M. Oostlander (for Mary Elizabeth Banotti), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for The Lord Bethell), Jacques F. Poos (for Carmen Cerdeira Morterero pursuant to Rule 153(2)), Bernd Posselt, Heide Rühle, Olle Schmidt (for Francesco Rutelli), Ingo Schmitt (for Jorge Salvador Hernández Mollar), Ilka Schröder, Joke Swiebel, Anna Terrón i Cusí, Kathleen Van Brempt (for Adeline Hazan pursuant to Rule 153(2)), Gianni Vattimo (for Martine Roure) and Christian Ulrik von Boetticher.

The opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities are attached.

The report was tabled on 13 November 2002.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on a 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 (COM(2002) 0071 – C5-0085/2002 – 2002/0043(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal (COM(2002) 0071<sup>1</sup>),
  - having regard to Article 63, first paragraph, point (3) of the EC Treaty,
  - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0085/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities (A5-0397/2002),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 126 E, 28.5.2002, p. 393.

## Amendment 1

## Title

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

Proposal for a Council directive on the short-term residence permit issued to victims of ***smuggling of human beings*** or trafficking in human beings who cooperate with the competent authorities

*Justification*

*It seems desirable to simplify the title.*

## Amendment 2

## Whole text

(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.

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

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

*Justification*

*It would be helpful to replace the term 'illegal immigration' with the simpler term 'smuggling of human beings'.*

### Amendment 3

#### Recital 1

(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.

(1) The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat ***smuggling of human beings***, is a constituent element of the European Union's objective of creating an area of freedom, security and justice. ***Trafficking in human beings and smuggling of human beings are a serious violation of human rights and must be combated.***

#### *Justification*

*It is important to stress that this directive is concerned with serious offences which violate human rights.*

### Amendment 4

#### Recital 3 b (new)

***(3b) The majority of the victims received come from Central and Eastern Europe. In view of the geographical proximity and cultural links with this region and because of enlargement, the EU has an additional responsibility here.***

## Amendment 5

### Recital 7

(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.

(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. ***Non-governmental organisations recognised by the Member State can play an important role in providing assistance and support to victims.***

### *Justification*

*It is important to acknowledge the role which non-governmental organisations recognised by Member States can play in assisting and caring for victims. Such organisations can do much to help restore victims' confidence.*

## Amendment 6

### Recital 8

(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.

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

### *Justification*

*The concept of whether the presence of the victim will be useful is arbitrary and vague. To whom is it supposed to be useful, and who is to assess this and on what grounds? This reformulation is both specific and unambiguous.*

Amendment 7  
Recital 9

*(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.*

*Deleted*

*Justification*

*A consequence of the amendment to Article 12. Creating a specific residence permit which opens up access to the labour market is not the purpose of this directive.*

Amendment 8  
Article 1

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.

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 smuggling of human beings, the direct result of which is exploitation***, or by trafficking in human beings (hereafter referred to as “victims”) who cooperate in the fight against the perpetrators of these offences.

*Justification*

*A distinction should be made between trafficking in human beings and the smuggling of human beings. Trafficking in human beings is an offence against the victim involving exploitation that is a violation of human rights. The smuggling of human beings is an offence against the State. The two offences may overlap, particularly where someone is smuggled into a Member State and immediately finds themselves exploited in order to repay the smuggler. Only in such a situation can an extension of the short-term residence permit be justified.*

Amendment 9  
Article 2, paragraph (b)

(b) *"action to facilitate illegal immigration" means the offences defined in Articles 1 and 2 of the Council Directive .../.../CE [on defining the facilitation of unauthorised entry, transit and stay];*

(b) *'smuggling of human beings' means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a Member State of which the person is not a national or a permanent resident.*

*Justification*

*This definition of 'smuggling of human beings' is based on the UN Protocol against the Smuggling of Migrants by Land, Sea and Air.*

Amendment 10  
Article 2, point (b)

(b) *"action to facilitate illegal immigration" means the offences defined in Articles 1 and 2 of the Council Directive .../.../EC [on defining the facilitation of unauthorised entry, transit and stay];*

(b) *"action to facilitate illegal immigration" means the act of facilitating intentionally for purposes of direct or indirect gain, by aiding directly or indirectly, the unauthorised entry, movement, or residence in the territory of a Member State of an alien who is not a national of a Member State of the European Union;*

*Justification*

*It is legally dubious to refer in a legislative act to a proposed act which is not yet in force or still not certain to enter into force. The definition chosen here is the one used in the French initiative (C5-0427/2000), as amended by Parliament's Citizens Committee.*

Amendment 11  
Article 2, paragraph (c)

**(c) 'illegal entry' means crossing borders without complying with the necessary requirements for legal entry into the receiving state.**

*Justification*

*Self-explanatory.*

Amendment 12  
Article 2, paragraph (c)

**(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];**

*(For definitions, see Council framework decision on combating trafficking in human beings OJ L 203, 01.08.2002, p.1.*

