

A photograph of two hands, one from a person with a darker skin tone and one from a person with a lighter skin tone, both tied together with thick, brown, knotted rope. The hands are clenched into fists, and the rope is tied around the wrists. The background is a bright blue sky with soft, white clouds.

# The EU rights of victims of trafficking in human beings

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## 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.’*

A handwritten signature in black ink that reads "Cecilia Malmström". The signature is written in a cursive, flowing style.

# 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 2012–2016, namely under PRIORITY A: Identifying, protecting 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 those 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.



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The description of EU legislation and relevant case-law pertaining in this document is non-exhaustive, and therefore does not cover in detail the conditions for benefiting from the rights covered, or other rights that an individual might be entitled to under EU legislation depending on their circumstances. The rights in this document benefit victims of trafficking in human beings, even when the rights in the respective EU legislation are applicable to a broader group of persons. This document in itself does not constitute any binding obligations on any parties, but describes rights and obligations deriving from EU legislation that need to be transposed in national law of Member States. Articles of legislation referenced in this document were correct as of 1 January 2013 (legislation may be subsequently altered or repealed). This document in no way constitutes a binding interpretation of the legislation cited, but is intended to be a reference document designed for ease of use.

# EU rights of victims of trafficking in human beings

*This document intends to inform victims, practitioners and Member States on the rights of victims under EU law. It does in no way constitute a binding interpretation of EU legislation. All rights need to be read within the context of the full legal provision and appropriate legislation.*

## 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 investigative 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 regulation of contact (including phone, mail). A European Protection Order applies to a protection measure under criminal law in one EU country for a victim, by extending this protection to another EU country where he or she 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.



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## 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 for 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 dismissal 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 people 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 attendance 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.

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 her/himself and her/his 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 banned 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

### 1.1 Directive 2011/36/EU, 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 grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

### 1.2 Directive 2011/36/EU, 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 2011/36/EU, 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 2004/81/EC or similar national rules.

### Directive 2011/36/EU, 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 2004/81/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 action to facilitate illegal immigration.

### Directive 2004/81/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 2004/81/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 2004/81/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), minors.

### 1.4–7 Directive 2011/36/EU, Article 11, paragraph 5:

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living

capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

**1.8 Directive 2011/36/EU, Article 11, paragraph 7:**

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a 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 needs, have access to 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 shall have 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.

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 8, 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, or to enable victim support organisations to call on existing specialised 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 on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
- (b) information about or direct referral to any relevant specialist support services in place;
- (c) emotional and, where available, psychological support;
- (d) advice relating to financial and practical issues arising from the crime;
- (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

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 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, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma 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 2004/81/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 need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 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 19:**

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 2011/95/EU, Article 2(d):**

(d) '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 stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.

### **Directive 2004/83/EC, Article 21:**

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.
2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
  - (a) there are reasonable grounds for considering him or her as 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.*

*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 or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.*

*2. Member States shall ensure that in 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 psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child.

### **Directive 2011/36/EU, Article 16, paragraphs 1 and 2:**

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, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. 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.

### **1.15 Directive 2011/36/EU, Article 14, paragraph 2:**

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 holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest 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 witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

#### 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 victimisation, 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 severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make 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 victimisation, to intimidation



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and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 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 their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

### 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 protect victims, or potential victims, of trafficking (see, *mutatis mutandis*, *Osman*, cited above, § 115; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). 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 3(a) of the Palermo Protocol and Article 4(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*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).

### 2.2 Directive 2011/36/EU, Article 8:

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 subjected to 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 relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, 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 2008/977/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 purposes for which they are collected.

### 2.4 Council Framework Decision 2008/977/JHA, Article 4, paragraph 2:

2. Personal data shall be erased or made anonymous when they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed. Archiving of those 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 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 sort of advice,if, in the cases envisaged in point (i) 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 procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- (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 procedures 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 about their case;
- (j) the available restorative justice services;
- (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

**Protection during and after criminal proceedings**

**2.7 Directive 2011/36/EU, Article 12, paragraph 4:**

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life.

**2.8 Directive 2011/36/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.

**2.9 Directive 2011/36/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 13:**

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

**2.10 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.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes 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.

**2.11 Directive 2012/29/EU, Article 3, paragraphs 1 and 2:**

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in 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 to be understood.

