COUNCIL OF THE EUROPEAN UNION

Brussels, 13 June 2013

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LIMITE

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NOTE

from: Presidency
to: Working Party on General Matters, including Evaluations (GENVAL)


Delegations will find enclosed the third revised version of the draft Council conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings, as agreed at the GENVAL meeting of 23 April 2013.

These draft conclusions will be submitted to COREPER on 15 May 2013 and subsequently to the June JHA Council for approval.
The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION,

RECOGNISING that trafficking in human beings is a gross violation of human rights, prohibited by the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights;

REMINding that trafficking in human beings affects women, men, girls and boys and taking into account that Member States are faced with an extensively complex and ever changing form of organised crime;

EMPHASIZING the need to identify, assist, support, protect and compensate the victims of trafficking in human beings;

AFFIRMING that trafficking in human beings needs to be addressed in an integrated, multidisciplinary way and that measures should be human rights and victim-centred based, gender-sensitive and take into account the best interest of the child;

AFFIRMING the need for more efficient EU internal and external cooperation for the effective combating of this crime and for the protection of its victims;
RECALLING that the European Council in the Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens\(^1\) - has stressed that trafficking of human beings is a very serious crime involving violations of human rights and human dignity that the EU cannot condone, and that it has deemed necessary that the Union should develop a consolidated EU policy against trafficking aiming at further strengthening the commitment and efforts made, by the EU and the Member States, through a coordinated and coherent policy response which goes beyond the area of freedom, security and justice;

RECALLING the crucial importance of the UN Protocol against Trafficking in Persons including Women and Children dated 14 December 2000\(^2\), and the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings dated 16 May 2005\(^3\), and the need for the EU Member States who have not yet done so, to ratify these instruments without any delay;

RECALLING the provisions of the CoE Convention regarding the rights and protection of victims and the interpretation of such provisions in reports of the CoE Group of Experts on Action against trafficking in human beings:

RECALLING the appointment by the Commission of an Anti-Trafficking Coordinator;

RECALLING the importance of the European Court of Human Rights case law (in particular the Rantsev case\(^4\)) concerning the positive obligations of Member States in relation to the protection of victims;

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\(^1\) OJ C 115, 4.5.2010, p.1.
\(^3\) Council of Europe Treaty Series (CETS) No. 197.
\(^4\) Judgment of 10 January 2010 (Application no. 25965/04).

RECALLING the Directive 2004/81/EC of the Council of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities²;

TAKING INTO ACCOUNT the work carried out by the EU institutions, Agencies and the Member States for strengthening cooperation for combating trafficking in human beings and protecting its victims;

REITERATING the importance of the rights of victims of trafficking in human beings provided for in Directive 2011/36/EU and recognising the importance of rights to all victims including victims of trafficking in human beings which are provided for in other EU-instruments, in particular Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime³;

RECALLING the Communication of 19 June 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy Towards the Eradication of Trafficking in Human Beings 2012–2016, and in particular Priority A, Action 4, that to inform victims of their rights and help them effectively exercise them, the Commission will, in 2013, provide clear, user-friendly information on the labour, social, victim and migrant rights that they have under EU law and that as a follow-up, the Commission will help Member States provide and disseminate similar information at national level in 2014;

RECALLING the Council Conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 of 25 October 2012, intending to support and complement the Strategy, and which inter alia emphasise the importance of developing clear information for victims of trafficking in human beings including on their rights and disseminate the information to all relevant actors that work with victims;

REMINding Member States that national fact sheets on the rights of victims of all crime already exist to guide victims through the most important steps of criminal proceedings in each Member State, explaining their rights and the basic rules they need to follow to exercise them.

WELCOMING the Commission publication, published on 15 April 2013 on the "The EU rights of victims of trafficking in human beings" as provided for by Priority A, Action 4, of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.

INVITES MEMBER STATES to:

- Take into consideration and utilise the Commission document "The EU rights of victims of trafficking in human beings" (attached as an appendix) for the purpose of drawing up or, if necessary, amending Member State specific document(s). Such document(s) should provide clear, user-friendly information on labour, social, victim and migrant rights that victims of trafficking in human beings have under EU law in their jurisdiction with special attention being given to child victims;

- Supplement the information on the labour, social, victim and migrant rights that victims of trafficking in human beings have under EU law with any other rights of victims of human trafficking that exist under the domestic law in their jurisdiction, in/when drawing up such document(s);

- Ensure, as far as possible, where the information is to be provided in more than one document, that such documents are collated into a single dossier to facilitate victims' easy access to comprehensive information on their rights;

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– Ensure that such document(s) outline(s) in a clear and user-friendly manner how such rights can be exercised by victims in their jurisdiction;
– Disseminate such document(s) to all relevant actors that work with victims of human trafficking in their jurisdiction (e.g. police, border guards, immigration and asylum officials, health and social work professionals, Non-Governmental Organisations, etc.);
– Utilise such Member State specific document(s) in training to all relevant actors working in combating trafficking in human beings to ensure a human rights' perspective;
– Satisfy themselves that the objective of these Council Conclusions have been met by June 2014.

