

Legal entry channels for persons in need of protection



EU Fundamental Rights Agency

fra.europa.eu

FRA focus paper on legal entry channels

- Making the right to asylum in Article 18 of the EU Charter of Fundamental Rights a reality
- Fundamental Rights Forum 2016



Every year, tens of thousands of people risk their lives trying to enter the European Union (EU) in an irregular way, and many die in the attempt. Increasing the availability of legal avenues to reach the EU would contribute to make the right to asylum set forth in Article 18 of the EU Charter of Fundamental Rights a reality for vulnerable refugees and other persons in need of protection who are staying in a third country, often facing risks to their safety. It would also help to fight smuggling in human beings. This FRA focus seeks to contribute towards the elaboration of such legal entry options so that these can constitute a viable alternative to risky irregular entry.

In its report on fundamental rights at Europe's southern sea borders, the European Union Agency for Fundamental Rights (FRA) described the disturbing migration patterns across the Mediterranean that each year costs thousands of lives. The majority of those who crossed the sea in unseaworthy boats in 2014 to reach the shores of southern Europe were persons in need of international protection, including persons fleeing the civil war in Syria. This paper, therefore, focuses on them.

Strengthening legal channels for refugees to reach safety would contribute to reducing the number of migrant lives lost at sea and the abuses perpetrated by the smuggling networks. This was one of the main conclusions of FRA's joint Fundamental Rights Conference, which it organised together with the Italian Presidency of the Council of the European Union in Rome on 10 and 11 November 2014.

This FRA focus presents a toolbox of possible schemes EU Member States could use to enable more persons in need of international protection

to reach the European Union (EU) without resorting to smuggling. It starts by presenting different refugee-related schemes - including emigration, humanitarian admissions, the issuance of humanitarian visas (either under Schengen or national law), and temporary protection - as well as regular mobility schemes, such as those available to family members of persons residing in the EU, students, migrant workers and other categories of persons, which could be made more accessible to refugees staying in third countries.

In sum, this paper aims to describe possible ways to increase legal admissions into the EU of persons in need of international protection who find themselves in a third country. It does not deal with asylum seekers who appear at the border or are already inside the EU, and who are to be treated in accordance with the EU asylum acquis and in full respect of the principle of non-refoulement and of the prohibition of collective expulsions. Nor does this FRA focus deal with search and rescue operations underway in international maritime law.

The benefits of legal entry channels

- Better protection
- International solidarity
- Fight against smuggling and trafficking
- Fighting abuse and exploitation - in particular of women
- Security
- Controlled immigration
- Less rehabilitation needed
- Integration
- Filling skills gap

Risk

Mitigation

Selection of beneficiaries difficult

Objective transparent criteria, communicated to communities

Could encourage migration

Enhance protection in countries of first asylum

Criminal misuse of channels

Harmonise conditions among Member States

Needs additional resources

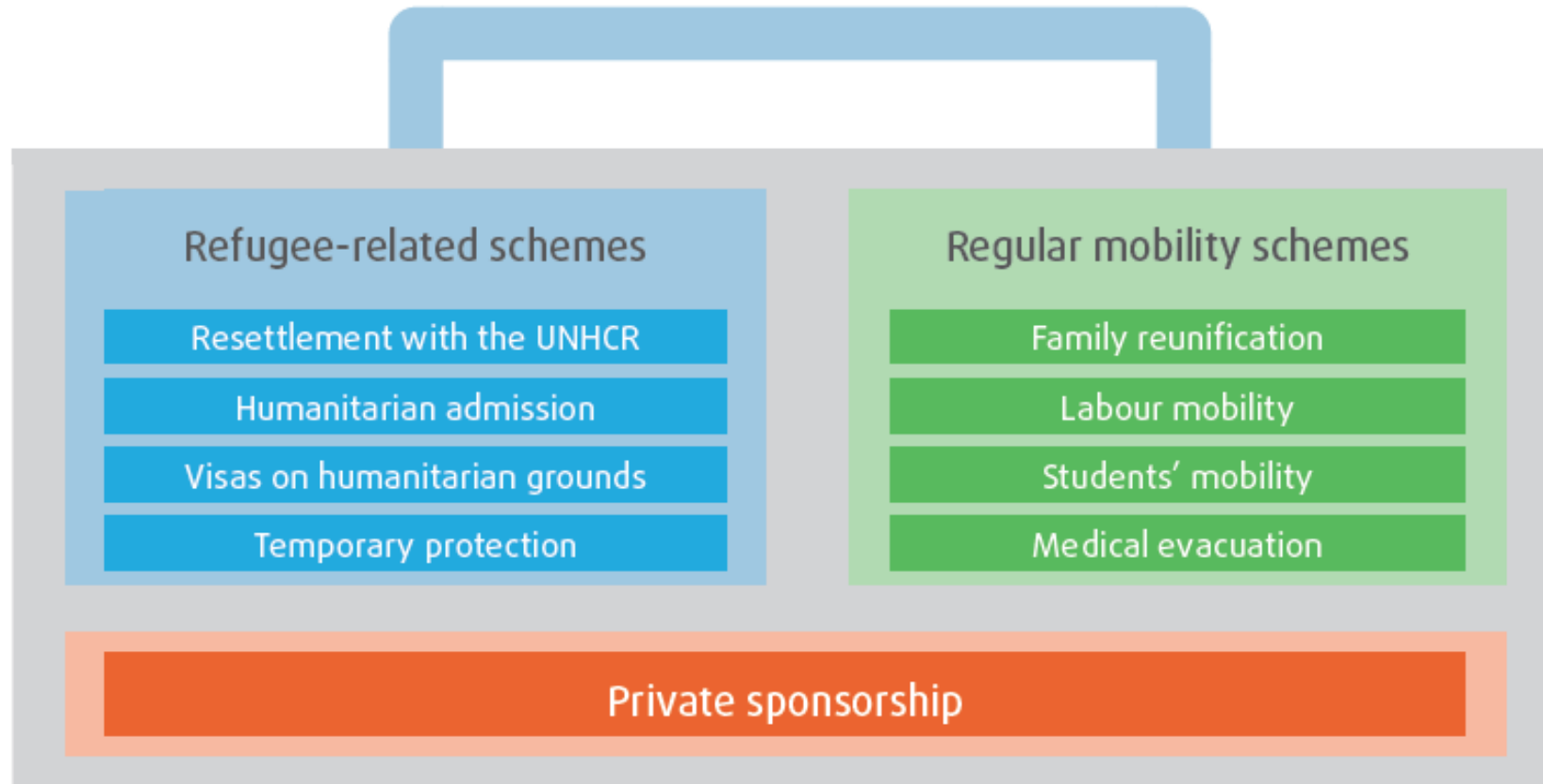
Needs less resources for spontaneous arrivals

