



2018/2271(INL)

26.11.2018

DRAFT REPORT

with recommendations to the Commission on Humanitarian Visas
(2018/2271(INL))

Committee on Civil Liberties, Justice and Home Affairs

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(Initiative – Rule 46 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Humanitarian Visas (2018/2271(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
 - having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 4, 18 and 19 thereof,
 - having regard to the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and the 1967 Protocol thereto,
 - having regard to Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)¹,
 - having regard to the United Nations Global Compact for Safe, Orderly and Regular Migration and to the United Nations Global Compact on Refugees, which followed the New York Declaration for Refugees and Migrants adopted unanimously by the United Nations General Assembly on 19 September 2016,
 - having regard to the European Added Value Assessment on Humanitarian Visas prepared by the European Parliamentary Research Service,
 - having regard to Rules 46 and 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2018),
- A. whereas, despite numerous announcements and requests for safe and legal pathways offering access to European territory for persons seeking international protection, there is currently no harmonisation at Union level of protected entry procedures (PEPs) and no legal framework at Union level for humanitarian visas, i.e. visas issued for the purpose of reaching the territory of the Member States in order to seek international protection;
- B. whereas, according to the judgment of the Court of Justice of 7 March 2017 in Case C-638/16², *X and X v État belge*, Member States are not required, under Union law, to grant humanitarian visas to persons who wish to enter their territory with a view to applying for asylum, but they remain free to do so on the basis of their national law; whereas this ruling interprets existing Union law, which may be modified;
- C. whereas several Member States currently have or have previously had national schemes for issuing humanitarian visas or residence permits to guarantee national PEPs for people in need;

¹ OJ L 243, 15.9.2009, p. 1.

² Judgment of the Court of Justice of 7 March 2017, *X and X v État belge*, C-638/16, ECLI:EU:C:2017:173.

- D. whereas the number of persons admitted on the basis of national entry procedures for humanitarian protection or through resettlement remains low in comparison to global needs, with significant disparities between Member States; whereas the scope of national entry procedures for humanitarian protection and resettlement is narrowly defined and, in the case of resettlement, is strictly connected to the criteria of vulnerability and registration as a refugee of the Office of the United Nations High Commissioner for Refugees;
- E. whereas, as a result, an estimated 90% of those granted international protection have reached the Union through irregular means, which leads to them being stigmatised before they even arrive at the external borders of the Member States;
- F. whereas single women travelling alone or with children, women heads of household, pregnant and lactating women, people with disabilities, adolescent girls and elderly women are among those who are particularly vulnerable along migration routes to Europe and are facing particular greater risks of gender-based violence, such as rape, violence and being the target of smugglers and traffickers to be sexually and economically exploited; whereas women and girls furthermore tend to be more vulnerable to all forms of exploitation, including labour exploitation and sexual exploitation, along the migration routes to the Union and are often forced into survival sex in exchange for continuing their journey;
- G. whereas the human cost of those policies has been put at at least 30 000 deaths at the Union's borders since 2000; whereas a Union legal framework is urgently needed as one means to address the intolerable death toll in the Mediterranean and on the migration routes to the Union, to truly combat human smuggling, exposure to trafficking in human beings, to labour exploitation and violence, to manage the orderly arrival, dignified reception and fair processing of asylum claims and to optimise Member States' and the Union's budget for asylum, procedures, border control and search and rescue activities as well as to achieve coherent practices in the Union asylum *acquis*;
- H. whereas Parliament has tried to include provisions in that vein in its amendments to Regulation (EC) No 810/2009;
- I. whereas both the Council and the Commission have rejected those amendments on the ground, among others, that such provisions should not be included in Regulation (EC) No 810/2009 given that its scope covers short-stay visas only;
- J. whereas Parliament, faced with the Commission's inaction, has therefore decided to proceed with drawing up this resolution on humanitarian visas;
- K. whereas intensive work was undertaken, including with the help of experts, to draw up the recommendations which are annexed to this resolution;
1. Requests the Commission to submit, by 31 March 2019, on the basis of point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU), a proposal for a regulation establishing a European Humanitarian Visa following the recommendations set out in the Annex hereto;
 2. Considers that Member States should be able to issue European Humanitarian Visas to

persons seeking international protection to allow those persons to enter the territory of the Member State issuing the visa for the sole purpose of making an application for international protection in that Member State;