INVITES THE COMMISSION to:

– Support the efforts of the Member States in providing and disseminating such Member State specific document(s);
– To allocate the necessary budget to fund projects concerning the implementation of the rights of victims.
The EU rights of victims of trafficking in human beings
Europe Direct is a service to help you find answers to your questions about the European Union.

Freephone number (*):
00 800 6 7 8 9 10 11

(*) Certain mobile telephone operators do not allow access to 00 800 numbers or these calls may be billed.
Foreword

Cecilia Malmström,
EU Commissioner for Home Affairs

'Trafficking in human beings is the slavery of our times, and a gross violation of human rights. It is a serious crime affecting women, men, girls and boys of all nationalities, causing severe and lifelong harm to its victims. To protect and assist victims of human trafficking, and help them recover as far as possible, EU legislation grants them a number of rights — to legal assistance, medical help, temporary residence and more. For those rights to be known and applied effectively in practice, victims and practitioners working in the field of trafficking in human beings need clear and accessible information about their content. I hope that this overview of the EU rights of victims of human trafficking will help authorities in EU Member States in their daily work to deliver the assistance and protection that victims need and deserve.'
Introduction

Addressing trafficking in human beings is a priority for the European Union and the Member States. The EU approach recognises the gender-specific nature of trafficking in human beings. It places the victim and its human rights at the centre, and recognises the need for a child-sensitive approach. It emphasises the need for coordinated, multidisciplinary action.

Clear and consistent information to victims of trafficking in human beings on their rights is essential. These rights range from (emergency) assistance and health care to labour rights, rights regarding access to justice and to a lawyer and on the possibilities of claiming compensation. This document provides an overview of those rights based on the Charter of Fundamental Rights of the European Union, EU directives, Framework decisions and European Court of Human Rights case-law. Additional rights for children have been included at the end of each chapter.

This document is addressed to victims and to practitioners seeking an overview of rights based on EU legislation, as well as to Member States developing similar overviews of rights of human trafficking victims at national level. EU legislation provides for minimum standards, Member States can go beyond these standards as appropriate.

Rights deriving from EU legislation which is due to be transposed into national law by Member States after the publication of this document are marked in italics in the text.

For the purpose of the rights and obligations set out in this document, a 'child' shall mean any person below 18 years of age. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child.

'Victim' for the purposes of this document refers to an individual who is subject to trafficking in human beings.

'Perpetrator' and 'offender' for the purposes of this document refers to an individual or individuals who have been accused or found guilty of human trafficking.

'Third-country national' is an individual who is not a citizen of a Member State of the European Union.

With this document, the European Commission is implementing one of the actions in the EU strategy towards the eradication of trafficking in human beings 2011-2016, namely under Priority 4: Identifying, arresting and assisting victims of trafficking, Action 4: Provision of information on the rights of victims.
"Trafficking in human beings" as defined in Directive 2011/36/EU, Article 2:

1. The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over these 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.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
EU rights of victims of trafficking in human beings

Chapter 1: Assistance and support

1.1 Victims are entitled to assistance and support as soon as the competent authorities have reasonable grounds to believe that they might have been trafficked.

1.2 Victims are entitled to assistance and support before, during, and for an appropriate time after the conclusion of criminal proceedings.

1.3 Assistance and support should not be conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial; in cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period.

1.4 Assistance and support can only be provided with the victim’s consent on an informed basis.

1.5 Victims are entitled at least to a subsistence-level standard of living, appropriate and safe accommodation and material assistance.

1.6 Victims are entitled to necessary medical treatment including psychological assistance, counselling and information.

1.7 Victims are entitled to translation and interpretation services where appropriate.

1.8 Victims with special needs (in particular needs in relation to pregnancy, health, disability, physical or mental illness or have suffered serious physical, sexual or psychological violence) shall be attended to.

1.9 Victims, in accordance with their needs, have the right to access confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members are entitled to access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
1.10 Specialist support services must provide: (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; (b) targeted and integrated support for victims with specific needs, including victims of sexual violence and victims of gender-based violence, including trauma support and counselling.

1.11 Victims who are third-country nationals must be informed of the reflection and recovery period and provided with information on the possibilities of obtaining international protection.

1.12 Victims have the right to seek asylum and be informed of the possibilities for obtaining international protection and should be protected against refoulement (return to the country where there is a risk of death, torture or other inhuman or degrading treatment or punishment).

Child victims

1.13 The child's best interest shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

1.14 Child victims are entitled to assistance and support taking account of their special circumstances. Member States need to take necessary measures to provide a durable solution based on an individual assessment of the best interest of the child.

