

Legal entry channels to the EU for persons in need of international protection: a toolbox

FRA Focus

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 2013 report on fundamental rights at Europe's southern sea borders, the European Union Agency for Fundamental Rights (FRA) described the disquieting migration pattern 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 2014 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 smugglers. It does so by presenting different refugee-related schemes – including resettlement, 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 expulsion. Nor does this FRA focus deal with search and rescue obligations enshrined in international maritime law.

Largest displacement since World War II: risks of exploitation and abuse

According to the UN High Commissioner for Refugees (UNHCR), the number of refugees, asylum seekers and internally displaced people worldwide has – for the first time in the post-World War II era – exceeded 50 million people. By the end of 2013, there were 51.2 million forcibly displaced people in the world – six million more than in 2012.¹ The countries from which they mainly originate are Afghanistan, Eritrea, Somalia, Sudan and Syria. Referring to the situation in Syria, the UNHCR spoke of ‘the worst humanitarian crisis of our time’, with Syrians having become the largest refugee population under his mandate.²

Most displaced persons find safety in their regions of origin. More than 190,000 Central African refugees, for example, have fled to Cameroon, Chad, the Congo and the Democratic Republic of the Congo (DRC) since December 2013.³ The number of Syrian refugees registered in Lebanon is another telling example. By December 2014, almost 1,150,000 Syrians had been registered as refugees in Lebanon, thus making up over a quarter of Lebanon’s population. In comparison, only about 100,000 Syrians applied for asylum in the 28 EU Member States in 2014.⁴

Many refugees in countries of first asylum are vulnerable to exploitation and abuse. They are

frequently confined to camps where they may be exposed to various risks concerning their safety and health. During the rainy season in Ethiopia in November 2014, for example, the Lietchor refugee camp, which houses more than 47,800 refugees from South Sudan, was flooded. This worsened conditions in the camp, with people having to wade through water to cross from one dry part of the camp to another.⁵ The UNHCR reports that in the Syrian refugee camps in the Middle East, the security of refugees is at risk and their medical needs are not well covered.⁶

Female-headed refugee households, single women and girls face a heightened risk of sexual exploitation and abuse. They can be forced to provide sexual favours in exchange for essential resources, as reported by the International Organization for Migration (IOM) concerning the situation in the camps in Haiti in 2013,⁷ or by the UNHCR concerning that of Syrian refugees in 2014.⁸ Forced early marriages and human trafficking are also a real risk.⁹ In the Zaatar camp in Jordan, Syrian refugees and local aid workers have signalled the existence of an organised trade in young girls. According to local sources, the rate for a bride ranges between 2,000 and 10,000 Jordanian dinars (€2,494 to €12,471),¹⁰ with another 1,000 (€1,247) going to the broker.¹¹

Too few legal ways to enter the EU

The possibilities for people in need of protection to legally enter and stay in an EU Member State are very limited. For security or political reasons, EU Member States are often required to close down their diplomatic representations in war-torn countries.¹² For nationals of these countries, obtaining a visa to enter the EU is difficult since there is a risk of overstay. Moreover, nationals from war-affected countries, such as South Sudan or Syria, often need to have a transit visa even when they are just passing through an EU Member State.¹³ For a persecuted person, it is often impossible to visit a consulate to apply for a visa because diplomatic representations are usually located in areas of capitals that are intensively surveilled by security forces.

Comparing the number of Schengen visas issued to Syrian nationals before and after the conflict illustrates these difficulties: the total number of visas issued to a foreigner for visiting the Schengen area

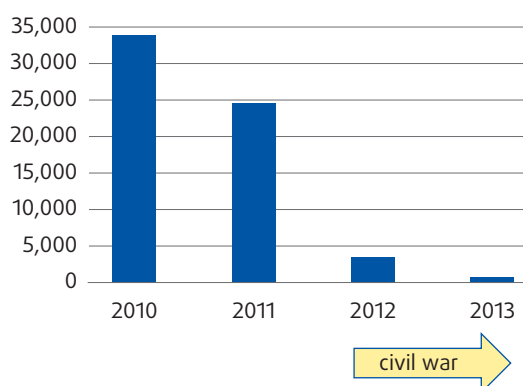
granted to Syrian nationals has dropped from over 30,000 in 2010 to almost zero in 2013 (Figure 1).

The fact that opportunities to enter the EU lawfully are limited lead many people in need of protection to resort to smuggling networks to reach safety or join their families. According to preliminary figures provided by Frontex, in 2014 some 278,000 people were apprehended, intercepted or rescued when trying to reach the EU by crossing the border in an irregular manner – over twice as many as during the initial stages of the Arab Spring in 2011. A significant proportion of them were smuggled.

The majority of these people came from ‘refugee-producing’ countries, such as Syria or Eritrea, and arrived by crossing the Central Mediterranean by sea, putting their lives at great risk: the IOM estimates that 3,224 people died in the Mediterranean in 2014.¹⁴



Figure 1: Number of Schengen visas issued to Syrians, trend 2010–2013



Source: European Commission, DG Home, Visa statistics, 2014

Resorting to smugglers endangers the lives and physical integrity of asylum seekers and migrants. In line with the following testimonies from the FRA project on fundamental rights at Europe's southern sea borders, smugglers exploit or directly expose them to risks.

'There were people that when they saw the boat, they didn't want to get in, because they were afraid, and they did not want to leave. The Libyans forced them to enter the boat, they tortured them. [...the boat was] small, 7–9 metres. But they told us that it was a large boat, instead it was small, it was not good. For this reason, some of us were afraid and they did not want to get on and were beaten.'

(Migrant coming from Libya, interviewed in Italy, 2010)

'We had a rough time, I was awake for three days keeping an eye on the situation because we were strangers, we didn't all know each other, it was a small group but there were sick people, some vomiting, others crying and no food, the food was only the captain's [...].'

(Migrant describing the journey across the Alboran sea, interviewed in Spain, 2011)

When persons in need of international protection reach the borders of the EU in an irregular manner,

they may be refused entry to the country at which they arrive, and instead be subjected to unlawful collective expulsions or pushed back in violation of the principle of non-*refoulement*.

