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EXPLORING AVENUES FOR PROTECTED ENTRY IN EUROPE”

REPORT

This REPORT has been drawn up in the frame of the Project “Exploring new forms of access to asylum procedures. ET Entering the Territory”, co-financed by the European Commission under the European Refugee Fund – Community Actions 2009.

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Printed in March 2012 by

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ACRONYMS

ACVZ	The Advisory Committee on Migration Affairs (ACVZ) (Adviescommissie voor Vreemdelingenzaken)
ALO	Airport Liaison Officer
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCI	Common Consular Instruction
CDA	Christian Democratic Party (Christelijk Democratisch Appel)
CEAR	Comision Espaňola de Ayuda al Refugiado)
CEAS	Common European Asylum System
CIAR	Inter-ministerial Eligibility Commission on Asylum and Refuge
CIR	Italian Council for Refugees
COI	Country of Origin Information
CRC	Convention on the Rights of the Child
CU	Christian Union (Christen Unie)
DIIS	Danish Institute for International Studies
DRC	Danish Refugee Council
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EP	European Parliament

ERF	European Refugee Fund
EU	European Union
FAO	Federal Asylum Office
FAT	Federal Administrative Tribunal
FOM	Federal Office for Migration
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GCR	Greek Council for Refugees
HLWG	High Level Working Group on Asylum and Migration
ILO	Immigration Laision Officer
IND	Immigration and Naturalization Service
IOM	International Organization for Migration
ISMU	Iniziative e Studi sulla Multietnicità
KISA	Action for Equality, Support, Antiracism
MAF	Ministry of Foreign Affairs
MP	Member of Parliament
MVV	Provisional Sojourn (machtiging tot voorlopig verblijf)
NAV	Journal of Asylum and Refugee Law (Nieuwsbrief Asiel- en Vluchtelingenrecht)
NGO	Non-Governmental Organization
NL	The Netherlands
OAR	Oficina de Asilo y Refugio
PD	Asylum Procedures Directive
PEP	Protected Entry Procedure
PFC	The People for Change Foundation

PvdA	Social Democratic Party (Partij van de Arbeid)
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
TBV	Temporary Regulation Aliens Circular (Tussentijds Bericht Vreemdelingencirculaire)
TEC	Treaty of the European Community
TP	Temporary Protection
UDHC	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

Seeking asylum in the European Union is dependant on the physical presence of the protection seeker in the territory of a Member State. Access to protection is linked to access and admission to territories.

The combination of measures introduced under the EU border and visa regimes has made more and more difficult to exert the right to seek asylum enshrined in the EU Charter of Fundamental Rights, having made it impossible for the vast majority of protection seekers to reach EU territories in a legal manner.

Not only controls at EU external borders are strengthened, but control mechanisms are extended to the territories of third countries. Carrier sanctions; the deployment of Immigration Liaison Officers (ILOs) and Airport Liaison Officers (ALOs); financial and logistical support to Governments of third countries as well as providing "incentives" for the strengthening of their control and surveillance systems; deployment of FRONTEX to "sensitive areas" and, in some instances, the indiscriminate pushing back of migrants and protection seekers to countries of origin or of transit are some of the measures of a package designed to fight irregular immigration but actually do restrict the right to seek asylum.

As a consequence, protection seekers have no other choice than paying smugglers for transport by surface, sea or air. According to estimates based only on the incidents that became known, from 1998 to August 2011, 17.738 persons died in the attempt to reach Europe. During 2011 alone, about 2.000 children, men and women died in the Channel of Sicily. Taking into consideration only the route from Libya to the island of Lampedusa, in 2011, 5% of all those who attempted to reach Europe lost their lives.

Most people trying to reach Europe are usually subject to grave human rights violations and exploitation during their route to Europe, in particular in transit countries and/or in those territories, such as the high seas, considered de facto *res nullius*.

People arriving in the frame of mixed flows are subject to interception at sea and in several occasions they have no possibility to seek asylum in the EU, with the concrete risk that the principle of non refoulement is breached.

People who succeed in reaching EU territories and apply for protection, in spite of all these risks and difficulties, are not necessarily those who mostly need international protection. The "selection" is based on the financial capacities of these persons and their families, migration skills, level of education, and similar factors unrelated to the reasons that forced them to leave their home countries.