1.15 A guardian or representative will be appointed to a child victim when the holders of parental responsibility are precluded from ensuring the child's best interest and/or representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Victims have the right to appropriate protection based on an individual risk assessment. The individual assessment should be timely and should aim to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to the particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2.2 Victims of trafficking should not be prosecuted or be subject of penalties imposed for their involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking in human beings, in accordance with national law.

2.3 Victim personal data can be collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and may be processed only for the same purpose for which the data was collected. Processing of this data has to be lawful, adequate, relevant and not excessive (in relation to the purpose for which it was collected).
2.4 Victim personal data must be deleted or made anonymous when it is no longer required for the purpose for which it was collected.

2.5 Victims are entitled to information from their first contact with the competent authorities (such as the police, judicial authorities, etc.) and as far as possible in languages commonly understood.

2.6 Victims are entitled to information on:
- the type of services or organisations to which they can turn for support;
- the type of support which they can obtain;
- where and how they can report an offence;
- procedures following such a report and their role in connection with such procedures;
- how and under what conditions they can obtain protection;
- to what extent and on what terms they have access to legal advice, legal aid or any other sort of advice;
- requirements for them to be entitled to compensation;
- if they are resident in another Member State: any special arrangements available to them in order to protect their interests;
- how to receive reimbursement for the expenses incurred as a result of their participation in criminal proceedings.

Protection during and after criminal proceedings

2.7 According to an individual assessment by the competent authority, victims are entitled under certain conditions to specific treatment aimed at preventing secondary victimisation, namely avoiding unnecessary repetition of interviews during investigations, prosecution or trial, visual contact between the victim and the perpetrator, giving evidence in open court and unnecessary questions about the victim's private life.

2.8 Victims have access without delay to legal counselling and to legal representation, including for the purpose of claiming compensation.

2.9 Legal advice and representation is free of charge where the victim does not have sufficient financial resources.

2.10 Victims have in accordance with their role in the relevant criminal justice system the right to a review of a decision not to prosecute.

2.11 Victims have the right to understand and be understood in criminal proceedings and to receive communications in an understandable manner, taking into account personal considerations such as disability.

2.12 Victims are entitled under certain conditions to be accompanied by someone of their choice who can help them understand or be understood in the first contact with a competent authority, unless this would be against the interests of the victim or proceedings.

2.13 If they make a formal complaint, victims are entitled to written acknowledgement of the complaint, receive translation or necessary linguistic assistance for making the complaint.

2.14 Victims must be informed that they are entitled to information about criminal proceedings as a result of the complaint (decisions on halting the investigation or not prosecuting the offender, what charges will be brought against the offender, the time and date of the trial, the final judgment and the state of criminal proceedings) without unnecessary delay, according to the wishes of the victim.
2.15 Victims can request to be notified without unnecessary delay if the offender is released or escapes from custody.

2.16 Depending on their formal role in criminal proceedings, victims have the right to interpretation free of charge, during interviews or questioning during criminal proceedings before investigating and judicial authorities and for their active participation in court hearings.

2.17 Depending on their formal role in criminal proceedings, victims are entitled to free-of-charge translation of information essential to the exercise of their rights in criminal proceedings in a language that they understand received during criminal proceedings.

2.18 Victims can use communication technology such as videoconference, telephones or the Internet for translation purposes unless the physical presence of an interpreter is required for the victim to exercise their rights or understand proceedings.

2.19 Victims have the right to participate voluntarily in restorative justice programmes based on their informed consent, which can be withdrawn at any time. The victim has a right to full and unbiased information about the process. Discussions which do not take place in public can remain confidential (unless agreed by the victim and perpetrator) or if the information has to be released due to an overriding public interest, such as threats or acts of violence.

2.20 A European Protection Order may be issued when the victim is staying or residing in another Member State and a protection measure against the trafficker has been issued such as a prohibition to enter certain locations, places and areas where the victim resides or visits, or prohibition or restriction of contact (including phone, mail). A European Protection Order applies to the protection of a victim in any EU country where the victim resides or has moved.

2.21 Member States must minimise possible communication difficulties (for example if they speak a different language or have impediments) for victims who are witnesses or are involved in the proceedings in other ways so that they can understand their involvement in each step of criminal proceedings.

Child victims

2.22 Interviews with child victims should take place without unjustified delay. Child victims are entitled to be interviewed, where necessary, in premises designed or adapted for that purpose.

2.23 Interviews with child victims should be conducted by the same people if possible, limiting the number of interviews as much as possible and only where strictly necessary for criminal investigations and proceedings. The victim can be accompanied by a representative or adult of the child’s choice (where appropriate) unless a reasoned decision against the appropriateness of that person has been made.

2.24 Criminal hearings involving child victims should take place without the presence of the public and without the direct presence of the child, who can be otherwise heard using appropriate communication facilities (such as video links, etc.).

2.25 Member States may prevent the public dissemination of any information that could lead to the identification of a child victim.

