



Policy Proposal on

EU Asylum Policy

Creating legal avenues and protecting asylum seekers on
the sea route

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Authors: Asiya Ahmed, Aspasia Anagnostou, Katarzyna Bien, Piera Buccino
Grimaldi, Moritz Krause, Paula Hoffmeyer, Lisa Kühn, Ricarda Lindau, Saskia
Piotrowski, Valerie Schönberg

Tutor: Dersim Yabasun

STUDENT FORUM MAASTRICHT

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Content

Executive Summary	3
Introduction	5
Policy Proposal 1: Humanitarian Visas	6
Problem Statement	6
Background	6
Objectives	7
Elaboration	7
Policy Proposal 2: Rescue at Sea Program	8
Problem	8
Background	8
Objectives	8
Elaboration	9
Conclusion	10



Executive Summary

Introduction

The number of asylum seekers and migrants attempting to reach Europe through the Mediterranean has increased drastically throughout the last years. This development has established entry over the sea as the most frequently used route by which migrants attempt to gain access to European territory. Due to a lack of legal routes for migration, more than ninety percent of asylum seekers must enter the EU irregularly. In 2014 the approximate number of asylum seekers and migrants that lost their lives at sea rested at 3500. Since the beginning of April already hundreds of asylum seekers and migrants have drowned on their dangerous journey to Europe. These circumstances create a problematic situation resulting in the disregard of the principles of solidarity and non-refoulement.

Proposal 1: Humanitarian Visas

Background

The Stockholm Program (2010-2014) called for establishing more legal access to the EU for asylum seekers and migrants. Moreover, the program set out the aim to develop an integrated border management and visa policy, respecting the principle of solidarity. Currently, the Visa Code (Regulation (EC) No 810/2009) governs the visa application process. It provides the legal but very limited possibility to apply for a humanitarian visa.

Objective

The proposal follows the objective to create and promote a legal channel to enter the EU. This approach should decrease the scope of irregular migration.

Elaboration

Amendment of the Visa Code to extend the application of humanitarian visas

- Create coherence between Art.19 (4) and Art. 25 (1) to eliminate inefficiencies in issuing humanitarian visas: inclusion of the aspect of international obligations in both Articles
- Amendment of Art. 19 (4) to extend the application of humanitarian visas: replacement of "may be" with "shall be" for the admissibility of humanitarian grounds
- Addition of a definition of humanitarian grounds based on a non-exhaustive list as well as a definition of international obligations based on international agreements
- Provision of access to effective legal remedy in case of rejection



Training of professionals involved in issuing humanitarian visas by the European Asylum Support Office (EASO)

Collection of data concerning applications, acceptance and rejection of humanitarian visas over a three year time period to evaluate capacities and applicability

Proposal 2: Rescue at Sea Program

Background

The Italian operation Mare Nostrum was started in 2013 to tackle the increased immigration to Europe and to protect migrants and asylum seekers taking the sea route. In only one year, the operation saved over 140,000 people at sea. At the end of 2014, Mare Nostrum was replaced by the Frontex mission Triton which shifts the focus from saving human lives to border protection. In addition, UNHCR created the Central Mediterranean Sea Initiative in 2014 to further help prevent deaths at sea.

Objective

The proposal follows the objective to address the high death rate of migrants and asylum seekers entering by sea and to provide for better burden sharing among EU Member States.

Elaboration

The pilot project is divided into three consecutive stages

Stage 1: Search and Rescue Mission

- Short term measure: European Rescue Mission carried out by the Member States at the external borders of the EU and funded by the Asylum, Migration and Integration Fund (AMIF)
- Long term measure: European Rescue Agency specifically responsible for the coordination of rescue missions, common funding and equipment for rescue operations by all Member States

Stage 2: Reception Centers

- Temporary admission of migrants and asylum seekers to reception centers located at the external borders of the EU for a maximum period of two weeks

Stage 3: Distribution Key

- Allocation of migrants and asylum seekers to all Member States according to a distribution key
- Application of a Member State specific quota based on the factors of GDP, population, area and unemployment



Conclusion

We call on the Commission to take into account our policy proposal. The two outlined approaches are crucial to address the current human rights challenges that asylum seekers and migrants are facing. The aim is to decrease deaths at sea, to provide for legal routes and to establish a proportional burden sharing among all Member States. The concept of humanitarian visas provides for legal routes to enter the EU by pragmatically revising existing structures. In addition, the rescue at sea mission tackles the problem of irregular and dangerous Mediterranean routes.

