

**22 February 2022**  
**European Day For Victims Of Crime**

## States should offer trafficked persons access to a residence permit on personal grounds

Access to residence is critical for the safety, stability, and future perspective of trafficked persons.<sup>1</sup> However, laws or policies determining which trafficked persons are granted residence permits, vary substantially between different European countries and generally identified trafficked persons do not have much access to regular stay. This prevents many from claiming their rights, leaving them without protection.

Currently, the key provisions on temporary residence permits for victims of trafficking in Europe are foreseen in two EU Directives, namely the 2004 EU Residence Permit-Directive<sup>2</sup> and the 2011 Anti-Trafficking Directive<sup>3</sup>, as well as in the Council of Europe (CoE) Anti-Trafficking Convention.<sup>4</sup>

Within the legal framework of EU Directive 2004/81/EC, victims of trafficking receive support only in so far and as long as it is required by the needs of criminal prosecution, i.e. the residence permit therefore fully depends on victims' cooperation with the authorities. The CoE Anti-Trafficking Convention – which all 27 EU MS ratified – foresees however, renewable residence permits not only in exchange for cooperation with the criminal justice system, but also on account of the personal situation of victims of trafficking.

The 2004 Residence Permit Directive, which links the residence permit to victim's cooperation contradicts the unconditional nature of assistance to victims which is provided for in the 2011 Directive and the CoE Convention, which should enable trafficked persons to exercise their rights as victims of crime and to protect them from further exploitation and harm. Limiting residence permits on cooperation criteria is also at odds with EU States' obligation to ensure access to justice for victims of crime, pursuant to the 2012 Victims' Rights Directive, which applies to all victims of crime, irrespective of their residence status.

The fact that States expect victims to cooperate in the investigation and prosecution of human trafficking offences, without sufficient guarantees for their protection, exposes them to retraumatisation, risk of reprisals and intimidation by the traffickers, as well as risks to their families.

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<sup>1</sup> Findings of the project REST show the importance of a durable solution for trafficked persons. The Report can be found here: <https://efoe.at/wp-content/uploads/2021/05/REST-Final-Report.pdf>

<sup>2</sup> EU Council Directive 2004/81/EC of 29 of 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, OJ L 261/19 (hereinafter EU Dir 2004/81/EC).

<sup>3</sup> EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

<sup>4</sup> Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, ETS 197 (hereinafter CoE Anti-Trafficking Convention).

Trafficked persons which now have hardly access to residence and thus lack full protection, include:

- Those who need time to be ready to cooperate and who face a diminished capacity to cope with or recover from the damage suffered.
- Those who cannot participate in a criminal proceeding due to disabilities, severe traumatisation and or insufficient information, as well as severe risks.
- Those who are not able to participate in a criminal proceeding due to lack of systemic efforts of prosecution (culture of impunity).
- Those who have cooperated with the authorities, but the criminal justice proceedings have ended, and cases have been dismissed beyond their control.
- Those who have cooperated or are willing to cooperate with the authorities, but who face deportation because of a Dublin claim.

The personal situation on the basis of which renewable residence permits can be granted to victims of trafficking, according the Council of Europe Anti-Trafficking Convention, includes ‘a range of situations, depending on whether it is the victim’s safety, state of health, family situation or some other factor which has to be taken into account’. This CoE Convention’s provision on residence permits goes beyond the current EU legal framework. The Group of Experts on Action against Trafficking in Human Beings (GRETA), which monitors the implementation of the CoE Convention, has stressed that granting a residence permit on account of the personal situation of the victim tallies with the human rights-based approach to combating human trafficking. However, GRETA’s reports show that granting a residence permits to victims of trafficking on the basis of their persons situation (humanitarian grounds) was available as an option in only 24 of the 47 European countries which have ratified the Convention, including in 18 EU countries.

Residence functions as a form of restitution in itself. Only a regular residence for victims can ensure a full completion of the States’ obligation to protect victims of trafficking. A systematic effort for trafficked persons’ safety, stability and future perspective demands the de-linking of residence from cooperation, as well as the promotion of trafficked persons’ social inclusion.

**While the European Commission is now calling for a revision of the 2011 EU Trafficking Directive, we instead call for a revision of the EU 2004 Residence Permit Directive, to include a provision on the residence permit issued to trafficked persons based on their personal situation, as the CoE Anti-Trafficking Convention foresees. This would not only align the different international instruments but also ensure that the human-rights based approach underlying action against human trafficking is given effect.**

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**La Strada International is a European NGO platform against human trafficking that works from a human rights perspective, comprising 30 anti-trafficking NGOs in 24 European countries. The Platform’s primary goal is empowering trafficked and exploited persons, improving their position through promoting their universal rights. This statement is launched in the framework of the project REST - Residency Status: Strengthening the protection of trafficked persons.**

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<sup>9</sup> As stated in the EU 3rd progress report (2020): „A culture of impunity prevails when those involved in the criminal business model and in the trafficking chain do not face consequences for their criminal acts. The impunity of perpetrators in the EU persists and the numbers of prosecutions and convictions of traffickers remain low. “, p.10.