Negative reaction in European societies

Information campaign, integration

Legal ways to access Europe for persons in need of protection

Figure 2: Toolbox with options on legal ways to access Europe



Private sponsorships

Private sponsorships: scholarships, integration support for sponsored family members.

Examples:

- Canada's private sponsorship for a year by private persons, through NGOs
- Germany's private sponsorship by residents of Germany of extended family members

Resettlement and humanitarian admission

Resettlement with UNHCR:

Selection and transfer of refugees from where they have sought protection to a third state which has agreed to admit them - as refugees, with permanent residence status.

Humanitarian admission:

Similar to resettlement, but selection by the admitting state with/without UNHCR support. Leave to stay – on protection or other grounds.

Syrian refugees

- Resettlement / humanitarian admission: 211,446
- Humanitarian Visas: 17,750
- Private Sponsorships: 24,062
- Academic Scholarships: 1,456
- Total: 254,714

UNHCR, 2017

C-visa: Visa Code – Short term visa for the Schengen area.

- *Article 19(4)* – Member States may derogate from admissibility criteria based on humanitarian grounds;
- *Article 25(1)* - possibility of issuing short-stay Schengen visa with limited territorial validity (LTV) on humanitarian grounds
- *CJEU Case C-638/16 PPU, X and Y v. Belgium:* procedures for application for international protection at consulates outside the scope of EU law, but falls solely within national law.

D-visa: National visa limited to the MS in question

- Example- France - Haiti earthquake victims; Iraqi Christians in 2010

Obstacle:

- Access to consular representation → better geographic coverage
- Schengen Visa Centres and Mobile units

ETIAS - European Travel Information and Authorisation System

EC Proposal on ETIAS:

- *Article 38* - issuing of travel authorisation on humanitarian grounds, for reasons of national interest or because of international obligations
- *“The EU legislator should ensure that Article 38 of the proposal continues to provide for travel authorisations with limited territorial validity to offer persons in need of international protection a legal channel at national level through which they can seek safety” (FRA Legal opinion on ETIAS, Opinion 12)*

Temporary Protection Directive:

- Developed during Balkan conflict, but never used
- *Article 2 (d)*: Mass influx of a large number of displaced persons – spontaneous or evacuated
- *Article 5*: Directive activated on the basis of a Council Decision recognising the existence of a mass influx of displaced persons
- European Parliament listed the application of the Directive as possible measures to address the Syrian crisis.

Directive on Family Reunification

- More favourable conditions for refugees (Chapter V)
- Practical obstacles: limited access to information, embassies, lengthy procedures, high cost

Example:

- Visa facilitations for non-core family members of Syrians in Switzerland, 2013

Labour mobility

Schemes for labour immigration and entrepreneurs can be made more accessible for people in need of protection staying in third countries

Improve labour shortages and boost the host economy, safe routes, integration and jobs for refugees

Mobility schemes for researchers

For the benefit of persons in need of protection

Facilitated access, less bureaucratic requirements

Example:

- Marie Skłodowska-Curie fellowships under the Horizon 2020 programme.

Facilitate access of persons in need of protection to mobility programmes for students

Gain skills that are useful for rebuilding the post-war society.

Examples:

- EU Erasmus Mundus Programme
- France has pledged to admit 1000 Syrians through student visas (scholarship program) due to be implemented 2017/18
- 186 Syrian individuals have been admitted to Germany to participate in scholarship programmes (30 April 2017)

Medical evacuation provides for temporary admission of people with urgent medical needs where the treatment is not available in the third country

Example:

- Czech MEDEVAC programme, Czech Republic evacuation of Ukrainians injured in clashes with police force 2014

Fundamental Rights Forum 2016

- Complement resettlement and humanitarian admission with regular mobility schemes - work, students, research, family reunification
- Humanitarian visas accessible through consular representation and Schengen mobile application centres
- Private sponsorships: The burden of proof not unduly shifted into civil society or other non-state actors. Private resources, plus additional assistance of EU funding.