3. Considers that European humanitarian visas should be complementary to, and not substitute, the existing national entry procedures for humanitarian protection, resettlement procedures and spontaneous applications under international refugee law;
4. Considers that any initiative on European Humanitarian Visas should be without prejudice to other migration policy initiatives, including those aiming to address the root causes of migration;
5. Emphasises the pressing need for safe and legal pathways to the Union, of which the European Humanitarian Visa should be one, which is also especially important from a gender perspective since women are particularly vulnerable and therefore more exposed to sexual and gender-based violence along routes and in reception centres; emphasises that vulnerable economic and other types of dependencies often put women and girls in third countries in a situation where it is even more difficult for them than for men to safely seek asylum;
6. Considers that part of the financial implications of the requested proposal should be covered by the general budget of the Union as a practical expression of the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States, in accordance with Article 80 TFEU;
7. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the national parliaments, the Court of Justice of the European, the European External Action Service, the European Asylum Support Office, the European Border and Coast Guard Agency, the European Union Agency for Law Enforcement Cooperation and the European Union Agency for Fundamental Rights.

ANNEX TO THE MOTION FOR A RESOLUTION RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

The European Parliament considers that the legislative act to be adopted should:

1. FORM AND TITLE OF THE INSTRUMENT TO BE ADOPTED

- be a separate legal act to be adopted in the form of a regulation entitled “Regulation of the European Parliament and of the Council establishing a European Humanitarian Visa”,

2. LEGAL BASIS

- have point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU) as its legal basis,

3. JUSTIFICATION

- be justified by:
 - the current legal gap in Union law which, in addition to resettlement procedures applicable to vulnerable refugees, does not provide for procedures, either in the *visa acquis* nor in the borders or asylum *acquis*, for the admission to the territory of the Member States of persons seeking protection, with an estimated 90 % of the persons subsequently being recognised as refugees and beneficiaries of subsidiary protection reaching the territory of the Member States irregularly,¹ often through life-threatening routes,
 - the risk of fragmentation as Member States increasingly set up their own programmes of humanitarian admission and procedures, going against the general aim under Article 78(1) TFEU to develop a common policy on asylum, subsidiary protection and temporary protection, and leading also to the risk that these different schemes undermine the uniform application of the common provisions on entry to the territory of the Member States of third-country nationals as laid down in the Regulations (EC) No 810/2009² and (EU) 2016/399³ of the European Parliament and of the Council,
 - the high costs, in human but also in social, economic and budgetary terms,

¹ HEIN / DONATO (CIR) 2012: exploring avenues for protected entry in Europe, p. 17.

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

³ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

- associated with the status quo for the third-country nationals concerned (smuggler fees, risk of trafficking and exploitation, risk of persecution, risk of death and ill treatment, etc.) and for Member States and the Union (elevated budget for search and rescue, including for private shipping, border protection, cooperation with third countries, asylum procedures and possibly return in case of rejected applications for international protection as well as the fight against organised crime, trafficking and smuggling etc.),
- the added value of Union action, in terms of ensuring compliance with Union values, including fundamental rights, mutual trust between Member States and confidence in the system by asylum seekers, legal certainty, foreseeability, and the uniform application and implementation of the rules, the achievement of economies of scale, and the reduction of the above-cited costs of the status quo,
 - recall that Directive 2013/32/EU of the European Parliament and of the Council¹ and Regulation (EU) No 604/2013 of the European Parliament and of the Council² only apply on the territory of the Member States, while there are, at present, insufficient legal ways for asylum applicants to reach that territory,
 - recall that, after the submission of an asylum application in a Member State, the provisions of the Union’s Common European Asylum System apply,
 - stress that a refusal of an application for a European Humanitarian Visa does not affect in any way the right to apply for asylum within the Union nor does it prevent the applicant from entering other available protection schemes,