Introduction

The Common European Asylum System (CEAS) was established to ensure adequate protection of asylum seekers and uniform procedures to be implemented by Member States. The CEAS is inter alia based on the principle of solidarity between Member States. That implies an area in which responsibility is shared proportionately and in which international human rights obligations are met. However, Member States face an unequal amount of responsibilities. Therefore, with regard to the arrival of asylum seekers on EU territory, the CEAS cannot only rely on certain Member States to fulfill specific international obligations of which the European Union (EU) as a whole is obliged to respect.

Over 90 percent of all persons seeking asylum in the EU must enter irregularly due to a lack of other possibilities. Specific legal routes still do not exist for asylum seekers to enter into Europe. Smugglers provide one of the only routes for asylum seekers to reach the EU and the treatment along such routes consists of rampant and extreme human rights violations. As a result, we believe it is crucial to strengthen alternative existing structures that can offer legal channels for asylum seekers to reach the EU. Such an alternative can exist in the form of humanitarian visas. However, it must be acknowledged that not all persons will have access to these legal channels and the use of the Mediterranean Sea as a passage into the EU cannot be entirely stopped. As a consequence, the EU holds an obligation to protect and safeguard those travelling by sea in accordance with its duty to respect the principle of non-refoulement.

The number of asylum seekers and migrants attempting to reach Europe through the Mediterranean has drastically increased throughout the last years. This development has established entry over the sea as the most frequently used route by which migrants attempt to gain access to European territory. In 2014, the approximate number of asylum seekers and migrants that lost their lives at sea rested at 3,500. Since the beginning of April 2015 already hundreds of asylum seekers and migrants have drowned in their attempt to reach Europe. The EU and especially the Member States at the external borders are struggling to cope with the growing influx of asylum seekers and migrants.



In response to the Commission's problem statement regarding the external dimension of EU asylum policy, we developed a policy proposal tackling the issues of legal routes for asylum seekers to reach the EU and cooperative action to tackle irregular migration. Thus, this proposal consists of two parts addressing the most pressing issues that need new solutions: humanitarian visas and the protection for asylum seekers entering by sea. We call on the Commission to examine our proposal for the strengthening of legal entry channels according to our humanitarian visa recommendations. In addition, we urge the Commission to establish a protection mechanism for those entering the EU via the Mediterranean through our Rescue at Sea action plan.

Policy Proposal 1: Humanitarian Visas

Problem Statement

Due to a lack of legal channels for third country nationals (TCNs) seeking protection in the EU, 90 percent of all persons applying for asylum in EU Member States cross EU borders illegally. The lack of effective protection mechanisms for accessing EU territory undermines the EU's obligations concerning human rights and refugees. Therefore, it is proposed to ease the way to enter the EU legally and press for the reinforcement of legal avenues to Europe. The legal text relevant in this context, namely the Visa Code, shows a lack of coherence. Embassies and consulates of EU countries located in third countries have the possibility to issue visas on humanitarian grounds. Due to the incoherence, the implementation of the legal entry channels is not effective in many cases as the embassies and consulates rarely make use of this instrument.

Background

The Stockholm Program (2010-2014) called for establishing more legal access to the EU for persons in need. Moreover, the program set out the aim to develop an integrated border management and visa policy, respecting the principle of solidarity. Currently, Regulation (EC) No 810/2009 (Visa Code) governs the visa application, including the possibility of a humanitarian visa. Even though the limited legal possibility to apply for a humanitarian visa exists, it is rarely used. Thus, many refugees are forced to come to Europe illegally. In 2013, 107,000 people entered the EU illegally. Furthermore, only 16 Member States have issued humanitarian visas at all. The issue has also been recognized by the European Commission in its communication paper COM (2014) 154 as well as by the European Parliament. They are referring to a "coordinated approach to humanitarian visas and common guidelines" to make an open and safe Europe happen.¹

¹ "Humanitarian visas: option or obligation?", study for the LIBE Committee of the European Parliament, 2014.



Objectives

The primary objective of this proposal is to promote legal channels for entry to the EU and thereby decrease irregular immigration. Thus, it pursues the goal to cause a shift from illegal to legal channels of entrance. Moreover, the proposal aims to provide for better burden sharing among EU Member States.