*Justification*

*The Council framework decision on combating trafficking in human beings was adopted on 19 July 2002.*

Amendment 13  
Article 3, paragraph 2

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

**Member States *shall apply the provisions of this Directive to minors who are victims of trafficking in human beings in the same way as to adults.***

*Justification*

*Minors who are victims of trafficking should be given the opportunity to cooperate with the police and judicial authorities. Minors make up a steadily increasing percentage of all victims. Failure to take them into account here would make them even more attractive to traffickers. The best interests of the child must, however, be properly taken into account as laid down in Article 14 of this Directive.*

Amendment 14  
Article 3, paragraph 2 a (new)

***2a. If protection is extended to minors, Member States shall ensure that they are entrusted to the care of recognised non-governmental organisations.***

*Justification*

*Minors are a vulnerable category of victims. It is desirable that recognised non-governmental organisations should play a major role in caring for them in particular.*

Amendment 15  
Article 4

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.

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, ***such as, in particular, the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms.***

*Justification*

*It is important to refer explicitly to the principal sources of protection of human rights in the European Union.*

Amendment 16  
Article 7

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

Persons who are identified by the competent authorities as victims within the meaning of Article 1 shall immediately be informed ***in a language that they understand*** of the possibility of obtaining the short-term

Directive.

residence permit provided for by this Directive.

*Justification*

*It is important that victims should be able to understand clearly the implications of and conditions on which they can obtain a short-term residence permit.*

Amendment 17  
Article 7, paragraph 2 a (new)

***2a. During initial reception, non-governmental organisations recognised by the Member States can play a special part in providing assistance as referred to in Article 9 of the proposal.***

*Justification*

*Non-governmental organisations recognised by the authorities have an important part to play in providing initial assistance to victims. They play an important role, including in many cases in the initial reception of victims.*

Amendment 18  
Article 7a (new)

***When identifying persons as victims within the meaning of Article 1, the authorities may consult competent non-governmental organisations and associations.***

*Justification*

*Competent NGOs that have significant knowledge and experience can help authorities to identify victims.*

Amendment 19  
Article 8, paragraph 1

1. Victims shall be granted a reflection period of 30 days to take the decision to cooperate with the competent authorities.

1. Victims shall be granted a reflection period of 30 days to take the decision to cooperate with the ***relevant*** competent

This period starts from the moment they sever relations with those suspected of committing the offences referred to in Article 2(b) and (c).

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) **and they have been referred to a recognised non-governmental organisation.**

#### *Justification*

*It is preferable that the reflection period should not start until victims have contacted or been referred (for instance by the police) to a non-governmental organisation recognised by the Member State.*

#### Amendment 20 Article 8, paragraph 4

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.

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) **unless the contact was approved by the authorities as part of the investigation or prosecution**, or for reasons relating to the protection of public order and national security.

#### *Justification*

*It would be unjust to punish a victim if traffickers seek contact with him/her against his/her own will. Moreover, in certain circumstances contact with the traffickers may even be useful for the investigation or prosecution. It should therefore be left up to the Member States to decide whether and when the severance of all contacts is absolutely necessary and whether and when the competent authorities can approve contact with traffickers as part of the investigation or prosecution.*

#### Amendment 21 Article 8, paragraph 4 a (new)

**4a. Only on the basis of serious grounds may the thirty-day reflection period be extended.**

*Justification*

*Thirty days is a serious reflection period. Only in exceptional cases, for example if a victim is unable to lodge a complaint for psychological, medical or practical reasons, should it be possible to grant a longer reflection period.*

Amendment 22  
Article 9, paragraph -1 (new)

***-1. Member States shall protect the privacy and identity of people involved in legal proceedings, particularly by ensuring that the proceedings are not held in public.***

*Justification*

*The first assistance to which people involved in legal proceedings are entitled comprises protection against acts of intimidation and/or reprisals. The confidentiality of these proceedings is a basic precaution.*

Amendment 23  
Article 9, paragraph 1

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.

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, ***to*** medical and psychological treatment, 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, ***such as minors, women in particular when they are pregnant and disabled people.***

*Justification*

*Medical and psychological treatment must include the full range of care and assistance to which nationals have access. Moreover, this article duplicates Article 13, which refers to medical and psychological care to which holders of a short-term residence permit have access.*

Amendment 24  
Article 9, paragraph 2 a (new)

***Non-governmental organisations recognised by the Member State may play an important part in providing assistance to the victim.***

*Justification*

*Non-governmental organisations which are recognised by the State can play an important part in providing assistance, in view of their expertise and experience. However, Member States must ensure that they have adequate funds at their disposal.*

Amendment 25  
Article 10

Article 10 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:

Article 10 Issue and renewal of the residence permit

1. The authority responsible for the investigation or prosecution shall ***establish*** 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, ***unless the competent authorities deem such contracts necessary for the investigation or prosecution and have granted approval to the victim to continue the contacts.***

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 member 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.*

(a) the authority responsible for the investigation or prosecution rules favourably on the criteria listed in paragraph 1; **and**