**2.12 Directive 2012/29/EU, Article 3, 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 in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

### **2.13 Directive 2012/29/EU, Article 5:**

*1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.*

*2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.*

*3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.*

### **2.14 Directive 2012/29/EU, Article 6, paragraphs 1, 2, 3 and 4:**

*1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:*

- (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;*
- (b) the time and place of the trial, and the nature of the charges against the offender.*

*2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:*

- (a) any final judgment in a trial;*
- (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.*

*3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.*

*4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.*

### **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 remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued 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 identified 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 1:**

*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 interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.*

### **2.17 Directive 2012/29/EU, Article 7, paragraphs 3 and 6:**

*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 translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.*

*6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.*

### **2.18. Directive 2012/29/EU, Article 7, paragraph 2:**

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

**2.19 Directive 2012/29/EU, Article 12:**

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. 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 agreement;
- (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 parties 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 5:**

A European protection order may only be issued when a protection 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; or
- (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 executing 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 comparable 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):**

- 3. (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; and
- (b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

**2.25 Directive 2012/29/EU, Article 21, paragraph 1:**

*1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

**2.26 Directive 2011/36/EU, Article 9, paragraph 2:**

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

## 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 crimes of intent.

**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 other legal proceedings.*

*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:**

3. 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 applicant for compensation

is habitually resident, the applicant shall have the right to submit the application to an authority or 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 Member States deem appropriate.

**Directive 2004/80/EC, Article 5:**

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).

2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.

3. The assisting authority shall not make any assessment of the application.

**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:

5. '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 (1) 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; or
- (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 enrolled at 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 assure 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; or

- (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 teaching 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 who are authorised to work in the territories of the Member States are entitled to 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 its renewal conditional upon the participation in the said programmes or schemes.

### 4.8 Directive 2011/98/EU, Article 12, paragraph 1:

1. *Third-country workers as referred to in points (b) and (c) of Article 3(1) 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 whose members are engaged in 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 diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;*
- (e) branches of social security, as defined in Regulation (EC) No 883/2004;*
- (f) tax benefits, in 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 employment 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 or 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):

(d) The infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted 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 provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory 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 paragraph 1(a) and (c), and having due regard to Article 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; or
- (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 13 before the enforcement of any return decision.

3. In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4. Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5. In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits

may be extended until the third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

**4.13 Directive 2011/36/EU, Article 14, paragraph 1:**

1. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

**Directive 2004/81/EC Article 10(b):**

(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

## 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 6:**

6. The information referred to in paragraph 5 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 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 need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 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.

**Directive 2004/81/EC, Article 6, paragraph 1:**

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

**5.2 Directive 2004/81/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.

**5.3 Directive 2004/81/EC, Article 6, paragraph 4:**

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(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:**

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.

### Residence permit

**5.5 Directive 2004/81/EC, Article 8:**

1. 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 criterion set out in subparagraph (b), Member States shall consider:

- (a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
- (b) whether he/she has shown a clear intention to cooperate and

(c) whether he/she has severed all relations with those suspected of acts 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 fulfilment 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.

#### 5.6 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), minors.

#### 5.7 Directive 2004/81/EC, Article 14:

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

- (a) if the holder has actively, 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.



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## Long-term residents

### 5.8 Directive 2003/109/EC, Article 3:

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.

### Directive 2003/109/EC, Article 5, paragraph 1:

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

- (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
- (b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

### Directive 2004/83/EC, Article 29, paragraph 1:

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

## 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 2004/81/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 of 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 related to return, as referred to in Article 12(1), 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 mentioned in paragraph 1 shall have the power to review decisions related to return, 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 national 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 15(3) to (6) of Directive 2005/85/EC.

#### **6.5 Directive 2008/115/EC, Article 9:**

1. Member States shall postpone removal:

- (a) when it would violate the principle of non-refoulement, or
- (b) for as long as a suspensory 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 in voluntary compliance with an obligation to return, or enforced — to:

- his or her country of origin, or
- 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 return.

## Reference to EU legislation

2012/C326/47	Consolidated version of the Treaty on the Functioning of the European Union
2012/29/EU	<i>Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (deadline transposition 16 November 2015)</i>
2011/99/EU	<i>Directive on the European protection order (deadline transposition 11 January 2015)</i>
2011/98/EU	<i>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 and on a common set of rights for third-country workers legally residing in a Member State (deadline transposition 25 December 2013)</i>
2011/95/EU	<i>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 (recast) (deadline transposition of specific articles 21 December 2013)</i>
2011/36/EU	Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
	European Court of Human Rights, Case of Rantsev v. Cyprus and Russia, Application no. 25965/04
2010/C83/02	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
2008/115/EC	Directive on common standards and procedures in Member States for returning illegally staying third-country nationals
(EC) No 562/2006	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
2004/81/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

2004/80/EC	Council Directive relating to compensation to crime victims
2004/38/EC	Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
2003/109/EC	Council Directive concerning the status of third-country nationals who are long-term residents
2001/220/JHA	Council Framework Decision on the standing of victims in criminal proceedings

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