2.26 When possible and under the circumstances of each case, if the victim is a child, Member States could defer prosecution of the perpetrator(s) for a period of time after the child victim has reached the age of majority.
Chapter 3: Compensation

3.1 Victims are entitled to access existing compensation schemes for victims of violent intentional crimes.

3.2 Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings.

3.3 Victims are entitled to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

3.4 Victims are entitled to the return of their own property (unless urgently needed for criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

Access to compensation schemes in cross-border situations

3.5 Victims are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed.

3.6 Victims are entitled to essential information on the possibilities to claim compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required and on requests for supplementary information.

3.7 Victims are entitled to receive, as soon as possible, information on the contact person or department responsible for handling their compensation claim, an acknowledgement of the receipt of the application, if possible an indication of the time by which a decision on their application will be made and on the decision taken.
Chapter 4: Integration and labour rights

4.1 EU citizens have the right to remain within the territory of the Member States for up to three months provided that they have a valid passport or identity document, subject to limitations and conditions.

4.2 EU citizens have the right to remain anywhere in the EU provided that they have legal work or are studying at an accredited educational establishment and have comprehensive health insurance (or have enough money to ensure that they or their family members do not become a burden on their host's social security system) or have a family member satisfying any of these conditions.

4.3 Every EU citizen has the right to education and to have access to vocational and continuing training.

4.4 Every EU citizen has the freedom to choose an occupation and right to engage in work in any Member State (subject to certain restrictions) and nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of the citizens of the Union.

4.5 Every worker has the right to fair and just working conditions which respect his or her health, safety and dignity and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Member States should define the rules under which victims who are third-country nationals, holding a residence permit, have access to the labour market, to vocational training and education, limited to the duration of the residence permit.

4.7 Victims who are third-country nationals must have access to existing programmes or schemes aimed at them to recover to a normal life, including where appropriate courses designed to improve their professional skills or preparation of their assisted return to the country of origin.

4.8 Victims who are third-country nationals are entitled to equal treatment with nationals of the Member State where they live with regard to working conditions, including pay and conditions as well as health and safety at the workplace, freedom of association, education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures, branches of social security, tax benefits, access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing as provided by national law.

4.9 Victims who are irregularly staying third-country nationals are entitled to lodge a complaint against their employer directly or through third parties such as trade unions or associations.

4.10 Victims who are irregularly staying third-country nationals have the right to claim outstanding remuneration (wages) against their employer; even if the victim has returned to the country of origin. They should be systematically and objectively informed about their rights before the enforcement of any return decision.

4.11 The level of remuneration should be at least as high as the wage provided for by laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless parties prove otherwise.
4.12 The victim who is an irregularly staying third-country national may introduce a claim against their employer and eventually enforce a judgment for any outstanding remuneration.

**Child victims**

4.13 Child victims who are third-country nationals are entitled to have access to the educational system under the same conditions as national children within a reasonable time.

**Chapter 5: Reflection period and residence permit for victims who are third-country nationals**

**Reflection period**

5.1 Third-country nationals who are victims of trafficking in human beings are entitled to a reflection period. This is intended to allow them to recover and escape the influence of the perpetrators so that they can make an informed decision on whether to cooperate with the police and judicial authorities.

5.2 Victims cannot be expelled from the country during the reflection period.

5.3 The reflection period may be ended if the victim renews contact with the perpetrator, or for reasons relating to public policy and the protection of national security.

5.4 Victims are entitled to receive at least emergency medical treatment and specific services, including psychological services for the most vulnerable during the reflection period.

**Residence permit**

5.5 Once the reflection period is over for the third-country national, the victim has the right to be considered for a residence permit based on whether the victim:

- is necessary for the investigation or judicial proceedings;
- has shown a clear intention to cooperate;
- has severed all relations with the perpetrator or person responsible for trafficking her/him;
- would pose no risk to public order, policy or security.

The permit must be valid for at least six months and can be renewed based on the same conditions.

5.6 After a residence permit has been granted, the victim who does not have sufficient resources is still entitled to be granted at least standards of living capable of ensuring subsistence, access to emergency medical treatment, and, where appropriate, translation and interpreting services. Specific attention to the needs of the most vulnerable, including psychological services, should be ensured. Safety and protection needs must be taken into account in accordance with national law as well. Support may include free legal aid, according to national law.
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5.7 The residency permit can be withdrawn if the victim-renews contact with the people or persons responsible for trafficking her/him, when the victim's cooperation is fraudulent or the complaint is fraudulent or wrong, might pose a risk to public policy and to the protection of national security, ceases to cooperate or if the authorities decide to discontinue proceedings.

Long-term residents

5.8 A victim who is a third-country national and has resided legally within the Member State for at least five years, is entitled to long-term resident status. This is dependent on the victim having sufficient resources to maintain his/herself and his/her family without needing social security or sickness insurance.

