

Experts Group on Trafficking in Human Beings
Secretariat:
European Commission
Directorate General Justice and Home Affairs
Directorate D: Internal security and criminal justice
Unit D1: Fight against terrorism,
trafficking and exploitation of human beings
and law enforcement cooperation

B-1049 Brussels

Commissioner
António Vitorino
European Commission
DG Justice and Home Affairs
B-1049 Brussels

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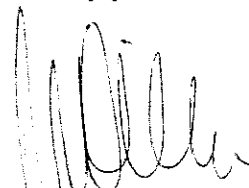
Dear Mr Vitorino,

On 25 March 2003, the Commission decided to set up a consultative group, to be known as the Experts Group on Trafficking in Human Beings. According to Article 2 (2) of the Decision, the Experts Group shall issue opinions to the Commission at the latter's request or on its own initiative.

Currently, negotiations are being held in the Council of Europe concerning a European Convention on action against trafficking in human beings. The issue of short-term residence permits for victims of human trafficking is one of the most important questions in this context. With a view to the role of the Commission in these negotiations, the Experts Group decided to issue an opinion on that question.

Thus, I have the pleasure of sending you, on behalf of the Experts Group, the attached opinion on a reflection period and residence permit for victims of trafficking in human beings, which was adopted by the Group on 16 April 2004.

Sincerely yours,



Ms. Marjan Wijers, MA, LL.M
President of the Experts Group

**Opinion
on reflection period and residence permit
for victims of trafficking in human beings¹**

Considering the negotiations at the Council of Europe for a European Convention on action against Trafficking in Human Beings and the participation of the Commission in the negotiations;

Considering the agreement on the necessity to integrate a human rights perspective into such a Convention, including specific attention on the position and needs of children consistent with the Convention on the Rights of the Child;

Considering the adoption by the Council of the European Union of the Directive 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;

Recalling the Brussels Declaration on Preventing and Combating Trafficking in Human Beings as the final outcome of the European Conference on Preventing and Combating Trafficking in Human Beings-Global Challenge for the 21st Century from 18 to 20 September 2002;

Recalling the Brussels Declaration as setting out the basis for further action by the Commission;

Recalling the European Commission's Decision of 25 March 2003 setting up a consultative group, to be known as the "Experts Group on Trafficking in Human Beings" (2003/209/EC) and the mission of the group to issue opinions on its own initiative as set forth in Article 2, para 2;

The Experts Group on Trafficking in Human Beings issues the following opinion with a view to the negotiations in the ad hoc Committee on action against trafficking in human beings (CAHTEH) on a European Convention on Action against Trafficking in Human Beings and especially the role of the Commission in these negotiations.

Background

1. Granting a reflection period, followed by a temporary residence permit, including corresponding rights to trafficked persons - regardless of whether the trafficked person is able or willing to give evidence as a witness - assists Member States in the obligation to protect the human rights of trafficked persons and not to treat the trafficked person exclusively as an

¹ The European Expert Group stresses the reality of trafficked persons being victims of severe crimes. The term "victims of trafficking" is further related to the Council Directive on the residence permit issued to third-country nationals (...) (14994/03). Nevertheless, the Group shares the concern that the use of the word "victim" is controversial because of its emphasis on vulnerability and powerlessness. Therefore, the term "trafficked persons" is being used in the opinion, which is in compliance with International Human Rights Documents, such as the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002 (E/2002/68/Add.1).

instrument for the prosecution.² Categorical protection of basic rights also serves to raise the trafficked person's confidence in the State and its ability to protect his/her interests. Once recovered, a trafficked person with confidence in the State would be more likely to make an informed decision and to co-operate with the authorities in the prosecution of traffickers. Special attention should be paid to child victims, i.e. persons below the age of 18, in that their best interests should be a primary consideration in all policies and procedures involving them.

Opinion

2. A reflection period should be granted immediately to all those who there is reason to suspect are trafficked. The purpose of the reflection period includes enabling identification of whether a person is trafficked, as well as granting the possibility for the trafficked person to begin to recover and make an informed decision about his/her options, including the decision on whether to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims.

3. The reflection period should be for not less than three months and should include the obligation to inform the affected person about and refer them to service agencies which can take care of him/her and provide him/her with appropriate assistance.³ A period of three months is a minimum time frame in which to ensure that the presumed trafficked person receives appropriate assistance and support, such as secure housing, psychological counselling, medical and social services, and legal consultation. During this period, a risk assessment should be conducted.⁴ Moreover, in case of return, proceedings have to be adopted that secure safe repatriation and promote social inclusion in the country of origin. These measures are pre-requisites for the trafficked person to reach an informed decision about his/her options. In the case of children, there should be the opportunity to extend the reflection period.

4. The residence permit should be granted to identified trafficked persons following the reflection period for a period of at least six months, with the possibility of renewal, irrespective of the capacity and/or willingness of the trafficked person to act as a witness.

Those trafficked persons who do not wish to testify as witnesses – or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be

² International Covenant on Civil and Political Rights (ICCPR), Art.7; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention against Transnational Organized Crime. Art. 7.

³ The so-called "B-9 regulations" in the Netherlands is considered to be a good example: Under the B-9 regulation, a presumed trafficked person cannot be expelled or deported for a three months reflection period.

⁴ See Brussels Declaration, Article 13 on immediate victim assistance, last para: "Protocols of minimum standards should be drawn up between law enforcement services and IOs and NGOs on the immediate treatment of trafficked victims. Without endangering the confidence a victim should have for an NGO, these standards would include at least:

That law enforcement officers must recognise victims of trafficking as victims of serious crime that must not be re-victimised and must treat them in accordance with their human rights and in accordance with the UN Protocol on trafficking in persons.

That the safety of the victims and their families is the paramount consideration.

That the investigator has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.

taken into custody in the destination country – require equally adequate protection measures as trafficked persons willing to testify.⁵

5. During the temporary residence permit trafficked persons should have access to appropriate and secure housing, medical, psychological, social, legal and financial assistance, and should be authorized to have access to the labour market and to vocational training and education in order to enable them to recover and take back control over their lives and to promote their social inclusion and future prospects.

4. When the temporary residence permit expires, if no other kind of residence permit can be issued on the basis of ordinary national aliens' law, Member States should issue a residence permit on humanitarian grounds, especially in case of particularly vulnerable categories such as minors and victims of sexual violence or other serious human rights abuses, in particular if there is a reasonable ground to believe that the victim's life, health or personal liberty will be under threat upon return to his/her country of origin

6. Child victims of trafficking should equally be entitled to a temporary and/or permanent residence permit and the corresponding rights, independent of the child's willingness or capacity to co-operate with the authorities, consistent with the principle of the "best interests of the child". Limiting the possibility of the issuance of a residence permit for trafficked persons to adults could act as an incentive for traffickers to target children.

⁵ See Italian model "Article 18" of the Legislative Decree no.286/98now law no.228/20 and UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002 (E/2002/68/Add.1), Guideline 6.