(b) *issuing it does not stand in contradiction to the protection of public order and national security. **The fact that the victim does not have or no longer has identity papers or is in the possession of false identity papers shall not prevent the issue of a short-term residence permit.***

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 granting a residence permit, the Member States should consider granting family members or persons treated as family members accompanying the victim a residence permit limited to this period.*

*5. The decision taken by the authority responsible for the investigation or prosecution pursuant to paragraph 1 of this article shall be duly substantiated. Provision shall be made for appeal to the competent authority against this decision.*

#### *Justification*

*Clarifications: the original wording of paragraph 4 in particular is quite incomprehensible.*

Amendment 26  
Article 10, paragraph 1, subparagraph (a)

(a) whether the **presence** of the victim is **useful**;

(a) whether the **cooperation** of the victim **with the authority responsible for the investigation or prosecution is relevant**;

*Justification*

*The concept of whether the presence of the victim will be useful is arbitrary and vague. To whom is it supposed to be useful, and who is to assess this and on what grounds? This reformulation is both specific and unambiguous.*

Amendment 27  
Article 12

**Article 12 Work, training and education**

**Deleted**

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

*Justification*

*This provision is not compatible with the objective of the directive, i.e. to enable victims to participate in proceedings. Instead, it introduces a specific residence permit for taking up an occupation or course of study whose continuation after the end of the criminal proceedings is to be given positive consideration when a fresh residence permit is applied for. This would mean that illegal immigrants would become legally entitled to a residence permit. The implication would be that any illegal immigrant could legally obtain a long-term residence permit by lodging a complaint against the smuggler.*

Amendment 28  
Article 13, paragraph 1

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.

1. Member States shall **guarantee** 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.

### *Justification*

*Holders of short-term residence permits should be guaranteed access to primary medical care.*

### Amendment 29 Article 14, introductory sentence

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

***The following provisions shall apply to victims who are minors:***

### *Justification*

*Victims of trafficking who are minors must be given the opportunity to cooperate with the police and judicial authorities. Children make up a steadily increasing percentage of all victims. Failure to take them into account here would make them even more attractive to traffickers. The best interests of the child must, however, be properly taken into account as laid down in the three points of this article of the Directive.*

### Amendment 30 Article 15

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.

Member States ***shall*** 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.

***Member States shall ensure that their legal system provides for measures against traffickers which enable victims to secure recognition of the offence committed/harm suffered and/or compensation for it.***

### *Justification*

*The fate of victims in a wider context than that of the legal proceedings ought to be a prime condition for the granting of these residence permits. Reintegration is possible only if victims are recognised as such. Moreover, as a residence permit can be granted only if a complaint is lodged, it is important that complaints should also have a successful outcome from the victim's point of view.*

Amendment 31  
Article 15 a (new)

***The Member States shall ensure that the victim is actually available to the authority responsible for the investigation or prosecution throughout the proceedings.***

*Justification*

*To protect the interests of the victim it is very important that the victim can be contacted quickly throughout the proceedings.*

Amendment 32  
Article 16, paragraph 1

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.

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, ***concluding the prosecution of the traffickers or smugglers***, or, if relevant, the beneficiary does not take part in the rehabilitation programme referred to in Article 15.

*Justification*

*It is important to state clearly which judicial decision is meant.*

Amendment 33  
Article 16, paragraph 2

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.

2. When the short-term residence permit expires ordinary aliens law shall apply. ***Member States shall ensure that victims have the opportunity to apply for protection under the asylum procedure in accordance with the conditions which apply to this in the Member State.*** If victims submit an application for a ***permanent*** residence permit, Member States shall take account of their

cooperation *in both the judicial procedure and the integration programme* when considering their applications.

*Justification*

*It is important to establish a link with any provision which exists for protecting victims in accordance with the asylum procedure. When an application is made for a permanent residence permit, account should be taken of the victim's cooperation in the procedure.*

Amendment 34  
Article 16, paragraph 2 a (new)

***2a. Provision shall be made for appeal to the competent authority against a decision not to renew a short-term residence permit on the grounds that the conditions laid down in Article 10(2) are no longer fulfilled.***

*Justification*

*Victims must have the opportunity of appealing to a court against a decision not to renew their residence permit if this decision has been taken because the conditions laid down in Article 10(2) are no longer fulfilled. This accords with the requirements of due legal process.*

Amendment 35  
Article 17, point (a)

(a) if the holder has renewed contacts with those suspected of committing the offences in question, or

(a) if the holder has renewed contacts with those suspected of committing the offences in question, ***unless such contact was approved by the competent authorities as part of the investigation or prosecution,*** or

Amendment 36  
Article 17, subparagraph (c)

(c) for reasons relating to the protection of public order and national security.