Chapter 6: Return

6.1 If a victim who is a third-country national is not allowed to stay in the EU and therefore obliged to return to their country of origin, the victim will normally be granted a voluntary departure period of between 7 and 30 days.

6.2 This period can be extended to take specific circumstances into account, such as family, social links or children attending school and the length of stay.

6.3 Victims of trafficking who have been granted a residence permit and cooperate with the police and judicial authorities cannot be barred from entering Member State territory for a specified period if they comply with the obligation to return, provided they do not pose a threat to public policy or security.

6.4 A victim can always appeal to an authority, with legal advice representation and interpretation (if necessary).

6.5 Removal must be postponed when the principle of non-refoulement would be violated. It may also be postponed for other reasons taking into account specific circumstances of the individual case, in particular the victim's physical state or mental capacity, or technical reasons such as lack of transportation capacity or lack of identification of the victim.

6.6 Countries which have signed a readmission agreement with the European Union are obliged to automatically readmit their nationals, their (unmarried) children and their spouses, or those who hold or held a valid visa or residence permit.

Child victims

6.7 A child victim who is a third-country national, unaccompanied by a parent or guardian, can only be returned once the child's best interest has been taken into consideration and the Member State is satisfied that the child will be returning to the family, a nominated guardian or adequate reception facilities.
References

Chapter 1: Assistance and support

1. Directive 2001/36/EC, Article 11, paragraph 2:  
2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable ground to believe that the person has been subjected to any of the offences referred to in Articles 2 and 3.

1.2 Directive 2001/36/EC, Article 11, paragraph 1:  
1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

1.3. Directive 2001/36/EC, Article 11, paragraph 3:  
3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2001/81/EC or similar national rules.

Directive 2001/36/EC, recital 18:  
In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim 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, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive.

Directive 2004/38/EC, Article 1:  
The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against those who facilitate illegal immigration.

Directive 2004/38/EC, Article 6, paragraph 2:  
2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

Directive 2004/38/EC, Article 7:  
1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment; they shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Directive 2004/38/EC, Article 9:  
1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the opinion provided for in Article 3(3), minors.

1.4.7 Directive 2001/36/EC, Article 11, paragraph 5:  
5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a voluntary and informed basis, and shall include at least standards of living...
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1.8 Directive 2011/36/EU, Article 11, paragraph 7:
7. Member States shall attend to victims with special needs, whose needs derive, in particular, from whether they are pregnant, their health, disability, mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

1.9 Directive 2012/29/EU, Article 8, paragraph 1 and 2:
1. Member States shall ensure that victims, in accordance with their need, have access to confidential victim support services, free of charge, acting in the interest of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their need and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

1.10 Directive 2012/29/EU, Article 9, paragraph 3:
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, to enable victim support organisations to call on existing specialist entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

Directive 2012/29/EU, Article 9:
1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:
(a) information, advice and support relevant to the rights of victims, including an access to national compensation schemes for criminal injuries, and on their role in criminal proceedings, including preparation for appearance in the trial;
(b) information about or direct referral to any relevant specialist victim support services in place;
(c) emotional and, where available, psychological support;
(d) advice relating to financial and practical issues arising from the crime;
(e) advice otherwise provided by public or private services, relating to the risk and prevention of secondary and repeat victimisation, or resettlement and of exploitation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
(a) shelters or any other appropriate victim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including financial support and counselling.

1.11 Directive 2011/36/EU, Article 11, paragraph 6:
6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/49/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise qualify for international protection and the conditions for the granting of (1) and Council Directive 2005/55/EC of 13 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

1.12 Charter of Fundamental Rights of the European Union, Article 18:
The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Charter of Fundamental Rights of the European Union, Article 15:
1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Directive 2011/35/EU, Article 2(a):
(a) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a statute person, who, being outside the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, is unwilling to return to it, and to whom Article 13 does not apply.
The EU rights of victims of trafficking in human beings

**Directive 2004/38/EC, Article 21.**

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. When not prohibited by the international obligations mentioned in paragraph 1, Member States may refuse a refugee, whether formally recognised or not, when:
   (a) there are reasonable grounds for considering him or her a danger to the security of the Member State in which he or she is present or
   (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

**Child victims**

**1.13 Directive 2011/36/EU, Article 13, paragraphs 1 and 2.**

1. Child victims of trafficking in human beings shall be provided with assistance, support, and protection. In the application of this Directive, the child’s best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

**Directive 2012/29/EU, Article 1, paragraphs 1 and 2.**

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

2. Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional, and non-discriminatory manner, in all contacts with victim support or restorative justice services, in a competent authority operating within the area of criminal proceedings. The rights set out in the Directive shall apply in persons in a non-discriminatory manner, including with respect to their residence status.

**2. Member States shall ensure that the application of this Directive, where the victim is a child, the child’s best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child’s age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.**

**1.14 Directive 2011/36/EU, Article 14, paragraph 1.**

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psychosocial recovery, are undertaken following an individual assessment of the specific circumstances of each particular child victim, taking into account the child’s views, needs and concerns, with a view to finding a durable solution for the child.