Elaboration

It is of great importance to make amendments to the Visa Code in order to extend the scope of the application of humanitarian visas. This approach is pragmatic as it incorporates existing structures and gives the opportunity to actively regulate the influx of asylum seekers. First, it is necessary to create coherence between Art. 19 (4) and Art. 25 (1) of the Visa Code in order to eliminate inefficiencies in the process of issuing humanitarian visas. Art. 19 (4) states that "By way of derogation, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds or for reasons of national interest." In contrast, Art. 25 (1) refers to Limited Territorial Visas and adds the component of international obligations. Considering the necessity of coherence, it is essential to include the aspect of international obligations in Art. 19 (4).

Second, the current wording states that the requirements for humanitarian visas "may be" considered admissible. An extension of the possibility of giving humanitarian visas can be accomplished by replacing the word "may be" with "shall be" in Art. 19 (4). Third, the requirements in regard to humanitarian grounds and international obligations have to be clearly defined. As the concept of humanitarian grounds is contested, a non-exhaustive list could facilitate the application of the concept. This list could include aspects such as medical reasons, strengthening of family ties or protection related factors. The term of international obligations can be defined based on international agreements such as the Geneva Convention. These sources of international law should be explicitly mentioned in the Visa Code. Fourth, it is necessary to ensure access to effective legal remedy in case of rejection. As the Member States are committed to the European Convention on Human Rights (Art. 6) a fair trial has to be ensured. Taking into account that the suggested changes would have a significant impact on the visa processes, it is also necessary to review the handbooks.

Subsequent to the amendment of the visa code, trainings on the application of humanitarian visa should be provided for professionals in charge of the application process. These trainings should be conducted by the European Asylum Support Office (EASO). They should focus on soft and professional skills as well as the changed content of the handbook to ease the application of humanitarian visa. This requires an increase in the capacity and budget of EASO.

Moreover, the changes should also involve the establishment of a data collection process that is evaluated after a period of three years. EASO should be responsible for

monitoring the collected data. The data should include national embassies' reports on applications for visa (based on fulfilled requirements as well as on humanitarian grounds), acceptance and rejection quotas as well as numbers. Based on the outcome the embassies' capacities should be adjusted in accordance to the impact assessment.

Policy Proposal 2: Rescue at Sea Program

Problem

In 2014, approximately 3500 asylum seekers and migrants lost their lives at sea while trying to reach Europe. Since the beginning of 2015 the number of deaths has already reached 900, demonstrating an increase in deaths during this period in comparison to last year. During one week in April 2015 alone, the Italian coast guard rescued 10,000 asylum seekers and migrants at sea. From the high numbers of persons arriving at the EU borders by sea in 2014, Italy received 170,100 asylum seekers and migrants, Greece received 43,500, Spain received 4,250 and Malta and Cyprus received 568 and 339 respectively. These facts underline the urgency of the situation and the need for the EU to take immediate action.

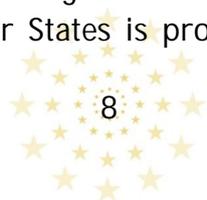
Background

In October 2013, the Italian government launched the Mare Nostrum Operation, abiding by its international obligations to protect those attempting to seek asylum and respecting the principle of non-refoulement. In only one year, this operation saved over 140,000 people at sea. However, due to high costs and low levels of solidarity, Italy could not continue its crucial operation. At the end of 2014, Mare Nostrum was replaced by the Frontex mission Triton. While Mare Nostrum held a greater focus on saving lives (budget of 9 million euro per month), Triton now has a greater focus on border protection (budget of 3 million euro per month).

In addition, UNHCR created the Central Mediterranean Sea Initiative (CMSI) in 2014 to further help prevent deaths at sea. The CMSI seeks to strengthen cooperation with relevant stakeholders, including the European Commission, the European Asylum Support Office, Frontex, EU Member States, the International Maritime Organization, the International Organization for Migration, civil society and other partners. Unfortunately, the current initiatives still remain highly inadequate to tackle the issue of migrant deaths at sea.

Objectives

The aim of this proposal is, first and foremost, to address the high death rate of asylum seekers and migrants travelling by sea and to ensure compliance with the EU's obligations under international refugee and human rights law. Therefore, the implementation of a pilot project aiming at the rescue of people in distress and their distribution among the EU Member States is proposed. This project will ensure the



saving of lives of thousands of asylum seekers and migrants and their effective protection. It is a first step towards equal and fair sharing of challenges faced by the member states with regard to irregular migration at sea.