'Two of the soldiers got into the boat with the group of refugees. They then took them to the Turkish side onto a sandbank in the river. There they left the refugees who were left to swim across to Turkey. It was maybe less than 200 m but you had to swim. [A]fter five minutes, the Greek police and the soldiers came back with another group of people, one family with four children [...] from Syria and Iraq. [...]. The water the refugees had to cross to get back to Turkey was not so deep, it went up to the chest of an adult man, but the children and the young woman could not swim. The refugees therefore tried to make a small wooden bridge with using small trees and branches, but that did not work. Then they made a human bridge, holding on to each other, and then they passed the children across the water, from one person to another. There was a current and it was difficult to help the others across the river. The [interviewee] does not know what would have happened to the other group of refugees if he and his group had not been there to help them across the river.'

(UNHCR Stockholm, extracts from the UNHCR interview notes with a Syrian musician apprehended a few days after having crossed into Greece, November 2014)

If they finally make it into the EU, some may be detained due to the irregular nature of their stay. Others may have to take up work under exploitative conditions to repay the cost of smuggling.

Under Article 79 of the Treaty of the Functioning of the EU, the Union shall adopt measures to combat irregular migration and trafficking in human beings. The Task Force Mediterranean, which the European Commission established in the aftermath of the tragedy near Lampedusa in October 2013, identifies the fight against smuggling in human beings as one of the priority areas for action. It calls for the development of a comprehensive EU plan to fight smuggling in human beings, which could include increasing the number of legal avenues to reach the EU safely.¹⁵

Increasing calls for more opportunities to reach the EU legally

Increasingly, people are turning their attention to the exploration of legal ways for persons in need of international protection to enter the EU.

The Task Force Mediterranean recommends a renewed focus on resettlement and reinforced legal avenues to reach Europe.¹⁶ The European

Commission also commits to explore further possibilities for protected entry procedures, which could include conducting a feasibility study on joint external processing of protection claims, without prejudice to the existing right of access to asylum procedures in the EU.¹⁷

In a number of its resolutions, the European Parliament also calls for the creation of safe routes into the EU.¹⁸ In its resolution of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the parliament considers that further avenues of legal migration should be explored as well as 'future initiatives that follow good examples of resettlement, including the voluntary resettlement programme' laid down in Article 17 of Regulation (EU) No. 516/2014 establishing the Asylum, Migration and Integration Fund. It thus highlights that EU funding offers assistance to those Member States willing to implement resettlement programmes.¹⁹ It also stated that 'the EU should ensure safe and legal access to the EU asylum system, and explore legal migration policies' and asked the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to assess the various policies at stake, draw up a set of recommendations and report back to plenary with a 'strategic initiative report' before the end of 2015.²⁰

FRA ACTIVITY

Strengthening legal channels to reach the EU

Strengthening legal channels for refugees to reach protection and safety would contribute to reducing the number of migrant lives lost at sea and the abuses perpetrated by smuggling networks. This was one of the main conclusions of the 2014 Fundamental Rights Conference organised by FRA in Rome on 10 and 11 November. Participants also called for a more innovative use of the existing EU legal framework to the benefit of third-country nationals in need of protection.

Source: FRA (2014), Fundamental rights and migration to the EU: Conference conclusions, *Fundamental Rights Conference 2014*, <http://fra.europa.eu/en/publication/2014/fundamental-rights-conference-2014-fundamental-rights-and-migration-eu-conference>

At the global level, in its *Central Mediterranean Sea Initiative* action plan, the UNHCR calls for the development of legal alternatives to dangerous irregular movements, one of 12 concrete steps suggested.²¹

The United Nations (UN) Special Rapporteur on the human rights of migrants,²² the Council of Europe's Commissioner for Human Rights²³ and the Council of Europe Parliamentary Assembly,²⁴ as well as

civil society organisations, have made similar calls.²⁵ The European Council on Refugees and Exiles (ECRE) has made legal access to the EU for people in need of protection one of their priority areas for concrete action in their campaign on Syria's refugees.²⁶ The Red Cross EU Office has released two position papers on legal access to the EU for people in need of protection, the most recent one focusing on the Syrian refugee crisis.²⁷

Legal entry schemes could be used more proactively to better respond to the urgent needs of persons in need of protection. Providing more opportunities to access the EU safely would have many benefits related to the fight against smuggling, the protection of persons in need, security and integration.

Main advantages of legal entry

Advantages	Expected results
✓ Better protection	Better chances for refugees to access and enjoy protection.
✓ International solidarity	Accepting refugees contributes to addressing humanitarian crises in third countries
✓ Fight against smuggling and trafficking	Reduction of the demand for human smuggling and of the risk of persons becoming victims of human trafficking.
✓ Security	Collection of biometric data (in the Visa Information System for Schengen visas) and searches in SIS II help identify possible security risks.
✓ Controlled immigration	The identity of orderly admitted persons is known, which facilitates return should they lose the right to stay in the future.
✓ Less rehabilitation needed	Orderly admission reduces the need of psychosocial care due to trauma experienced during migration.
✓ Integration	Lawful entry would enable authorities to better plan and implement their integration programmes.
✓ Filling skills gap	Persons in need of protection with needed skills could be channelled into labour migration schemes and their knowledge and skills could be used after arrival.

A number of challenges also exist, however, that need to be adequately assessed to mitigate ensuing risks.

Risks and ways to mitigate these

Risks	Ways to mitigate risks	Risks	Ways to mitigate risks
✓ Selecting beneficiaries of legal entry programmes may be difficult	Objective and transparent selection criteria which are communicated to the communities concerned.	✓ Smugglers and other criminals could misuse legal channels of migration	Harmonisation among EU Member States of conditions, including those addressing security concerns, an applicant must fulfil.
✓ Persons who have not planned to move to the EU could be encouraged to do so, when they learn about such possibilities	To reduce the need for having to leave countries of first asylum, protection must continue to be enhanced in these countries, by supporting efforts of the international community.	✓ Managing applications and organising arrivals require additional resources	Savings from managing spontaneous arrivals could be used to manage orderly arrivals.
		✓ Could generate a negative reaction in some sectors of European societies	Information campaigns and programmes for the integration of persons in need of protection in the reception societies may mitigate this.