**Directive 2011/36/EU, Article 15, paragraphs 1 and 2.**

1. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings, from the moment the child is identified by the authorities, where, by national law, the holder of parental responsibility or, in the case of a conflict of interest between them, the child victim, is prohibited from assuming the child’s best interests and/or from representing the child.
Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Directive 2011/36/EU, Article 12, paragraph 3:
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to victim protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedure.

Directive 2012/29/EU, Article 22:
1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimization, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:
(a) the personal characteristics of the victim;
(b) the type or nature of the crime; and
(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the gravity of the crime; victims who have suffered a crime committed with a view to or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender makes them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimization, to intimidation.
The EU rights of victims of trafficking in human beings

and to realization. To determine whether and to what extent they would benefit from special measures as provided for under Articles 29 and 30, child victims shall be subject to an individual assessment as provided for in paragraph 3 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account, where relevant, the victim’s wishes, and shall be the subject to a competent authority for the purpose of the framework of their tasks and may be processed only for the same purpose for which data were collected. Processing of the data shall be lawful and adequate, relevant, and not excessive in relation to the purpose for which they are collected.

European Court of Human Rights, Case of Rantsev v. Cyprus and Russia (application no. 25965/04)

286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to prevent victims or potential victims of trafficking from suffering further exploitation. Choudhury and Mitrović v. Turkey, no. 22535/93, § 115; and Mahmut Kaya v. Turkey, no. 42285/98, § 115, ECHR 2000-I. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 2(a) of the Palermo Protocol and Article 3(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, mutatis mutandis, Omráčová, cited above, §§ 116 to 117, and Mahmut Kaya, cited above, §§ 115 to 116).

2.2 Directive 2011/36/EU, Article 12: Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subject to or any of the acts referred to in Article 2.

Directive 2011/36/EU, recital 14: (14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, in offences under legislation on production or circulation of these documents, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment, for offences that a person has voluntarily committed or participated in.

2.3 Council Framework Decision 2008/577/JHA, Article 3, paragraph 1:

1. Personal data may be collected by the competent authorities only for specified, explicit and legitimate purposes in the framework of their tasks and may be processed only for the same purpose for which data were collected. Processing of the data shall be lawful and adequate, relevant, and not excessive in relation to the purpose for which they are collected.

2.4 Council Framework Decision 2008/577/JHA, Article 4, paragraph 2:

1. Personal data shall be erased or made anonymous when they are no longer required for the purpose for which they were lawfully collected or are lawfully further processed. Archiving of these data in a separate data set for an appropriate period in accordance with national law shall not be affected by this provision.

2.5 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:

1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as is possible in languages commonly understood, to information of relevance for the protection of their interests.

2.6 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:

1. (a) the type of services or organisations to which they can turn for support;
(b) the type of support which they can obtain;
(c) where and how they can report an offence;
(d) procedures following such a report and their role in connection with such procedures;
(e) how and under what conditions they can obtain protection;
(f) to what extent and on what terms they have access to (i) legal advice or (ii) legal aid, or (iii) any other form of advice, if, in the cases envisaged in point (b) and (ii), they are entitled to receive it;
(g) requirements for them to be entitled to compensation;
(h) if they are resident in another State, any special arrangements available to them in order to protect their interests.
Directive 2012/29/EU, Article 4, paragraph 1:
1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:
(a) the type of support they can obtain and from whom, including where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
(b) the procedure for making complaints with regard to a criminal offence or their role in connection with such proceedings;
(c) how and under what conditions they can obtain protection, including protection measures;
(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
(e) how and under what conditions they can access compensation;
(f) how and under what conditions they are entitled to interpretation and translation;
(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements which are available to protect their interests in the Member State where the first contact with the competent authority is made;
(h) the available procedure for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
(i) the contact details for communications abroad are;
(j) the available restorative justice services;
(k) how and under what conditions expenses incurred in a result of their participation in the criminal proceedings can be reimbursed.

Directives 2011/50/EU, Article 12, paragraph 2:
2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.

Directives 2011/50/EU, Article 12, paragraph 2:
2. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Directive 2012/29/EU, Article 11, paragraphs 1, 2 and 3:
1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

2.1. Directive 2012/29/EU, Article 11, paragraphs 1 and 2:
1. Member States shall take appropriate measures to assist victims to understand and be understood from the first contact and during any further necessary interaction they have with a competent authority in the course of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in a simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or be understood.

2.12. Directive 2012/29/EU, Article 11, paragraph 3:
3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice.
The EU rights of victims of trafficking in human beings

their choice in the first contact with a competent authority when, due to the impact of the crime, the victim requires assistance to understand or to be understood.