(c) for reasons relating to the protection of public order and national security. ***The fact that the victim does not have or no longer has identity papers or is in the possession of***

***false identity papers shall not be regarded as one of the above reasons.***

*Justification*

*When it is being considered whether a residence permit should be withdrawn, a victim whose identity papers and so on have been taken away by the trafficker or smuggler should not be regarded as posing a threat to public order and national security because he or she fails to satisfy other national conditions governing the right of residence, such as possession of a valid travel document.*

Amendment 37  
Article 17, paragraph (2) (new)

***2. The withdrawal of a residence permit shall be duly substantiated.***

*Justification*

*Self-explanatory.*

Amendment 38  
Article 17, paragraph (3) (new)

***3. Provision shall be made for appeal to the competent court against a decision to withdraw a residence permit.***

*Justification*

*In order to ensure the proper administration of justice in the interests of victims, it is important that provision should be made for appeal to a judicial body.*

Amendment 39  
Article 20

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

1. No later than 30 June **2005**, the commission shall report to the European Parliament and the Council on the application of this Directive in the Member

States and propose 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.

States and propose 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 *two* years on the application of this Directive in the Member States.

## EXPLANATORY STATEMENT

By letter of 21 February 2002 the Council consulted the European Parliament on a Commission 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. This proposal was forwarded to Parliament by the Council pursuant to Article 67(1) of the Treaty establishing the European Community.

### **Institutional framework**

With the entry into force of the Treaty of Amsterdam, the European Union set itself the goal of creating an area of freedom, security and justice, as set out in the fourth indent of Article 2 of the EU Treaty. This area is defined in greater detail in Title VI of the EU Treaty and Title IV of Part 3 of the Treaty establishing the European Community (EC Treaty). Article 61 of the EC Treaty says that the Council is to adopt measures in the field of asylum and immigration in order to establish progressively an area of freedom, security and justice. Article 63, first paragraph, point (3) of the EC Treaty stipulates that these measures include measures concerning illegal immigration and illegal residence. The objectives of an area of freedom, security and justice were confirmed and further developed in the Vienna action plan and in the Conclusions of the Tampere European Council of 15 and 16 October 1999. The European Council concluded that the European Union needs to stop illegal immigration<sup>1</sup>, it also stated that it was determined to tackle illegal immigration at source, by combating those who engage in trafficking in human beings and economic exploitation of migrants. The rights of the victims of such activities must be secured with special emphasis on the problems of women and children.<sup>2</sup> The fight against illegal immigration was also an important theme of the Seville European Council of 21 and 22 June 2002. In its conclusions the European Council proposed to speed up the implementation of all aspects of the programme for the creation of an area of freedom, security and justice in the European Union.<sup>3</sup>

### **Fight against illegal immigration**

#### *At international level*

A significant step forward in the fight against smuggling of migrants and trafficking in human beings was the signing of the United Nations Convention against Transnational Organised Crime and its two protocols. The first is the protocol to prevent, suppress and punish trafficking in persons and the second covers the smuggling of migrants by land, sea and air<sup>4</sup>.

#### *In the European Parliament*

The European Parliament has long been active in combating trafficking in human beings and illegal immigration and has shown particular concern about the position of vulnerable groups such as women and children. In 1996 Parliament called for measures to ensure the safety and

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<sup>1</sup> Conclusion 3 of the Tampere European Council.

<sup>2</sup> Conclusion 23 of the Tampere European Council.

<sup>3</sup> Conclusion 26 of the Seville European Council.

<sup>4</sup> [http://www.odccp.org/odccp/crime\\_cicp\\_signatures\\_convention.html](http://www.odccp.org/odccp/crime_cicp_signatures_convention.html)

dignity of the victims by granting them a temporary residence permit for humanitarian reasons<sup>1</sup>.

In 2000 Parliament recommended a common EU policy focused on a legal framework and law enforcement response, repression and punishment of offenders, as well as prevention and protection of and support to the victims<sup>2</sup>. It called on the Commission to take measures to protect victims of trafficking, including the granting of temporary residence permits<sup>3</sup>. In a report in 2001 Parliament also called for assistance for victims of trafficking who have inadequate resources<sup>4</sup>.

## **Commission proposal**

### *Legal basis*

The Commission proposal is based on Article 63, first paragraph, point (1) of the EC Treaty. As the proposal involves a general immigration policy measure this is an appropriate choice.

### *Substance of the Commission proposal*

The proposal for a directive seeks to create instruments to combat illegal immigration and trafficking in human beings by introducing a short-term residence permit for the victims of these offences.

The measure will encourage victims to cooperate in tracking down and prosecuting the perpetrators of these criminal offences. The directive introduces a procedure whereby victims are given a reflection period in order to decide whether or not to cooperate in the investigations. A short-term residence permit may be issued if the authority responsible for investigation or prosecution considers that the presence of the victim is useful and the victim has shown a clear intention to cooperate. The victim must also have severed relations with those suspected of having committed the offences. The Member States will allow the holders of short-term residence permits to have access to the labour market, vocational training and education. The victims must also be given appropriate housing and medical and psychological care. The aim is to enable victims to fight back and to free themselves from traffickers or smugglers. It is also to enable victims to build a new life.