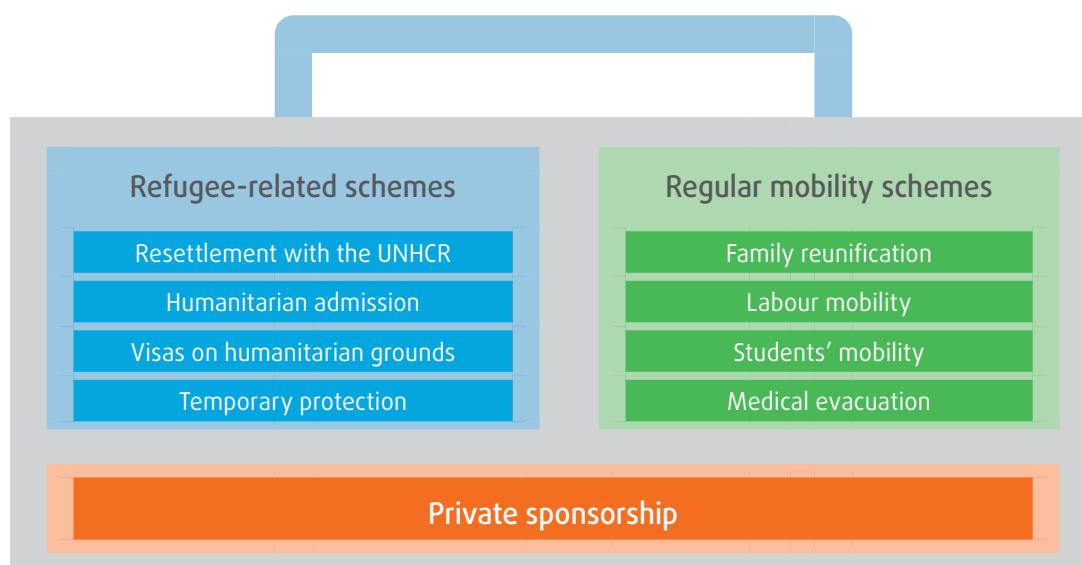
Operationalising legal entry channels: a toolbox

Legal entry channels for persons in need of protection can include a number of existing practices, namely:

- resettlement;
- humanitarian admission programmes;
- humanitarian visas;
- simplifying visa requirements for certain nationalities or certain groups;
- more generous use of family reunification rules;
- use of existing channels for regular migration for the purposes of labour and study.

Some of these ways of safe and legal access to the EU focus on refugees, while others are regular mobility schemes that could be made more accessible to refugees. Figure 2 illustrates the various existing options that EU Member States may use to operationalise legal entry channels.

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



All the existing ways to access the EU legally require human and economic resources to manage applications. This may be a practical obstacle to extending existing schemes or setting up new ones for the benefit of a larger number of persons.

Promising practice

Tapping into private resources to resettle more persons to Canada

Canada's Private Sponsorship of Refugees Programme complements the national government-assisted refugee programme. Sponsors are able to choose the refugee applicants they wish to sponsor. If a visa officer declares the refugee applicant to be eligible and admissible to the programme, the sponsor is responsible for assisting and financing the refugee's integration for one year from the date of arrival or until the refugee becomes independent.

The model is flexible to suit local constraints or opportunities. There are a variety of sponsorship types involving different sponsorship group configurations. The most visible are Sponsorship Agreement Holders – NGOs that have overarching agreements with the Canadian government, which enable their constituent groups to sponsor refugees under the private sponsorship programme. There are also other configurations such as the 'Group of 5' programme, through which five or more persons apply to sponsor a refugee.

Canada's resettlement target for 2015 includes 4,500 to 6,500 privately sponsored refugees. The Private Sponsorship Programme not only allows for more refugees to be resettled, it also provides secondary benefits such as allowing the public to become involved in assisting refugees.

Already in 1986, the People of Canada were awarded the Nansen medal largely based on this initiative.

For more information, see: Guide to the Private Sponsorship of Refugees Programme published by Citizenship and Immigration Canada

Source: UNHCR Canada

One possible solution to overcome this limitation is to integrate private stakeholders, such as NGOs, religious organisations or individual persons, in those schemes, making them sponsors and thus tapping into their resources. Private sponsorship can be applied to both refugee-related schemes as well as regular mobility schemes. This formula has delivered positive results in Canada.

Promising practice

Helping family members to come to Germany

Several federal states (*Länder*) in Germany implemented a programme to admit privately sponsored Syrians to live with their relatives in Germany. Initiated in August–September 2013, it allows for the admission of extended family members of persons residing in Germany, provided their families in Germany commit to covering the transport and living costs for their relatives for the duration of their stay in Germany (10,000 beneficiaries).

Source: Bundesministerium des Innern, http://www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingsschutz/Humanitaere-aufnahmeprogramme/humanitaere-aufnahmeprogramme_node.html

Private sponsorships can take various forms, from scholarships for students and academics to integration support for sponsored family members. The degree of private support to the programme can vary, depending on the circumstances. Other sources are public support from governments or international organisations.

Private sponsorship is a mechanism for tapping into additional resources which would otherwise not be available to support legal entry programmes. Whether applied to refugee-related or general mobility schemes, it will never cover the full costs of a programme, as the state would still at the very least be required to carry out the necessary screening and entry formalities. Although private sponsorship should not be used to shift the cost of existing or planned admission and reception programmes onto civil society, it is nevertheless a way of multiplying the possibilities of legal entry where private resources are available. It also contributes to raise public awareness and support.

The toolbox: refugee-related schemes

Resettlement with the UNHCR

According to the UNHCR, resettlement involves the selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals.

Resettlement is an important refugee protection tool, which has proven itself through history. Between the two World Wars, resettlement was the principal or a partial solution in a number of refugee situations. Relevant examples from the Cold War era are the resettlement of Hungarians in the 1950s and of Ugandan Asians in 1972. The largest resettlement operation occurred in the aftermath of the Indo-Chinese conflict, 700,000 Indochinese being resettled after 1979. In the 1990s, approximately 21,800 Iraqis were accepted for resettlement.²⁸

In principle, the decision on whether to resettle, and how many people and from which groups, remains with the authorities of the receiving state.