Elaboration

The pilot project is divided into three stages. The first stage concerns a search and rescue mission for vessels in distress approaching European territory. At the second stage, asylum seekers and migrants are brought to reception centers where they are temporarily accommodated. At the third stage of the procedure migrants are allocated according to a European distribution key corresponding to the receiving capacities of member states and humanitarian needs of asylum seekers.

Stage 1: Search & Rescue

In order to prevent the increasing number of deaths at sea, an effective European search and rescue mission must be created. This requires a coordinated approach of all Member States. In this respect, responsibilities for search and rescue at sea should be clearly allocated between the EU and all of the member states. Our proposition contains two alternatives: one European rescue mission addressing the need for urgent actions, and a more long-term approach focused on a common search and rescue mission coordinated by a European agency.

A. European Rescue Mission

As a short-term measure, the reintroduction of a rescue mission similar in scope and budget to the Italian operation "Mare Nostrum" is proposed. While being carried out by the Member States adjacent to the Mediterranean Sea, the mission would be funded by the Asylum, Migration and Integration Fund (AMIF) under the budget for direct management and specific actions. The budget of this fund is to be increased significantly with a view to ensure the success of the mission.

B. European Rescue Agency

Similar to European agencies such as FRONTEX and EASO, a European agency specifically responsible for the coordination of rescue missions should be created in the long term. The main task of this agency would be to coordinate the national coast guards' efforts with respect to rescue at sea and to ensure a common funding and equipment for rescue operations by all Member States. Technical assistance will be provided by the Member States' navies as well as by FRONTEX and EUROSUR, which are particularly going to contribute with surveillance. The agency would have to be equipped with a budget sufficient to fulfill its tasks.

Stage 2: Reception Centers

After their rescue at sea, migrants and asylum seekers will be placed in newly created reception centers on the territory of Member States located at the external borders of the EU. These centers should provide for accommodation, food, legal advisors and

medical assistance, according to European and international obligations. However, the centers should not provide for asylum procedures, but rather prepare for a distribution of the rescued persons in the Member States. The processing of asylum seekers and migrants is carried out by national officials, supported and trained by EASO. NGO's and other local organizations should actively participate in the process. UNHCR officials will be present in an advisory role. After a maximum period of 2 weeks the migrants will be allocated to other Member States according to the distribution key (see stage 3). In order to ensure orderly processing of the persons concerned, personal data and fingerprints should be included in European databases. The centers and the personnel will be funded by the EU through AMIF.

Stage 3: Distribution key

After rescue and accommodation, migrants and asylum seekers are to be allocated in all Member States according to a distribution key. This is a mechanism already in use internally in the Member States of Germany and the United Kingdom. It serves the purpose of a proportionate and capacity-based distribution of asylum seekers with a view to provide the highest possible human rights standards. The distribution key addresses the disproportionate burden held by certain European Member States a priori due to geographical factors, and subsequently the limited application of the Dublin system with its overemphasis on the "country of first arrival". However, it specifically focuses on the limited amount of asylum seekers in distress at sea and therefore does not change the current asylum system.

To ensure an informed mechanism that allocates asylum seekers proportionately and on a capacity basis, the formula should contain key factors relating to capabilities. In 2013 the German Institute for International and Security Affairs proposed a formula incorporating four factors: GDP, population, area and unemployment. Economic strength and population are the primary and most significant factors, whereas area and unemployment are secondary.

According to these factors, quotas for each Member State are to be developed. In order to address the personal preferences of asylum seekers, the procedure should initially consider factors like family unity through individual interviews. Subsequently, the application of the distribution key will occur, respecting to the extent possible the humanitarian needs of asylum seekers.

Conclusion

We call on the Commission to take into account our policy proposal. The two outlined approaches are crucial to the current human rights challenges that asylum seekers and migrants are facing. The aim is to decrease deaths at sea, to provide for legal routes and to establish a proportional burden sharing among all Member States. The concept of humanitarian visas provides for legal routes to enter the EU by pragmatically revising existing structures. In addition, the rescue at sea mission proposed, tackles the problem of irregular and dangerous Mediterranean routes.