## **Rapporteur's observations**

Traffickers in human beings and smugglers of migrants exploit the vulnerable social and economic position of their victims. Victims are often misled by false promises and are attracted to the 'rich West' by advertisements or through agents to work as dancers, in the hotel and catering industry, as hairdressers or on building sites and so on. They are often unaware of the atrocious conditions in which they will be required to work. They are frequently victims of violence, threats, abuse and exclusion and run up high debts to cover the cost of transportation and documents. In general, your rapporteur therefore strongly supports

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<sup>1</sup> See A-0326/95, OJ C 32, 5.2.1996, p. 88.

<sup>2</sup> Sørensen report of 19 May 2000, A5-0127/2000.

<sup>3</sup> Sørensen report, paras 9 and 20.

<sup>4</sup> Klamt report of 12 June 2001.

the proposals made by the Commission. It is important that legislation should be enacted at Union level and this directive will be a first step in that direction. However, your rapporteur feels that the text of the proposal could be improved in a number of ways. The Commission has opted for a directive covering both trafficking in human beings and smuggling of migrants. Your rapporteur approves this approach. In practice it is often extremely difficult to make a clear distinction between smuggling and trafficking as they tend to overlap. People travel to the Union via a temporary employment agency or a travel agency and only discover that they have fallen into the hands of criminals on their arrival. In the case of the definitions, your rapporteur would like to make a suggestion concerning the smuggling of human beings, with reference to the United Nations Protocol signed in December 2000. In addition, she proposes a simplified title for the directive namely: 'Council directive on the short-term residence permit issued to victims of smuggling of human beings or trafficking in human beings who cooperate with the competent authorities'. This title makes the scope of the directive clearer. Instead of the complicated term 'action to facilitate illegal immigration', your rapporteur prefers the term 'smuggling of human beings'. The definition of this term can be taken from the UN Protocol against smuggling of migrants<sup>1</sup>. The proposal allows victims a reflection period of thirty days to consider whether they wish to cooperate. The rapporteur fully supports this, on the face of it, short period.

In practice victims who want to cooperate are generally able to reach a decision fairly quickly. A longer period frequently leads to 'procedure shopping'. This means that the victim finds another way of being able to remain in the country. These alternative solutions are almost always unfavourable to the victims. Procedure shopping is an abuse that can be exploited not only by the victims, but especially by traffickers. It is counter-productive for the investigation and prosecution of smugglers and traffickers because valuable time is lost. Only in exceptional and duly substantiated cases can the reflection period be extended, in particular on medical or safety grounds relating to the victim or his or her family and acquaintances. Your rapporteur would also like to focus particularly on the protection of minors, who form a particularly vulnerable group requiring every possible protection. Non-governmental organisations recognised by the authorities should be given an active role in providing protection for victims. Governments also have an important role and should also cooperate closely with non-governmental organisations. The government should ensure that there are adequate reception centres to take in victims where they can be counselled by non-governmental organisations. Furthermore, the government should provide adequate financial resources for assistance for victims. Action programmes should be set up to provide victims with support while they are trying to rebuild their lives. It is important to emphasise here the role that non-governmental organisations can play, particularly those working at local level. Good mutual relations between governments and non-governmental organisations, alongside recognition of each other's specific tasks and responsibilities is of crucial importance in the fight against trafficking in and smuggling of human beings. An effort should be made to strike a balance as regards independence, self-help and specific responsibilities.

In the rapporteur's view, the most important thing is that there should be a balanced instrument, for both victims and government. They have a joint responsibility. The amendments proposed by the rapporteur are designed to secure such a balanced approach. The deadline for implementing the directive is 30 June 2003.

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<sup>1</sup> Protocol against the smuggling of migrants by land, sea and air.

## MINORITY OPINION

by **Ilka Schröder**

on 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  
(COM(2002) 0071 – C5-0085/2002 – 2002/0043(CNS))

*We support the idea of helping victims of human trafficking. However, this is not at all what this directive is about.*

*A clear distinction must be made between 'trafficking in human beings' and smuggling of migrants. Trafficking in human beings involves most often the consent of the person to be transported into the EU, but later involves exploitation which exceeds the normal capitalist standards. The smuggling of migrants can be an action of disobedience against Fortress Europe and an effort to overcome the high walls of border controls that the EU has erected. 'Illegal immigration' is nothing more than an understandable reaction to the EU's efforts to fence itself against the migratory flows that result from global poverty, war and capitalist exploitation for a good part of which the EU is itself responsible. In fact, so-called 'illegal immigration' is the only way to reach the territory of the EU and it should not be criminalised. Instead, we must ensure free access to the EU so that the right of asylum can be taken up.*

*If we really want to help victims of trafficking and exploitation and modern forms of slavery, we should not hide behind the interests of European law enforcement authorities and cynically fob victims off with short-term residence permits. The State must not pressurise victims into cooperating with police and investigative authorities by means of the threat of expulsion.*

*Instead, comprehensive victim protection must first of all ensure a permanent residence permit, access to asylum procedures in particular and full and equal access to medical and social services without conditionality. Everything else is maybe good for European prosecutors, but certainly not enough for the victims of human trafficking.*

9 October 2002

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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

(COM(2002) 71 – C5-0085/2002 – 2002/0043(CNS))

Draftsman: Ioannis Koukiadis

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Ioannis Koukiadis draftsman at its meeting of 26 February 2002.