2.15 Directive 2012/29/EU, Article 6, paragraphs 5 and 6:

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person concerned in custody, prosecuted or sentenced for criminal offences concerning them is released from or his/her detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures taken for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identifiable risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

2.16 Directive 2012/29/EU, Article 7, paragraph 3:

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with translation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interview or questioning of the victim during criminal proceedings or investigatory and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearing.

2.17 Directive 2012/29/EU, Article 7, paragraphs 3 and 5:

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with a translation of information concerning them or the service of their rights in criminal proceedings in a language that they understand, free of charge, in the form that such information is made available to the victim. Translations of such information shall include at least any decision or court order or any conviction, on which the victim is informed, a brief summary of reasons for such decisions or a decision where the reasons are confidential in which case the reasons are not provided as a matter of national law.

4. Without prejudice to the rights of the defense and in accordance with rules of judicial discretion, communication technology such as videolinking, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or to understand the proceedings.

2.18 Directive 2012/29/EU, Article 7, paragraph 3:

1. Without prejudice to the rights of the defense and in accordance with rules of judicial discretion, communication technology such as videolinking, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or to understand the proceedings.
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2.19 Directive 2012/29/EU, Article 12:
1. Member States shall take measures to safeguard the victim from secondary or repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice service. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:
(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;
(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes, as well as information about the procedures for supervising the implementation of any agreements;
(c) the offender has acknowledged the basic facts of the case;
(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parts or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate, to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

2.20 Directive 2011/99/EU, Article 9:
A European protection order may only be issued when a protective measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:
(a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Directive 2011/99/EU, Article 6, paragraph 1:
1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the issuing State and the seriousness of the need for protection.

2.21 Council Framework Decision 2001/220/JHA, Article 5:
Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise, as far as possible, communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent compatible with the measures of this type which it takes in respect of defendants.

Child victims

2.22 Directive 2011/36/EU, Article 15, paragraph 3:
3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:
(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

2.23 Directive 2011/36/EU, Article 15, paragraph 3(c), (d), (e) and (f):
(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
(e) the number of interviews is as limited as possible and interviews are carried out only, where strictly necessary for the purposes of criminal investigations and proceedings;
(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

2.24 Directive 2011/36/EU, Article 15, paragraph 4:
4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Directive 2011/36/EU, Article 15, paragraph 5:
5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:
(a) the hearing take place without the presence of the public;
(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.
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Chapter 3: Compensation

3.1 Directive 2011/36/EU Article 17:
Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crime of interest.

3.2 Directive 2012/29/EU Article 16:
1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in another legal proceeding.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

3.3 Council Framework Decision 2001/220/JHA, Article 9, paragraph 1:
1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

3.4 Council Framework Decision 2001/220/JHA, Article 9, paragraph 3:
5. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Access to compensation in cross-border situations

3.5 Directive 2004/80/EC Article 1:
Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the application for compensation is habitually resident, the applicant shall have the right to submit the application to an authority in any other body in the latter Member State.

3.6 Directive 2004/80/EC, Article 4:
Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation by any means.

3.7 Directive 2004/80/EC, Article 7:
Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:
(a) the contact person or the department responsible for handling the matter;
(b) an acknowledgement of receipt of the application;
(c) if possible, an indication of the approximate time by which a decision on the application will be made.
Chapter 4: integration and labour rights

4.1 Treaty on the Functioning of the European Union, Article 21, paragraph 1:
1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

Directive 2004/38/EC, Article 6:
1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Regulation (EC) No 562/2006, Schengen Border Code, Article 2, paragraph 5:
1. Persons enjoying the Community right of free movement means:
   a. Union citizens within the meaning of Article 17(1) of the Treaty and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement, to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2) applies;
   b. third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

4.2 Directive 2004/38/EC, Article 7, paragraph 1:
1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
   a. are workers or self-employed persons in the host Member State;
   b. have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or
   c. are entitled to a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training and have comprehensive sickness insurance cover in the host Member State and assume the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence;
   d. are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

4.3 Charter of Fundamental Rights of the European Union, Article 14:
Right to education
1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments, with due respect for democratic principles and the right of parents to ensure the education and upbringing of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

4.4 Charter of Fundamental Rights of the European Union, Article 15:
1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries are authorized to work in the territories of the Member States on working conditions equivalent to those of citizens of the Union.

4.5 Charter of Fundamental Rights of the European Union, Article 31:
1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.
Third-country nationals

4.6 Directive 2004/81/EC Article 11, paragraph 1:
1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

4.7 Directive 2004/81/EC Article 12:
1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or the renewal conditional upon the participation in the said programmes or schemes.