Resettlement programmes generally target those refugees facing heightened protection risks in countries of first asylum. The UNHCR is responsible for identifying those needing to be resettled, basing its selection on criteria listed in its Resettlement Handbook. These criteria encompass seven categories:

- refugees with legal or physical protection needs;
- victims of torture;
- refugees with medical needs;
- women and girls at risk;
- family reunification cases;
- children and adolescents at risk following a best interests determination;
- refugees for whom no other alternative durable solution is available.²⁹

In 2013, some 21 resettlement countries admitted a total of 98,400 refugees worldwide. Most refugees were resettled to the United States (66,200), Australia (13,200) and Canada (12,200).³⁰ In comparison, according to Eurostat only 4,840 refugees were resettled in the EU as a whole,³¹ with only about half of the Member States having a regular resettlement programme in place.³²

Promising practice

Assisting resettled refugees to integrate in Finland

Following an agreement with the government, the Finnish Red Cross organises the reception of refugees resettled in Finland. Finnish Red Cross volunteers meet the refugees at the airport or at the land borders. In cooperation with the IOM and the municipalities of resettlement, the Red Cross provides the reception services. Locally, Finnish Red Cross volunteers organise various activities to support the integration of newcomers in cooperation with other NGOs, networks and local authorities. The Finnish Red Cross also assists resettled refugees with family reunification processes by providing information and advice, and by making practical travel arrangements once the family member's residence permits have been issued.

Source: Red Cross EU Office

The EU has put considerable efforts into developing a common approach to resettlement with the UNHCR. The EU Resettlement Programme laid down the Union's priorities covering the period from 2009 to 2013,³³ priorities that were revised in 2012.³⁴ A financial tool, the Preparatory Action on Emergency Resettlement, allowed for the first wave of resettlement from Syria in 2012.³⁵

A new funding instrument adopted in 2014, the Asylum, Migration and Integration Fund (Regulation (EU) 516/2014), provides special financial incentives to resettlement programmes, as well as a lump sum of between € 6,000 and € 10,000 for every refugee who is resettled based on a UNHCR request. Commission Regulation (EU) 801/2014 sets out the implementing conditions for the allocation of resources for the Union Resettlement Programme under the Asylum, Migration and Integration Fund.³⁶

The Syrian refugee crisis illustrates well the scope of global resettlement needs. On 9 December 2014, the UNHCR held a pledging conference to make 130,000 places available for Syrian refugees by the end of 2016.³⁷ It encouraged states to offer places also on top of their national resettlement quotas, to ensure that resettlement opportunities would continue to be available for refugees from the rest of the world, based on the global resettlement needs estimated for 2015.³⁸ By February 2015, EU Member States pledged to receive some 38,000 Syrian

refugees through various schemes.³⁹ Germany, for example, pledged most places – 20,000 under its humanitarian admission programme and 10,000 individual sponsorship visas – followed by Sweden (2,700), Austria (1,500 under the Humanitarian Action Syria programme), France (1,000) and Finland (850). Over one third of Member States have not yet made any specific pledges for Syrians.

The increased number of refugees worldwide makes resettlement more important than ever as a durable solution to refugees. The EU needs to pledge its fair share of resettlement places to support global efforts to enhance their availability. Moreover, in light of the principles of solidarity and responsibility-sharing, all EU Member States, rather than just some of them, should commit themselves to refugee resettlement according to their capacity and possibilities, thereby broadening the number of resettlement countries in the world. Austria made an important step in this direction when it presented its 'Save lives' initiative at the informal JHA Council in July 2014. It proposes an EU-wide resettlement programme whereby refugees taken in would be distributed among EU Member States according to pre-agreed criteria.⁴⁰ The European Commission is currently preparing a pilot project to operationalise this initiative, which could encompass all EU Member States.

Humanitarian admission

The term 'humanitarian admission' is currently used in different ways. Some humanitarian admission programmes are, in fact, resettlement schemes carried out under the auspices of the UNHCR; this concerns, for instance, part of the Syrian refugees who Austria admits under its humanitarian programme. Other programmes target refugees who the UNHCR has not individually selected. Under some humanitarian admission programmes, people are granted protection status, whereas under others they receive a different kind of leave to stay.

For the purpose of this FRA focus, 'humanitarian admission' describes programmes that are similar to resettlement, but for which refugees are not individually selected and submitted by the UNHCR. In other words, it is used to describe those situations in which people are admitted after having received refugee or other protection status, making this scheme accessible to individuals who might not qualify for resettlement under the UNHCR. Depending on national legislation, those admitted may be provided with a time-limited or a permanent residence permit.

Humanitarian admission programmes are not necessarily limited to persons who qualify as refugees, but can also target other individuals, including those who are still in their home country. In the early 1970s, for example, Canada accepted people who were at risk in Chile following the overthrow of Salvador Allende, processing them directly from the country of origin.⁴¹ In principle, humanitarian admission programmes could also be used for internally displaced persons, who do not qualify for resettlement under the UNHCR since they are still in their home country.

Although the UNHCR is not involved in interviewing and referring persons to humanitarian admission programmes, it can support setting up such programmes through a request for international solidarity. In response to the Syrian crisis, traditional resettlement schemes have been complemented by national humanitarian admission programmes, generally using similar criteria as the UNHCR for selecting beneficiaries. In February 2015, the UNHCR listed examples of humanitarian admission programmes, which include the 'Humanitarian Action Syria' in Austria (1,500 persons), the humanitarian admission programme in Germany (20,000 persons), the Syrian Humanitarian Admission Programme in Ireland (111 persons, see promising practice on joining family members in Ireland) or the Vulnerable Persons Relocation scheme in the United Kingdom (90 persons as of end 2014).⁴² The IOM supports these humanitarian admission schemes by providing pre-departure services such as health assessments, cultural orientation, and facilitated transportation.⁴³



Promising practice

Joining family members in Ireland through humanitarian admissions

The Irish Department of Justice opened from 14 March to 30 April 2014 a humanitarian admission programme to allow people affected by the Syrian conflict to join close relatives who are lawfully residing in Ireland. The admission programme offered temporary residency for up to two years. Applications for up to four of the most vulnerable family members could be submitted, two of whom would be prioritised for admission in the first instance. The two-person quota would be applied flexibly to avoid the breaking up of family units. The Irish Department of Justice received applications for 308 people, out of whom 111 were granted permission to enter Ireland.