These scenarios are the starting point for the project "E.T. Entering the Territory: exploring new forms of access to asylum procedures", co-financed

by the EU under the European Refugee Fund and implemented in 2011/2012. The project carried out by the Italian Council for Refugees (CIR) in partnership with the European Council for Refugees and Exiles (ECRE) as well as with NGOs, academics and research institutes in Austria, Cyprus, Denmark, Greece, Italy, Malta, the Netherlands, Spain and Switzerland. UNHCR has been involved as external evaluator.

The objectives are:

1. To promote the debate on the orderly entry into the EU of persons seeking international protection with information and data on experiences made in a number of Member States;
2. To stimulate the discussion at national and EU levels on orderly entry mechanisms and alternative means of access to asylum procedures;
3. To gather opinions of policy makers and other stakeholders on the pros and cons of protected entry procedures and other means of access to protection and evaluate the level of consensus at national as well as at EU level on new policies and legislation regarding access to asylum procedures;
4. To raise awareness on the difficulties people face in accessing asylum procedures and search consensus for solutions.

The activities of the project included the organization of national workshops in Athens, Rome, Madrid, Vienna, Malta and Cyprus and of a European conference held in Brussels in September 2011; interviews with 140 stakeholders, among them political leaders and government officials in all the countries involved as well as at EU level; missions to a number of embassies located in third countries; media work and campaigns.

Experiences made in a number of Member States with regard to different forms of managed and orderly arrival of persons in need of international protection were researched. Modalities of orderly arrival include: **diplomatic asylum; resettlement; humanitarian evacuation operations; flexible use of the visa regime; protected entry procedures**. In most countries subject to the research one or more of these modalities were carried out in the past or, in some cases, are still being used.

In particular all States have participated in humanitarian evacuation programmes in emergency situations. Formal resettlement programs are currently implemented in Denmark, Spain[1] and The Netherlands. In other Countries informal and *ad hoc* basis resettlement procedures have been carried out.

After the abolishment of protected entry procedures (PEPs) in Austria, Denmark and The Netherlands between 2002 and 2003, Switzerland remains the only country having such a procedure and does provide a model of what a serious attempt to design and operate this measure may look like. The Swiss

[1] See section II.1.2 “Resettlement”.

PEP, introduced in 1979, is a complementary option, providing for the possibility to fill an application at any Swiss diplomatic representation abroad, either in the country of origin or in a third country. Entry is authorized by the central authorities in Berne if the asylum seeker cannot reasonably be expected to remain in his/her country of residence or host country or to travel to another country. In this case, a visa « with regard to the granting of refugee status» is issued and the full procedure is carried out after arrival.

It should be highlighted that the overall number of persons who had or are still benefiting from these schemes is however extremely low.

The interviews with stakeholders showed that there is a general agreement on the need to rethink the present asylum system, as the EU legislation does not envisage the possibility to access protection in Europe from abroad.

In particular, the stakeholders expressed a positive opinion in relation to the possibility to adopt in the short-medium term complementary forms of access to protection., such as more flexible use of visa regime as well as resettlement programs. PEPs should be introduced at a later stage, taking into consideration the need to reach a wider political consensus.

The immense difficulty to access protection has been an important subject of the policy debate in the EU since the early days of the construction of the Common European Asylum System. The Conclusions of the European Council in Tampere (1999) made a clear reference to the issue of access to territory, sending out a strong signal on the need to balance border control and refugee protection. The European Commission, in a number of Communications, has highlighted the need for establishing protected entry schemes and, in 2002, has commissioned a feasibility study regarding processing asylum claims outside the EU. The results were presented in an international Seminar in Rome, in October 2003, under the Italian Presidency of the Council, together with a feasibility study on a European Resettlement Programme. In the Stockholm Programme (December 2009) the European Council states that “procedures for protected entry and the issuing of humanitarian visas should be facilitated” and that “analysis of the feasibility and legal and practical implications of joint processing of asylum applications inside and outside the Union should continue”. In the Action Plan for the Stockholm Programme (April 2010) the Commission announces a “Communication on new approaches concerning asylum procedures targeting main transit countries” by 2013.

After more than 10 years of policy debate, the plan for establishing a European Resettlement Programme has reached concrete steps whereas protected entry schemes not only were not developed at European level but rather abolished or restricted in Member States that previously had experienced such schemes. In Switzerland, where the national model of protected entry procedures used to be considered as an example of good

practice, the Parliament is presently discussing its abolishment. A constant argument for the review of national protected entry schemes is that such exercise cannot be done only in one single or in very few countries but must be adopted Europe-wide or al least in a significant number of States.