4.8 Directive 2011/50/EU Article 12, paragraph 1:
1. Third-country workers referred to in points (b) and (c) of Article 21 shall enjoy equal treatment with nationals of the Member State where they reside with regard to:
(a) working conditions, including pay and dismissal as well as health and safety at the workplace;
(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation to which members are affiliated to a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
(c) education and vocational training;
(d) recognition of diploma, certificates and other professional qualifications in accordance with the relevant national procedures;
(e) branch of social security, as defined in Regulation (EC) No 883/2004;
(f) tax benefits, so far as the worker is deemed to be resident for tax purposes in the Member State concerned;
(g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;
(h) advice services afforded by employers' offices.

4.9 Directive 2009/52/EC Article 13, paragraph 1:
1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers directly or through third parties designated by Member States such as trade unions or other associations of a competent authority of the Member State when provided for by national legislation.

4.10-12 Directive 2009/52/EC, Article 9, paragraph 1(d):
(i) The infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/619/JHA, uses work or services obtained from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.

Directive 2009/52/EC Article 6:
1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:
(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage paid for by the applicable minimum wages, by collective agreements or in accordance with established practice of the relevant occupational branches, unless otherwise the employer or the employee can prove otherwise, while respecting, where appropriate, the customary national provisions on wages;
(b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
(c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. In order to ensure the availability of effective procedures to apply paragraphs (a) and (b) and having due regard to Articles 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:
(a) may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned;
(b) when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 12 before the enforcement of any relevant decision.
Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Directive 2011/36/EU, Article 11, paragraph 5.2. The information referred to in paragraph 1 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2003/89/EC of 13 December 2003 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

5.2 Directive 2004/81/EC, Article 6, paragraph 2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

5.3 Directive 2004/81/EC, Article 6, paragraph 4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has acted voluntarily and on his/her own initiative reached contact with the perpetrator of the offence referred to in Article 7(b) and (c) or for reasons relating to public policy and to the protection of national security.

5.4 Directive 2004/81/EC, Article 7, paragraph 1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall accord to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

Residence permit

5.5 Directive 2004/81/EC, Article 8. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criteria set out in subparagraph (b), Member States shall consider:

(a) the opportunity presented by prolonging his/her stay on its territory for the investigation or the judicial proceedings, and

(b) whether he/she has shown a clear intention to cooperate and...
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(c) with the holder has several all relations with those suspected of any that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfillment of the conditions referred to in paragraph 1 shall be required.

3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

5.7 Directive 2004/81/EC, Article 14:

The residence permit may be withdrawn at any time if the conditions for its issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

(a) if the holder has activity, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c), or
(b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
(c) for reasons relating to public policy and to the protection of national security; or
(d) when the victim ceases to cooperate; or
(e) when the competent authorities decide to discontinue the proceedings.

5.6 Directive 2004/81/EC, Article 9:

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as

pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minor.
Long-term residents

58. **Directive 2003/109/EC, Article 5:**
1. This Directive applies to third-country nationals residing legally in the territory of a Member State.
2. This Directive does not apply to third-country nationals who:
   (a) reside in order to pursue studies or vocational training;
   (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
   (c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

**Directive 2003/109/EC, Article 4, paragraph 1:**
1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

Chapter 6: Return

6.1. **Directive 2008/115/EC, Article 7, paragraph 1:**
1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

6.2. **Directive 2008/115/EC, Article 7, paragraph 2:**
2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

6.3. **Directive 2008/115/EC, Article 11, paragraph 3:**
3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/83/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities shall not be subject to an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

6.4. **Directive 2008/115/EC, Article 13:**
1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions referred to in this Article, as referred to in Article 12(3), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.
2. The authority or body referred to in paragraph 1 shall have the power to review decisions related to returns, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country nationals concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation, or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 13(3) to (6) of Directive 2003/86/EC.

6.5 Directive 2008/115/EC, Article 3:
1. Member States shall postpone removal:
(a) when it would violate the principle of non-refoulement, or
(b) for as long as a temporary effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:
(a) the third-country national's physical state or mental capacity;
(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

6.6 Directive 2008/115/EC, Article 3, paragraph 3:
3. "return" means the process of a third-country national going back — whether by voluntary compliance with an obligation to return, or enforced — to:
— his or her country of origin,
— a country of transit in accordance with Community or bilateral readmission agreements or other arrangements.

Child victims

6.7 Directive 2008/115/EC, Article 10:
1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian, or adequate reception facilities in the State of removal.
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Reference to EU legislation

2012/C326/47 Consolidated version of the Treaty on the Functioning of the European Union


2011/98/EU Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State on a common set of rights for third-country workers legally residing in a Member State (deadline transposition 25 December 2013)

2011/95/EU Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (aamendments to the text) (deadline transposition of specific articles 21 December 2013)


2010/33/EU European Court of Human Rights, Case of Rantsev v. Cyprus and Russia Application no. 25965/04

2010/33/EU Charter of Fundamental Rights of the European Union

2009/52/EC Directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

2008/977/JHA Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters

2007/80/EC Directive on common standards and procedures in Member States for returning illegally staying third-country nationals

2006/122/EC Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

2004/83/EC Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

2004/61/EC Council 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
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