This programme is without prejudice to other avenues entering the EU, whereby people fleeing the conflict might lawfully enter the state, such as family reunification for the family members of refugees and persons with subsidiary protection, and the UNHCR's resettlement programme.

Source: Irish Naturalisation and Immigration Service
<http://www.inis.gov.ie/en/INIS/Pages/SYRIAN%20HUMANITARIAN%20ADMISSION%20PROGRAMME>

The UNHCR Core Group on Resettlement of Syrian Refugees advocates for complementary solutions for refugees, in addition to resettlement. Humanitarian admission is one option, which, if implemented in consultation with the UNHCR, can offer durable solutions to refugees and other persons in need of protection.

Visas on humanitarian grounds

The EU visas regime is a mobility scheme for short stay visits. It is not refugee-specific. It is, however, possible to issue short-term visas on humanitarian

grounds. These visas are often referred to as humanitarian visas. The humanitarian visa procedures are different from resettlement or other forms of humanitarian admissions, as only an initial assessment is conducted extraterritorially. The final status determination procedure is conducted in the country after arrival. The provision of a humanitarian visa is commonly referred to as 'protected entry'.⁴⁴

Promising practice

Admitting Syrians in Latin America

According to the UNHCR, from 2013 to February 2015, Brazil provided humanitarian visas for 5,700 Syrian refugees. Argentina has also created a mechanism to issue humanitarian visas to persons affected by the conflict in Syria (*Programa Siria*).

For the Argentinian programme, see also:
<http://aldiaargentina.microjuris.com/2014/10/21/se-aprueba-el-programa-siria-para-facilitar-el-ingreso-a-la-republica-argentina-por-razones-humanitarias-de-extranjeros-afectados-por-el-conflicto-armado-de-la-republica-arabe-siria/>

Source: UNHCR

The Mediterranean Task Force set up by the European Commission following the Lampedusa tragedy proposes to explore possibilities for protected entry procedures. The European Commission stated in its March 2014 Communication that 'Protected Entry Procedures [...] could complement resettlement, starting with a *coordinated approach to humanitarian visas* and common guidelines'.⁴⁵

'The Commission is already committed to exploring new avenues, in particular the possibility of developing a common approach to issuing humanitarian visas to allow those in need to come to Europe and apply for protection.'

Commissioner Avramopoulos' speech at the European Parliament plenary debate on migration, 25 November 2014, http://europa.eu/rapid/press-release_SPEECH-14-2140_en.htm

The Visa Code (Regulation (EC) No. 810/2009) regulates visas for visits of up to three months in EU Member States that are part of the Schengen area; these are so called C visas. In addition, Member States have the possibility of issuing national visas for long-term stay, so called D visas.

Promising practice

Issuing visas to reach France to apply for asylum

On a discretionary and exceptional basis, French diplomatic and consulate representations receiving asylum applications abroad (inside and outside the countries of origin) can issue visas to reach France to apply for asylum. The issuing of such visas is based on protection considerations and aims to provide protection to people in crisis zones.

Victims of the Haiti earthquake and Iraqi Christians benefitted from these type of visas in 2010. From 2012 to January 2015, France has provided close to 1,400 asylum visas for Syrians, enabling them to travel to France for the purpose of applying for asylum, thus being a leading example in Europe. These persons are usually given a long-term visa which entitles them, contrary to other asylum-seekers, to work during the asylum procedure.

On the right to work, see: <http://vosdroits.service-public.fr/particuliers/F2741.xhtml>

Source: UNHCR Paris

EU law does not provide a separate humanitarian visa procedure, although the Visa Code allows Member States to derogate from the admissibility requirements based on humanitarian grounds or reasons of national interest (Article 19 (4) of the Visa Code). Moreover, Article 25 (1) of the code also envisages the possibility of issuing a short-stay Schengen limited territorial validity (LTV) visa on humanitarian grounds, grounds of national interest, or because of international obligations. A visa's duration can also be extended on humanitarian grounds (Article 33 (1)).

According to a 2014 European Parliament study, 16 EU Member States have or had some scheme for issuing humanitarian visas through a national visa and/or a Schengen uniform visa, or a Schengen limited territorial validity (LTV) visa, which is valid in one or more Member States.⁴⁶ Most of them use this scheme on an exceptional basis. For instance, Italy used the D visa – a national permit for entry and stay – to manage some of the in-flow after the Arab Spring. EU-wide statistics on Schengen limited territorial validity visas are not collected, nor are there statistics on these visas issued on humanitarian grounds.

The Visa Code provides for a consultation mechanism between EU Member States. A state may request to be consulted when normal Schengen visas are issued to specific third-country nationals or specific categories of third-country nationals (Visa Code, Article 22). Such a consultation mechanism does

not apply in case of LTV visas issued in urgent cases (Article 25 (1)). In this case, a Member State does not have the option of alerting the visa-issuing Member State on possible security threats. Further defining the concept of 'humanitarian grounds' and its usage within the EU legal framework would therefore not only make it easier for persons in need of protection to reach safety, but could also enhance security.

In April 2014, the European Commission proposed a recast of the Visa Code.⁴⁷ The proposals include, among others, visa facilitation for family members of EU citizens. The pending revision of the Visa Code is an opportunity to review the appropriateness of developing a more coordinated approach to visas issued on humanitarian grounds.

In addition, access to consular representation can be a problem for persons in need of protection. The European Commission impact assessment accompanying the recast of the Visa Code acknowledges the generally insufficient geographical consular coverage. It therefore proposes the increased use of consular representation between Member States and the introduction of a general concept of 'Schengen Visa Centres'.

The European Commission impact assessment encourages funding under the Internal Security Fund for projects that improve geographical coverage.⁴⁸ Better outreach of visa processing would also benefit persons in need of international protection, particularly taking into consideration the fact that refugee camps are often in remote locations.