It considered the draft opinion at its meetings of 10 September and 30 September 2002.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, vice-chairman; Ioannis Koukiadis, vice-chairman and draftsman; Luis Berenguer Fuster (for Carlos Candal), Ward Beysen, Michel J.M. Dary, Bert Doorn, Raina A. Mercedes Echerer (for Heidi Anneli Hautala), Janelly Fourtou, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Klaus-Heiner Lehne, Hans-Peter Mayer (for Rainer Wieland), Manuel Medina Ortega, Fernando Pérez Royo (for Maria Berger pursuant to Rule 153(2)), Marianne L.P. Thyssen, Diana Wallis and Stefano Zappalà.

## SHORT JUSTIFICATION

### 1. Scale of the problem of human trafficking and smuggling, and the victims

International Organisation for Migration (IOM) statistics indicate that trafficking in an estimated 700 000 to 2 million women and children takes place globally each year. The persons who are brought into another country could be seen as parties to a criminal transaction. In reality, however, persons transported by organised crime groups are often victimised economically, physically, or otherwise. They are often deceived about the country to which they are being taken and, once they have reached their destination, sometimes forced to engage in prostitution or criminal activities in order to pay for the expenses incurred. In the latter case, the organised crime groups commit the two offences of smuggling and human trafficking.

Over the last decades, smuggling and trafficking have become a major activity and source of income for criminal organisations at national and international level. The phenomenon has assumed such proportions that in Europe, for example, smuggling has become a determining factor in migration trends. The various criminal organisations are increasingly networking in order to achieve economies of scale and monopolise every stage of the traffic from smuggling to control of the sex markets.

According to the NGO Terre des hommes, 6 000 children between 12 and 16 are smuggled into Western Europe every year to be used for sexual exploitation, in drug trafficking, or as beggars<sup>1</sup>.

In Germany, a total of 926 cases involving victims of trafficking in human beings were recorded in the year 2000, of whom 81.5 % were nationals of Central and East European countries and all of whom were women<sup>2</sup>.

The former Yugoslavia has become one of the main targets for human trafficking. There is evidence that, during the Kosovo crisis, women and girls were abducted by armed gangs or enticed away by other means from refugee camps in northern Albania.

### 2. Reasons for a directive

In most cases, the potential victims of traffickers, led astray by promises, believe that they are being recruited for a legitimate job or are going abroad in order to be married. Others know that they are being recruited to work in the sex industry and also that they will have to pay back the high recruitment and transport costs. Traffickers typically seek to control their victims by taking away their identity papers. Because they have generally made their way illegally into the country where they are working, the victims are deterred from integrating into the mainstream of society, for fear of being expelled.

Traffickers saddle their victims with crippling debts so as to control them and use them to earn a regular profit. They are rarely arrested, and prosecution is even less common. **Those who have fallen victim to trafficking often stand to lose more than they gain when they**

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<sup>1</sup> *The Guardian*, 12 July 2002, p. 6.

<sup>2</sup> Federal Criminal Investigation Office, Human Trafficking Situation Report 2000, p. 5.



of *action to facilitate illegal immigration or* trafficking in human beings who cooperate with the competent authorities

*perpetrators of offences in relation to illegal immigration and* victims of trafficking in human beings who cooperate with the competent authorities

#### *Justification*

*Terminological change for the purpose of clarification, which applies to the entire text. The directive concerns people who help to uncover illegal immigration networks even though they have themselves committed illegal immigration offences. They may under certain circumstances enjoy immunity from prosecution for this reason, but this does not make them victims of an offence.*

#### Amendment 2 Recital 4

*(4) At European Community level, several instruments are in the process of being adopted to define the offences of facilitating illegal immigration and trafficking in human beings.<sup>24</sup>* *deleted*

<sup>24</sup> *Council Directive .../.../EC [on defining the facilitation of unauthorised entry, transit and stay], OJ L ..., p. [JHA(2000)22]; Council Framework Decision of [...] [on combating trafficking in human beings], OJ L ..., p. [COM(2000) 854, 22 January 2000].*

#### *Justification*

*It is legally dubious to refer in a legislative act to a proposed act which is not yet in force or still not certain to enter into force. The definition chosen here is the one used in the French initiative (C5-0427/2000), as amended by Parliament's Citizens Committee.*

#### Amendment 3 Recital 5

(5) This Directive introduces a residence permit intended for the victims of *these*

(5) This Directive introduces a residence permit intended for the *perpetrators of*

*offences*, which offers a sufficient incentive to them to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

*illegal immigration and trafficking in human beings*, which offers a sufficient incentive to them to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