4. GENERAL PROVISIONS

- have as an objective the laying down of provisions on the procedures and conditions under which a Member State may issue a European Humanitarian Visa to persons seeking international protection to allow those persons to enter the territory of the Member State issuing the visa for the sole purpose of making an application for international protection in that Member State,
- cover in its scope third-country nationals who must be in possession of a visa when crossing the external borders of the Member States, pursuant to Council Regulation (EC) No 539/2001³, and where the claims of exposure to or risk of persecution as

¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

² Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

³ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

defined in Directive 2011/95/EU of the European Parliament and of the Council¹ are manifestly well founded, but who are not already in a resettlement process as defined in national resettlement schemes or in the proposed Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and of the Council² or Council Directive 2001/55/EC³,

- exclude from its scope family members who would otherwise have a right to join their family in a Member State in a timely manner in accordance with other legal acts of the Union or national law,

5. PROCEDURES FOR ISSUING HUMANITARIAN VISAS

- provide for such visa applications to be lodged directly, by electronic means or in writing, at any consulate or embassy of the Member States,
- provide for practical modalities for such visa applications, including the filling out of an application form, the provision of information on the applicant's identity, including biometric identifiers, and the provision of reasons, as far as possible documented, of the fear of persecution or serious harm,
- provide that the applicant for such a visa be invited to an interview (with the assistance of an interpreter if necessary), which may also be conducted by remote means of audio and video communication, which ensure an appropriate level of safety, security and confidentiality,
- provide that the documents submitted be assessed, including as regards their authenticity, by a competent, independent, and impartial authority, with adequate knowledge and expertise in matters of international protection,
- provide that applications for such a visa be assessed on the basis of the applicant's declaration and interview and, where available, supporting documentation, without conducting a full status determination process,
- provide that, before the issuing of such a visa, each applicant be subject to a security screening, through the relevant national and Union databases in full respect of applicable data protection provisions, in order to ensure that he or she does not pose a security risk,
- provide that such visa applications be decided on within 15 calendar days of the date of lodging the application,

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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 (OJ L 337, 20.12.2011, p. 9).

² 2016/0225(COD).

³ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

- provide that the decision on the application be communicated to the applicant and that it be individualised, written and motivated,
- provide that a third-country national refused such a visa has the possibility for an appeal as is currently foreseen in the case of a refusal of a short-stay visa or a refusal of entry at the border,

6. ISSUING A HUMANITARIAN VISA

- provide for such visas to be issued by means of a common sticker and inserted into the Visa Information System,
- provide that once a humanitarian visa is issued it allows its holder to enter the territory of the Member State issuing the visa for the sole purpose of making an application for international protection in that Member State,

7. ADMINISTRATIVE MANAGEMENT AND ORGANISATION

- provide that applications for such a visa be assessed by properly trained staff,
- provide that such staff may either be posted in embassies or consulates or in Member States, in the event of which applications be electronically transmitted and interviews conducted remotely,
- provide that certain aspects of the process, which do not entail any pre-selection of cases, assessment or decision making of any kind, may be managed by external service providers, including the provision of information, the management of appointments for interviews, and the collection of biometric identifiers,
- provide that appropriate measures be put in place to ensure data protection, data security and confidentiality of communications,
- provide that Member States cooperate with each other, Union agencies, international organisations, governmental and non-governmental organisations and other relevant stakeholders to ensure its harmonised application,
- provide that information on the procedures and conditions of such a visa as well as about the conditions and procedures to obtain international protection in the territory of the Member States be made widely available, including on the websites of the Member States' embassies and consulates and via the European External Action Service,

8. FINAL PROVISIONS

- provide for significant financial support from the Integrated Border Management Fund to be made available to Member States for its implementation,

- provide that a Member State that issues such a humanitarian visa has access to the same compensation from the Asylum, Migration and Integration Fund as when a Member State receives a refugee through the European Resettlement Framework,

9. AMENDMENT OF OTHER LEGAL ACTS

- provide for amendments to:
 - Regulation (EC) No 810/2009 to clarify that for persons seeking international protection the provisions of the Regulation establishing a European Humanitarian Visa apply,
 - Regulation (EC) No 767/2008 of the European Parliament and of the Council¹ to provide for applications for a European Humanitarian Visa to be entered into the Visa Information System,
 - Regulation (EU) 2016/399 to adjust the entry conditions for persons who have obtained a European Humanitarian Visa,
 - the Integrated Border Management Fund to provide funding for Member States for the implementation of the Regulation establishing a European Humanitarian Visa,
 - Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders² and to Council Directive 2001/51/EC³ in order to exempt carriers transporting third-country nationals from liability, obligations and penalties where the third-country nationals involved declare their intention to apply for international or humanitarian protection in the territory of the Member States.