Temporary protection

In cases where great numbers of persons flee a particular country in search of protection, lifting visa requirements altogether could be considered. This may in principle be a way of dealing with exceptional situations and allow for protection on a temporary basis.

The Temporary Protection Directive (2001/55/EC) was adopted to deal with spontaneous movements of large numbers of people from a particular country or region. Its Article 8 requires EU Member States, if necessary, to provide 'persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas'.

There is possibly an unexplored parallel to visa facilitation – a relatively common tool in the EU. The EU has concluded visa facilitation agreements with several third countries, which provide for simplified

visa procedures for certain categories of persons.⁴⁹ These usually include public officials, diplomats, business persons, artists, athletes, students, and drivers and crew of travelling companies.⁵⁰ Expanding the categories of persons on humanitarian grounds, by including human rights defenders for example, could create an option that would allow persons seeking international protection to travel safely and spend their money on ordinary travel rather than on paying smugglers.

Article 2 (d) of the Temporary Protection Directive defines a 'mass influx' as the arrival in the EU of a large number of displaced persons who come from a specific country or geographical area, regardless of whether their arrival is spontaneous or aided, for example through an evacuation programme.

Article 5 of the Temporary Protection Directive requires a Council Decision on a proposal from the European Commission to recognise the existence of a mass influx of displaced persons and thus activate the directive. Such a decision must be based on the scale of displacement and the advisability of establishing temporary protection, while taking into account information received from EU Member States, the European Commission, the UNHCR and other relevant international organisations.

Developed as a result of the conflict in the Western Balkans, the Temporary Protection Directive has not

been used since it entered into force. The UNHCR suggested in 2011 that it could be considered as an option to handle displacements from Libya,⁵¹ but the European Commission found that the conditions set out in the directive (persons are likely to be in need of international protection and their number is sufficiently great) were not met.⁵² In 2013, the European Parliament listed the application of the Temporary Protection Directive among the possible measures to be taken to address the Syrian crisis.⁵³

The CJEU has noted that 'the solidarity mechanisms which [... the Temporary Protection Directive] contains apply only to wholly exceptional situations falling within the scope of that directive, that is to say, a mass influx of displaced persons'.⁵⁴ In 2012, the European Parliament called on the European Commission to consider applying this directive also in cases where the relevant influx constitutes a mass influx for at least one Member State, and not only an influx for the EU as a whole.⁵⁵

The European Commission has not over the last decade considered the Temporary Protection Directive as the right tool to deal with refugees' movements spontaneously reaching the EU. The directive, if activated, also offers possibilities for legal entry to the EU, an element which should be taken into account when deciding on its usefulness and appropriateness for a particular situation.

The toolbox: Using regular mobility schemes for persons in need of international protection

Family reunification

The principle of unity of a refugee family was laid down at the international level by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons adopting the 1951 Convention Relating to the Status of Refugees. The Conference considered the unity of the family an essential right of the refugee, and recommended that states take the necessary measures to protect the refugee's family, ensuring in particular that the unity of the refugee's family be maintained.

Many persons who cross the Mediterranean under perilous conditions are believed to have family members in the EU. Functioning family reunification systems, including for extended family members, should therefore be a priority.⁵⁶ The UNHCR calls for the facilitation of family reunification and for the creation of additional channels, such as a humanitarian visa, to assist family reunification with extended family and relatives.

Promising practice

Allowing relatives to join their family members in Australia

The Australian government has increased the number of resettlement places available for family members through the Special Humanitarian Programme (SHP). It targets relatives of people who entered Australia as refugees.

The significant increase in SHP visas enables more people to be reunited with their family in Australia. There will, however, still be many more applications received than visas available, and only those applicants with close family links and compelling circumstances are likely to be successful.

The Humanitarian Programme has been set at 13,750 places, of which a minimum of 11,000 are reserved for people applying outside of Australia.

For more information, see the website of the Department of Immigration and Border Protection of the Australian Government

EU law provides for the right to reunification with core family members, such as spouses and children.

The Family Reunification Directive (2003/85/EC) regulates the right of refugees to family reunification. Pursuant to Article 3 (2) (c), the directive does not apply where the sponsor has been granted subsidiary protection (as opposed to refugee status).

Chapter V of the directive creates more favourable conditions for refugees compared with other third-country nationals:

- there is a more extensive definition of family members who can benefit from reunification;
- children arriving independently cannot be required to show that they meet the conditions for integration;
- there are more favourable provisions concerning unaccompanied children;
- there are exemptions to the necessity of presenting documentary evidence in certain circumstances;
- if initiated soon after refugee recognition, reunification with core family members cannot be made dependent on means and adequate accommodation to be provided by the sponsor;
- no period of residence in the host Member State by the sponsor is required before applying to bring family members.

The Family Reunification Directive allows for various restrictions. Building on case law by the Court

of Justice of the EU,⁵⁷ the European Commission issued guidelines in 2014 stressing that Member States must not use their margin of manoeuvre in a manner that would undermine the directive's objective, which is to promote family reunification. Furthermore, they should not weaken the directive's effectiveness, and make a balanced and reasonable assessment in every individual case of all the interests at play while having due regard to the best interests of the child.⁵⁸

FRA research published in 2011 shows that long procedures and the inability to meet certain requirements for family reunification prevent family members from lawfully joining their families who are in the EU. As a result, they often resort to irregular travel.⁵⁹ According to the UNHCR, there are many practical obstacles in the family reunification process through EU Member States, which can lead to prolonged separation, significant procedural costs and no realistic possibility of success.⁶⁰ A recent report released by the Red Cross EU Office and ECRE documents a set of practical problems that people in need of international protection encounter when seeking to be reunited with their family members in the EU, such as limited access to information and to embassies, lengthy procedures and high costs.⁶¹ In addition, in some EU Member States beneficiaries of subsidiary protection are treated as any other migrant requesting family reunification, and do not benefit from the more favourable treatment afforded to refugees, thereby substantially limiting the possibility of bringing their family members.