*Justification*

*Clarification. Amendment applies to the entire text.*

Amendment 4  
Recital 9

*(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.*

*deleted*

*Justification*

*A consequence of the amendment to Article 12. Creating a specific residence permit which opens up access to the labour market is not the purpose of this directive.*

Amendment 5  
Recital 12

(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

(12) The *objective* of introducing a short-term residence permit for *illegal immigrants or victims of trafficking in human beings* who lodge a complaint *and* cooperate in the fight against traffickers or smugglers cannot be achieved adequately by Member States. Indeed, the criminal organisations operate by

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.

definition on an international scale. In order to fight against this phenomenon, an increasing number of Member States have introduced *limited* residence permits for those cooperating with the judicial authorities, with positive results. *The aim is to prevent* disparities between measures in different states *from leading* to a shift in the activities of international networks to those Member States where *criminal proceedings cannot resort to these means*. 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, *particularly given that no specific residence permit is being introduced for accomplices who are prepared to give evidence*.

#### *Justification*

*Clarification. In the case of illegal immigration, these provisions are not aimed at protection for victims but at perpetrators who are prepared to give evidence and who are to be promised a mitigated sentence or immunity from prosecution because their evidence is valuable.*

#### Amendment 6 Article 1

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*.

The purpose of this Directive is to introduce a short-term residence permit for third-country nationals who are *either perpetrators* of offences constituted by the action to facilitate illegal immigration or *victims of* trafficking in human beings (hereafter referred to as “victims”) who cooperate *with the Member State authorities* in *criminal proceedings* against the perpetrators.

### *Justification*

*Terminological change for the purpose of clarification, which applies to the entire text. The directive concerns people who help to uncover illegal immigration networks even though they have themselves committed illegal immigration offences. They may under certain circumstances enjoy immunity from prosecution for this reason, but this does not make them victims of an offence.*

#### Amendment 7 Article 2, point (b)

(b) “action to facilitate illegal immigration” means *the offences defined in Articles 1 and 2 of the Council Directive .../.../EC [on defining the facilitation of unauthorised entry, transit and stay];*

(b) “action to facilitate illegal immigration” means *the act of facilitating intentionally for purposes of direct or indirect gain, by aiding directly or indirectly, the unauthorised entry, movement, or residence in the territory of a Member State of an alien who is not a national of a Member State of the European Union;*

### *Justification*

*It is legally dubious to refer in a legislative act to a proposed act which is not yet in force or still not certain to enter into force. The definition chosen here is the one used in the French initiative (C5-0427/2000), as amended by Parliament’s Citizens Committee.*

#### Amendment 8 Article 2, point (c)

(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];*

(c) “trafficking in human beings” means  
  
*- the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for*

*the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs;  
- the recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation;*

*Justification*

*It is legally dubious to refer in a legislative act to a proposed act which is not yet in force or still not certain to enter into force. The definition chosen here is based on the proposal COM(2000) 854, as amended by Parliament in its resolution of 12 June 2001.*

Amendment 9  
Article 5

*Article 5 Non-discrimination*

*deleted*

*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.*

*Justification*

*Given that all the Member States are bound by the EU Charter of Fundamental Rights and corresponding bans on discrimination are also contained in their own legal systems, the verbatim quote from the Charter appears superfluous.*

Amendment 10  
Article 8

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 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. ***Making use of*** the reflection period shall not create any entitlement to residence.

4. The ***Member States*** may at any time terminate the reflection period if the person has renewed contact with the ***suspect*** or for reasons relating to the protection of public order and national security.

*Justification*

*Linguistic clarifications.*

Amendment 11  
Article 10

Article 10 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**

Article 10 Issue and renewal of the residence permit

1. The authority responsible for the investigation or prosecution shall **establish** 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; **and**

(b) **issuing it does not stand in contradiction to** 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 granting a residence permit, the Member States should consider granting family members accompanying the victim a**

**2 (b) and (c) with member 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.**

**residence permit limited to this period.**

*Justification*

*Clarifications: the original wording of paragraph 4 in particular is quite incomprehensible.*

Amendment 12  
Article 12

**Article 12 Work, training and education** **deleted**

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

*Justification*

*This provision is not compatible with the objective of the directive, i.e. to enable victims to participate in proceedings. Instead, it introduces a specific residence permit for taking up an occupation or course of study whose continuation after the end of the criminal proceedings is to be given positive consideration when a fresh residence permit is applied for. This would mean that illegal immigrants would become legally entitled to a residence permit. The implication would be that any illegal immigrant could legally obtain a long-term residence permit by lodging a complaint against the smuggler.*

Amendment 13  
Article 13

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

**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 to 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.**

*Justification*

*Article 9 already provides for access to medical care. Further arrangements are not appropriate, for the same reasons as apply to Article 12.*

8 October 2002

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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

(COM(2002) 71 – C5-0085/2002 – 2002/0043(CNS))

Draftsperson: Lousewies van der Laan

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Lousewies van der Laan draftsperson at its meeting of 27 March 2002.