¹ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

² OJ L 239, 22.9.2000, p. 19.

³ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45).

EXPLANATORY STATEMENT

Background¹

Parliament started to call for humanitarian visas against the background of the migration crisis and the unacceptable death toll in the Mediterranean. It has expressed its views, among others, in the resolution of 12.4.2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration.

Humanitarian visas were already discussed in the EU context but without any concrete result. Currently, there are a number of targeted national programmes but no legal framework in EU law.

The LIBE Committee has tried to address this legal gap as part of the review of the Visa Code (2014/0094(COD)) but both Council and Commission have opposed the amendments included in this regard in the trilogue negotiations which started in May 2016. In September 2017, after months of deadlock with the Council refusing to continue negotiations if these amendments were not withdrawn, Parliament's negotiating team withdrew them. Instead the LIBE Committee decided to draw up this legislative own-initiative report.

Despite this step, Council and Commission discontinued the negotiations.

On 6.12.2017, LIBE Committee was authorised to draw up this legislative own-initiative report based on Art. 225 TFEU and Rule 46.

In preparation of this report, the rapporteur sought input from the shadow rapporteurs, but also from civil society and academia. Furthermore, its preparation was supported by a European Added Value Assessment prepared by the European Parliamentary Research Service. The rapporteur wishes to express his gratitude for the cooperation and the support provided.

Parliament's requests to the Commission

A clear request for a legislative proposal establishing a European Humanitarian Visa should be made to the Commission which should present such a proposal by the end of March 2019. This period might appear short. It is, however, fully justified given the urgency of the matter, the extended debates which have taken place, the studies undertaken and the detailed recommendations made in this report.

Detailed explanation of the recommendations

The order of the recommendations, annexed but forming part of the motion for resolution, is based on the structure of a legislative instrument. The recommendations cover the core elements such a legislative instrument should contain.

¹ For more details see the working document on humanitarian visas of the rapporteur of 5.4.2018

This legislative instrument should be a new, separate legal act. The discussions on the Visa Code have shown that such a separate act is necessary. The rapporteur considers that the appropriate choice of instrument would be a Regulation as the other instruments of the visa acquis.

Legal base

The rapporteur considers that a combination of Articles 77(2)(b) and 78(2)(g) TFEU, looking at border checks and the managing of inflows of people applying for asylum, would constitute an appropriate legal basis.

Justification for the proposal

The recitals of the new legislative instrument should start by explaining the main rationale for the instrument.

This should be, firstly, the current paradoxical situation that there is in EU law no provision as to how a refugee should actually arrive leading to a situation that almost all arrivals take place in an irregular manner. This situation has serious consequences for the individual but also for Member States. The persons fleeing need to engage in life-threatening trips with the help of smugglers for which they need to pay enormous fees and where they are exposed to exploitation, ill treatment and abuse. On the negative side for Member States are the effects of uncontrolled arrivals (with unknown numbers and no information on who is arriving) and the increased efforts necessary to manage such arrivals in terms of enhanced border control and surveillance, search and rescue activities, cooperation with third countries etc. At the same time, Member States are confronted with ever-stronger organised crime which benefits from financial gain made by human smuggling.

A further argument for such a new legislative instrument is the risk of fragmentation. It can be observed that Member States do set up national schemes but they are all different. The rapporteur welcomes all initiatives which do provide for a safe passage. At the same time, given that the EU constitutes an area of freedom, security and justice without internal frontiers (Art. 3(2) TEU) more emphasis should be put on common policies.

As the EU is founded on the values of respect of human dignity and the respect for human rights (Art. 2 TEU) such an instrument is, finally, also necessary for the EU to be in line with its own Treaty requirements.