Promising practice

Facilitating visa requirements for Syrians with family members in Switzerland

From 4 September to 29 November 2013, visa requirements for relatives of Syrian nationals living in Switzerland were temporarily eased. Visa facilitations were introduced for non-core family members of Syrians in Switzerland. The family relationship had to be shown credibly and comprehensively, without however having to provide civil registry documents, due to the difficult situation in Syria. Financial means were not examined. 8,200 applications were submitted and 3,749 visas were issued. This programme was terminated on 29 November 2013 on the basis that most of the legitimate visa applications by family members in an immediate emergency had already made use of the facilitation.

Source: ECRE, Information Note on Syrian Asylum Seekers and Refugees in Europe, November 2013



Being forced to live apart from one's family is not only a hardship for the individuals affected, but also an obstacle to integration. Many persons who cross the Mediterranean under perilous conditions are believed to have family members in the EU. Therefore, effective and functioning family reunification which cover, where necessary, also extended family members are needed.

Labour mobility

A person seeking protection is often at the same time also a worker, a researcher, an artist, an athlete or an entrepreneur. However, living in a refugee camp or trying to flee from a conflict makes it more difficult to apply for labour or related mobility schemes, due to limited access to information and bureaucratic requirements that are difficult for applicants to fulfil.

In light of their plans to return home as soon as possible, some refugees may primarily be looking for temporary migration opportunities. Provided the option for applying for asylum remains open, immigration schemes could be made more accessible for people in need of protection staying in a third country. For refugees, it is often difficult or impossible to meet the required criteria of such immigration schemes. One possibility for the legal entry of refugees is to strengthen **labour mobility schemes** focusing on groups of people in need of protection. Special programmes for legal labour migration set up with countries that experience forced displacement can in principle also benefit persons in need of protection.

Promising practice

Enhancing development in Colombia through temporary and circular labour migration to Spain

This IOM programme promotes the regular migration of Colombian workers to Spain. It is based on the Temporary and Circular Labour Migration (TCLM) plan that the Spanish trade union, Unión de Pagesos (UP) and the Fundación Agricultores Solidarios (FAS) started nine years ago to solve a shortage of workers for harvesting fruits in Catalonia. Labour migrants from Colombia – and more recently from Morocco and Romania – work in Spain for six to nine months to meet temporary demands. Following this work, labour migrants return to their own countries, with the possibility of being hired again for a new harvest during the following season. The IOM plans to expand the TCLM plan to include a much larger number of migrants and increase the number and diversity of employers in Spain. While not targeting them, the programme can also benefit displaced Colombians.

For more information, see <http://www.iom.int/cms/en/sites/iom/home/what-we-do/labour-migration/enhancing-development-in-colombi.html>

Existing public and private mobility schemes for **researchers** could also be used to benefit persons in need of protection. Their access to these schemes could be facilitated by making bureaucratic requirements more flexible. The respective schemes could also be modified so as to award a limited number of grants to persons in need of protection.

Promising practice

Gaining experience abroad through Marie Skłodowska-Curie actions (MSCA)

The MSCA are fellowships awarded by the European Commission Directorate-General for Research and Innovation under the Horizon 2020 programme.

They support researchers at all stages of their careers, irrespective of nationality (EU and non-EU citizens), working across all disciplines. In addition to generous research funding – €6.16 billion to be awarded in the period 2014-2020 – scientists have the possibility of gaining experience abroad and in the private sector, and of completing their training with competences or disciplines useful for their careers. Although this programme is not focused on refugees, it can contribute to the enhancement of their skills, and in the longer term promote their livelihood.

For more information, see <http://ec.europa.eu/research/mariecurieactions>

The same could apply to artists and athletes who are at the same time persons in need of protection.

Concerning **entrepreneurs' mobility schemes**, according to the European Commission DG Enterprise and Industry, statistics from several Member States indicate that proportionately more migrants than nationals start small businesses. This potential of migrants – but also obstacles – are highlighted in a forthcoming (2015) FRA report related to Article 16 of the Charter of Fundamental Rights on freedom to conduct a business. Bearing this in mind, policies to encourage entrepreneurship in the EU should take into account the entrepreneurship potential represented by this group.

Targeted measures could facilitate access to labour and similar mobility schemes for persons in need of protection that fulfil the required criteria to qualify for a regular labour migration scheme.

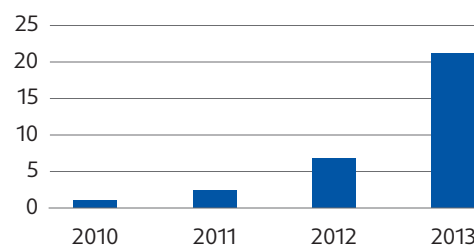
Students' mobility

Another possible safe way for people in need of protection to enter the EU would be to facilitate their access to mobility programmes for students, including all kinds of specific programmes, such as those designed for artists and athletes.

The Erasmus Mundus programme, a cooperation and mobility programme in the field of higher education managed by the Education, Audiovisual and Culture Executive Agency of the EU, is one of the schemes persons in need of protection could benefit from.

The number of applications received from Syrian citizens illustrates the current state of play. Whereas the number of Syrian applicants for Erasmus Mundus masters scholarships has increased from 40 in 2009 to 354 in 2013, it still remains relatively low, as does the number of successful applications (21 applications were successful in 2013),⁶² as shown in Figure 3. Although the number of successful applications has increased, in 2013, less than 1% of the students who were awarded the scholarship were Syrians. Further efforts to promote this programme could incentivise more applications. Making some of the bureaucratic requirements more flexible could also increase the number of applications. As suggested above for research mobility programmes, the respective schemes could also be modified so as to award some grants to persons in need of protection.

