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DRAFT REPORT

with recommendations to the Commission on Humanitarian Visas
(2017/2270(INL))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Juan Fernando López Aguilar

(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 (2017/2270(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, in particular its Articles 4, 18 and 19,
 - 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 and the opinion of the Committee on Women's Rights and Gender Equality (A8-0000/2018),
- A. whereas despite numerous announcements and requests for safe legal pathways for persons seeking international protection there is currently no legal framework at European 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 the number of persons admitted on the basis of national protected entry procedures or through resettlement remain low in comparison to the need; whereas the scope of these possibilities is equally narrow and in case of resettlement only includes persons who have already been recognised as refugees and who fulfil further vulnerability or geographical criteria;
- C. whereas - as a result - an estimated 90% of those granted international protection have reached the Union through irregular means;
- D. 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, human trafficking, exposure to labour exploitation and violence on the black market, to manage the orderly arrival, reception and processing of asylum claims and to reduce Member States' and Union costs for asylum, law enforcement, border control, surveillance and search and rescue activities as well as to avoid fragmentation through diverging national practices risking to undermine common policies and the Union *acquis*;
- E. whereas Parliament has tried to include provisions in this vein in Regulation (EC) No 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)¹;
- F. whereas both Council and the Commission have rejected these amendments, on the ground, among others, that such provisions should not be included in the Visa Code, given its scope covering short-stay visas only;

¹ OJ L 243, 15.9.2009, p. 1.

- G. whereas Parliament, faced with the Commission's inaction, has therefore decided to proceed with drawing up this legislative own-initiative report on humanitarian visas;
- H. whereas intensive work was undertaken, including with the help of experts, to draw up the recommendations which are annexed to this motion;
1. Requests that Commission submit, by 31 March 2019, on the basis of Articles 77(2)(b) and 78(2)(g) of the Treaty on the Functioning of the European Union, a proposal for a Regulation on establishing a European Humanitarian Visa, following the recommendations set out in the Annex to this resolution;
 2. 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 of the Treaty on the Functioning of the European Union;
 3. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the national Parliaments, the European Court of Justice, 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 establishing a European Humanitarian Visa”,

2. LEGAL BASE

- have Articles 77(2)(b) and 78(2)(g) of the Treaty on the Functioning of the European Union as legal basis,

3. JUSTIFICATION

- be justified by:
 - the current legal gap in Union law which does not foresee clear procedures, neither in the visa, 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) of the Treaty on the Functioning of the European Union to develop a common policy on asylum and subsidiary 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 Schengen Borders Code,
 - the high costs, in human but also in social, economic and budgetary terms, associated with the status quo for the third-country nationals concerned (smuggler fees, risk of trafficking and exploitation, risk of persecution, risk of mortality and ill treatment, etc.) and for Member States and the Union (elevated costs for search and rescue, including for private shipping, border protection, cooperation with

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

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 similar 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 the so-called Asylum Procedures Directive¹ and Dublin Regulation² only apply on the territory of the Member States, while there is, at present, no regular means for asylum applicants to reach the territory where these instruments apply,

4. GENERAL PROVISIONS

- have as an objective to lay down provisions on the procedures and conditions for issuing a 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 Regulation (EC) No 539/2001³, and who are in need of protection against a real risk of being exposed to persecution or serious harm, as defined in Directive 2011/95/EU⁴, in line with the prohibition of *refoulement*, as recognised by the Charter of Fundamental Rights of the European Union, but who are not covered by [the new Regulation establishing a Union Resettlement Framework or] Directive 2001/55/EC⁵,

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).

⁴ 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).

⁵ 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

5. PROCEDURES AND CONDITIONS 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 admissibility criteria for such visa applications, including the filling out of an application form, the provision of information on the applicant's identity, including biometric identifiers (ten fingerprints and facial image taken live), 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, 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, once declared admissible, 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 without conducting a full status determination process,
- provide that each applicant for such a visa be subject to a security screening, including by searching SIS, ECRIS-TCN, and Europol data, to ensure that he or she does not pose such a risk,
- provide that such visa applications be decided on within 15 calendar days of the date of lodging the application,
- 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 have 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,
- 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

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).

international protection in that Member State,

7. ADMINISTRATIVE MANAGEMENT AND ORGANISATION

- provide that applications for such a visa be assessed by properly trained staff of the Member States and staff from competent Member State authorities with knowledge about the country of origin and having adequate expertise in Union asylum and fundamental rights law, having received appropriate training by the European Asylum Support Office,
- provide that such staff may either be posted in embassies or consulates or in Member States, in case of which applications are 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, to ensure its harmonised application, with Union agencies, with UNHCR, as well as with other relevant governmental and non-governmental organisations,
- 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

- be implemented in several stages, beginning with a transition period of two years before its provisions become applicable, to allow for the necessary preparations to be made, followed by a further period of three years, during which its application is limited geographically to applicants residing in certain third countries to be decided upon by means of delegated acts, taking account of EUROSTAT and UNHCR data on recognition rates and global protection needs per year,
- be evaluated after two years from the start of its application in view of deciding on a further progressive roll-out to cover ultimately all relevant refugee-producing third countries,

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

9. AMENDMENT OF OTHER LEGAL ACTS

- provide for amendments to:
 - the Visa Code to clarify that for persons seeking international protection the provisions of the act establishing a European Humanitarian Visa apply,
 - the Visa Information System to provide for applications for a humanitarian visa to be entered into that system,
 - the Schengen Borders Code to adjust the entry conditions for persons seeking international protection,
 - the Integrated Border Management Fund to provide funding for Member States for the implementation of the act establishing a European Humanitarian Visa,
 - the instruments constituting the Common European Asylum System, in particular the Dublin Regulation and the Asylum Procedures Directive, to ensure that any results of the examination of an application for a humanitarian visa are taken into account in the procedures conducted once the person seeking protection has reached the territory of the Member States.

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 live up to its values.