General provisions

The objective of the new instrument should be limited to provisions on the procedures and conditions for issuing a humanitarian visa. In its nature it should be a visa with limited territorial validity to allow its holder to reach this territory to lodge there an application for international protection. The Member State issuing the visa would therefore become responsible for the asylum procedures.

Discussions have taken place whether there should be a kind of relocation mechanism. After careful reflection the rapporteur does not propose such a mechanism to avoid that the system becomes overly complicated.

The new instrument should cover third-country nationals who are subject to the visa requirement who are in need of protection against a real risk of being exposed to persecution or serious harm and who are not covered by any other instrument such as resettlement. Resettlement is highly supported by the rapporteur but cannot be the only legal, safe pathway as it addresses only a limited group of already recognised refugees.

Procedures and conditions for issuing humanitarian visas

The procedures for such visas should be similar to short-stay visas wherever their nature allows for it. This would, for example, concern the procedural steps, processing deadlines, the need for an application form and biometric data, the involvement of external service providers, security checks and the right to appeal. The procedures should, however, be different where the specific situation of the persons so require. There should, for example, always be an interview (also to address the risk of trafficking) and it should be possible to apply by electronic means. In addition, to save costs and to take account of the situation of the person more use of modern communication tools should be made than is currently the case for visa applications. It should, for example, be possible to conduct interviews remotely allowing Member States to work with asylum experts not necessarily based in third countries.

The visa application should be assessed on a *prima facie* basis to consider whether applicants have an arguable claim of exposure to a real risk of persecution or serious harm. The rapporteur considers that such an assessment is necessary for the procedure to be credible. He stresses that the assessment is an assessment of the visa application and not an external processing of an asylum application. The latter would pose too many legal and practical questions.

Administrative management and organisation

The instrument will require administrative efforts for which Member States should be able to receive support, also financially. Amendments to this end could be made to the financial programmes of the new MFF, and in particular the Integrated Border Management Fund. In addition, it is expected that savings in other areas can be made as arrivals will be more orderly with less persons clearly not in need of international protection. The use of modern communication technology should allow for further savings.

Final provisions

The rapporteur fully acknowledges that an important number of practical preparations have to be made before the new instrument as conceived here can be implemented. It will be necessary to think the interconnection between visa and asylum procedures in a new way and organise the administrative workflow accordingly. For this reason the rapporteur proposes a

two year transition period before the new rules would become applicable. Subsequently the rules should be tested in the controlled environment of some selected third countries as pilot regions. This should allow for experiences to be made and analysed before a further roll-out.

Specific support structures for Member States in the pilot regions should be provided. They should be able to receive significant EU funding (for example from the Integrated Border Management Fund) for the further adjustment of their premises, staff training and the reorganisation of workflows and IT infrastructure. Expert advice should be provided by agencies, including EASO, Frontex, Europol and FRA. The implementation in the pilot regions should be closely monitored to allow for conclusions to be drawn. The results of the monitoring should feed into the evaluation after two years. These results should be carefully assessed and where necessary the new instrument may be amended. Subsequent to any necessary adjustments, the new instrument should be further rolled-out.

Amendment of other legal acts

It would be necessary to amend a series of acts of the visa acquis, in particular the Visa Code and the VIS, to adapt them to the existence of this completely new instrument. The same is necessary for the legislative instruments the holder of such a visa will then be subject when travelling to the EU. For instance, when arriving with such a visa at the external border the Schengen Borders Code will have to be amended to recognise it. Finally, some adjustments are also needed in the asylum acquis. While obviously the asylum procedure would fully take place in the territory of the EU the fact that an applicant was holder of a humanitarian visa should be integrated. For example, any assessment which has already taken place as part of the visa application should also be taken into account in the asylum procedure to avoid any unnecessary duplication of efforts.

Conclusion

The rapporteur considers that it is high time to find innovative solutions addressing both the needs of persons seeking protection and Member States. The current thinking in silos as regard the visa acquis on the one side and the asylum acquis on the other is artificial and not adapted to today's realities. A courageous step is necessary for the EU to life up to its values.