It considered the draft opinion at its meetings of 27 August 2002, 10 September 2002 and 2 October 2002.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Marianne Eriksson acting chairperson; Jillian Evans vice-chairperson; Lousewies van der Laan draftsperson; Regina Bastos, Lone Dybkjær, Ilda Figueiredo, Geneviève Fraisse, María Izquierdo Rojo, Rodi Kratsa-Tsagaropoulou, Maria Martens and Sabine Zissener.

## AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

Amendment 1  
Recital 3 a (new)

***(3a) The vast majority of victims are of the female sex. Well over half the victims of trafficking in human beings are aged under 25 and three quarters under 30. Moreover, more than half the registered victims of trafficking in human beings are exploited in the prostitution sector.***

Amendment 2  
Recital 3 b (new)

***(3b) The majority of the victims received come from Central and Eastern Europe. In view of the geographical proximity and cultural links with this region and because of enlargement, the EU has an additional responsibility here.***

Amendment 3  
Article 7

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

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, ***in a language which they understand.***

The information shall be provided by the

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<sup>1</sup> OJ C 126 E, 28.5.2002, p. 393.

authorities responsible for the investigation or prosecution, an association or a non-governmental organisation.

authorities responsible for the investigation or prosecution, an association or a non-governmental organisation.

*Justification*

*The victim must understand the extent of the implications of obtaining a short-term residence permit and what the authorities expect of her.*

Amendment 4  
Article 7 a (new)

***7a. When identifying persons as victims within the meaning of Article 1, the authorities may consult competent non-governmental organisations and associations.***

Amendment 5  
Article 8, paragraph 1

1. Victims shall be granted a reflection period of 30 days to take the decision to co-operate 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).

1. Victims shall be granted a reflection period of 30 days to take the decision to co-operate 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). ***In exceptional circumstances, the competent authorities can extend this period up to 60 days.***

Amendment 6  
Article 8, paragraph 4

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

4. The State may at any time terminate the reflection period if the person has ***voluntarily*** renewed contact with the authors of the offences referred to in Article 2 points b) and c) ***unless the***

public order and national security.

***contact was approved by the authorities as part of the investigation or prosecution, or for reasons relating to the protection of public order and national security.***

Amendment 7  
Article 9, paragraph -1 (new)

***-1. Member States shall protect the privacy and identity of people involved in legal proceedings, particularly by ensuring that the proceedings are not held in public.***

*Justification*

*The first assistance to which people involved in legal proceedings are entitled comprises protection against acts of intimidation and/or reprisals. The confidentiality of these proceedings is a basic precaution.*

Amendment 8  
Article 9, paragraph 1

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.

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, ***to*** medical and psychological treatment, 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, ***such as minors, women in particular when they are pregnant and disabled people.***

*Justification*

*Medical and psychological treatment must include the full range of care and assistance to which nationals have access. Moreover, this article duplicates Article 13, which refers to medical and psychological care to which holders of a short-term residence permit have access.*

Amendment 9  
Article 10, paragraph 1, point (c)

(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.

(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, ***unless the competent authorities deem such contacts necessary for the investigation or prosecution and have granted approval to the victim to continue the contacts.***

Amendment 10  
Article 10, paragraph 2, point (b)

(b) there are no objections on the grounds of the protection of public order and national security.

(b) there are no objections on the grounds of the protection of public order and national security. ***The fact that a victim of trafficking in human beings does not (or does not any longer) have any papers or is in possession of false papers shall not prevent the issuing of a short-term residence permit.***

Amendment 11  
Article 13, paragraph 1

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.

1. Member States shall ***guarantee*** 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.

*Justification*

*Holders of short-term residence permits should be guaranteed access to primary medical care.*

Amendment 12  
Article 14, point (c) a (new)

*(ca) In addition, Member States shall ensure that unaccompanied minors are placed, in order of preference:*

- with adult members of their family;*
- with a foster family;*
- at centres specialising in accommodating minors;*
- in other accommodation suitable for minors.*

*Justification*

*The accommodation provided to minor victims should also be taken into account.*

Amendment 13  
Article 15

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.

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.

***Member States shall ensure that their legal system provides for measures against traffickers which enable victims to secure recognition of the offence committed/harm suffered and/or compensation for it.***

### *Justification*

*The fate of victims in a wider context than that of the legal proceedings ought to be a prime condition for the granting of these residence permits. Reintegration is possible only if victims are recognised as such. Moreover, as a residence permit can be granted only if a complaint is lodged, it is important that complaints should also have a successful outcome from the victim's point of view.*

#### Amendment 14 Article 17, point (a)

(a) if the holder has renewed contacts with those suspected of committing the offences in question, or

(a) if the holder has renewed contacts with those suspected of committing the offences in question, ***unless such contact was approved by the competent authorities as part of the investigation or prosecution, or***

#### Amendment 15 Article 20

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 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.

1. No later than 30 June **2005**, the commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose 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 **two** years on the application of this Directive in the Member States.