Figure 3: Successful Erasmus mundus applications submitted by Syrians (persons), 2010-2013



Source: EU Educational, Audiovisual and Cultural Executive Agency, 2014

Within the Erasmus Mundus programme, the Phoenix project is an interesting example of how cooperation at the educational level could benefit refugees. It intends to develop a structured mobility-based cooperation between three Palestinian, two Lebanese, one Syrian and two Jordanian Higher Education Institutions on the one side, and nine EU Higher Education Institutions on the other. This cooperation network aims to help students (whether at undergraduate, master, PhD or post-doctoral level), academic staff, researchers and administrative staff, to gain experience, expertise and skills through interaction in an international environment.⁶³

The Erasmus + programme, the new EU programme for education, training, youth and sport, is another scheme which young people in need of protection could benefit from. With a budget of €14.7 billion for the years 2014-2020, this programme aims at supporting national and transnational partnerships among Education, Training, and Youth institutions and organisations to foster cooperation.⁶⁴

Promising practice

Providing scholarships to refugees

The Albert Einstein German Academic Refugee Initiative Fund (DAFI Programme), financed by the German Government, consists of scholarships for refugees at the tertiary level in universities and polytechnic institutions. The aim of this programme is to provide refugees with a professional qualification for future employment so that they can contribute to the reconstruction of their home country.

For more information, see <http://www.unhcr.org/40dbee984.html>

The Swedish Institute has allocated 15 study grants a year for full-time Syrian masters students for the academic years 2014/2015 and 2015/2016.

For more information, see <https://studyinsweden.se/scholarship/swedish-institute-study-scholarships-for-syrian-students/>

In February 2014, Portugal welcomed 42 Syrian university students from Lebanon to complete their studies under the Global Platform for Academic Emergency Assistance to Syrian Students, created by former President Jorge Sampaio. These students are able to apply for a residency permit for one year, renewable for the same period of time.

For more information, see <http://jorgesampaio.pt/jorgesampaio/en/global-platform-4-syrian-students/>

Inspired by existing programmes, EU Member States should offer more possibilities to refugees to benefit from student mobility schemes, also in light of the skills required to rebuild post-war societies.

Medical evacuation

Medical evacuation provides for the temporary admission of people with urgent medical needs in selected cases where the required, and often specialised and resource-intensive, treatment is not available in the third country. This means of legal entry to the EU could be more widely used.

Medical evacuation differs from resettlement on medical grounds under the UNHCR auspices, which has been actively promoted by the UNHCR for Syrian refugees: 25% of those refugees are estimated to have serious medical conditions or disabilities that require follow-up care. The resettlement of refugees with medical needs alleviates the hardships of families who struggle to cover the cost of medical treatment while also having to pay for food, rent and education.⁶⁵

Medical evacuation programmes usually provide a temporary right to enter and stay in a Member State until an injury or disease is treated and the person has recovered. It is a form of solidarity with families who cannot afford to cover the cost of expensive medical treatment.

Promising practice

Offering medical treatment to injured persons in the Czech Republic

The Czech authorities evacuated 39 persons who were injured as a result of the violent clashes with the police forces in the Ukrainian capital in February-March 2014. They were brought to Czech medical facilities for treatment and recovery. In the case of children, their legal representatives were allowed to accompany them. The evacuation was carried out as part of the Czech MEDEVAC Programme targeting persons with medical problems in war-ridden countries or areas where adequate medical treatment is not available. The programme has been used in the past to provide medical treatment to persons evacuated from Iraq, Kosovo and Cambodia, primarily children.

Source: Ministry of Interior of the Czech Republic, <http://www.mvcr.cz/clanek/program-medevac.aspx?q=Y2hudW09Mw%3d%3d>

Conclusions

Persons in need of international protection who appear at the external border or are already inside the EU 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 expulsion.

At the same time, a more intense and creative use of legal entry schemes in the interest of persons in

need of protection who find themselves in a third country would contribute to reducing their need to resort to the services of smugglers to reach safety. EU institutions and Member States, as well as private actors, have an important role to play in increasing the possibilities to reach the EU legally, and thus contributing to reducing both the number of lives lost at borders and the abuses perpetrated by smuggling networks.

FRA opinion

Increasing legal avenues to reach the EU should be a core component of the forthcoming European Commission plan to fight smuggling in human beings.

At the same time, EU Member States should offer more possibilities for persons in need of protection to enter the EU legally, so that these can constitute a viable alternative to risky irregular entry. Where private resources are available, they should be used to multiply legal entry possibilities, without however unduly shifting the burden of reception and integration onto civil society. When increasing legal avenues to reach the EU, Member States may consider using a combination of refugee-related schemes and more refugee-friendly regular mobility schemes.

- *Each EU Member State should put in place a resettlement programme according to their capacities and possibilities, thereby significantly increasing the number of refugees resettled to the EU, targeting in particular refugees at heightened risk.*
- *While refugee resettlement should remain a core legal entry tool, EU Member States are encouraged to explore also other possible humanitarian admission schemes, taking inspiration from initiatives tested elsewhere.*
- *EU institutions and Member States should take the opportunity of the current revision of the Visa Code to explore the risks and benefits of establishing EU-level minimum standards for the issuance of visas for humanitarian purposes. In addition, the European Commission could consider a pilot project testing 'mobile' Schengen Visa Centres to explore possibilities to ease access for visa applicants, since persons in need of international protection are often located in remote areas or otherwise face disproportionate difficulties in reaching diplomatic or consular representations.*
- *The European Commission should give due weight to the Temporary Protection Directive's provisions on simplified legal entry when deciding whether or not to propose an activation of the directive for a particular situation.*
- *EU Member States should overcome practical and legal obstacles preventing or significantly delaying reunification with family members and other close relatives of persons granted international protection in the EU.*
- *Regular labour or other mobility schemes, including those of a temporary nature, could be made more accessible to refugees staying in a third country.*
- *Inspired by existing programmes, EU Member States should offer more possibilities to refugees to benefit from student mobility schemes, also in light of the skills required to rebuild post-war societies.*

The European Commission should support this process of strengthening legal access to the EU for persons in need of protection by proposing common approaches, encouraging Member States to take action and share promising practices, and helping to ensure sufficient solidarity funds are available for this purpose to Member States.



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Further information:

The following FRA publications offer further information on asylum, borders and migration.

- *Fundamental rights at land borders: Findings from selected European Union border crossing points* (2014), <http://fra.europa.eu/en/publication/2014/fundamental-rights-land-borders-findings-selected-european-union-border-crossing>.
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For an overview of FRA activities on asylum, borders and migration, see: <http://fra.europa.eu/en/theme/asylum-migration-borders>.



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