The present political and economic environment in Europe is certainly not favourable for the introduction of schemes for orderly arrival of persons seeking international protection. The fear that such schemes could result in unpredictable and elevated numbers of asylum seekers, or create a pull factor, and would imply elevated costs and the need to increase staff in diplomatic representations - was expressed by a number of stakeholders. In the present environment, this fear may influence policy makers and the public opinion. For this reason, the following proposals and recommendations are based on a gradual approach.

It goes without saying that all the measures recommended are supplementary to access to asylum procedures of persons arriving spontaneously and eventually in an irregular manner at European territories. Opening ways of orderly arrivals should in no circumstances allow derogation from the obligation to examine protection requests irrespectively of the mode of arrival.

As a result of the research work carried out, it appears that the general objective is to enlarge, step by step, the possibilities of persons in need of international protection to reach EU territories in a regular and orderly manner.

First and foremost, the definition of this objective would mean a cultural change which must be shared with the public opinion in Europe. In spite of many critical and pessimistic views expressed by the stakeholders regarding more technical questions on how to go forward, enlargement of space for legal entry for protection seeker is perceived as necessary and desiderable by almost all the people interviewed.

The focus is on *entry*, rather than on procedures. And it is not so much a question of authorizing a person already present at the border to enter a territory, but a legal guarantee to enter the territory provided *prior* to departure from the country of origin or from a third country. Only on the basis of such a guarantee the travel can be safe and regular.

All complementary forms of access to protection have in common this notion of travel authorization.

Therefore, it is all about visas, whether a derogation from visa requirement or the facility to obtain a visa.

Measures taken in this phase do not entail a change of the existing EU legislation, but rather a protection sensitive application of the existing rules, as a necessary correlative to current practices.

Taking into account that both the Schengen Convention of 1990 (Article 16) and the EU Visa Code of 2009 (Article 25) allow the issuance of Visa with Limited Territorial Validity under derogation from normal entry requirements for humanitarian reasons, national interests or international obligations,it is recommended that Member States issue national guidelines in order to reduce the degree of discretion currently characterising the issuance of such national visas.

Moreover, it is recommended that the EU should adopt non binding guidelines in order to harmonize the application of Article 25 EU Visa Code between Member States.

In a next step, those guidelines may be incorporated into the Common Consular Instructions on Visas.

On a national level, diplomatic representations may also be authorized to issue a travel document, where necessary, in cases of a positive evaluation of a request for a Visa with Limited Territorial Validity, and EU guidelines should encourage it.

It is recommended to use the European Refugee Fund or similar future funds envisaged from 2014, in such a way that Member States receive a "bonus" in relation to the number of asylum seekers who enter the country on the basis of a Visa with Limited Territorial Validity.

In addition, exemptions from the requirement to obtain a visa should be exceptionally envisaged in favour of nationals of a country where massive violations of human rights take place.

Among the advantages of a protection sensitive application of visa policies is the decrease of the number of asylum seekers subject to procedures under the Dublin II Regulation, since "secondary movements" will occur at a far lesser extent.

In this phase, it is further recommended to establish the European Resettlement Programme.

It is therefore recommended to invest on campaigns informing the public opinion all over Europe about the advantages and the need for resettlement of refugees. The future EU programmes should provide more generous incentives for Member States so that they join the programme and increase the number of beneficiaries.

In a second step, Member States are encouraged to introduce or re-introduce **national protected entry schemes** for asylum seekers in their countries of origin as well as those unable to obtain protection in third countries of first haven or transit.

These schemes should, by and large, follow the present Swiss model and should foresee also supplementary forms of accessing diplomatic representations with the involvement of UNHCR or international NGOs.

Encouragement by the EU could take the form of policy direction and guidance and should include, again, a financial incentive and compensation.

In relation to issuing of visas, resettlement programmes and national protected entry schemes, it is recommended that the European Asylum Support Office - EASO and the European Union Agency for Fundamental Rights - FRA are entrusted with monitoring their implementation and provide empirical basis for the formulation of subsequent policy proposals.

In a third step, it is recommended **to recast the Procedures Directive**, introducing non-binding rules for embassy procedures that should be as similar as possible to the rules governing the procedures following asylum applications in the territory of Member States.

Scope of the recast would be the harmonization of material practices and the establishment of minimum standards applicable for Member States that have introduced protected entry schemes.

In a fourth step, to be envisaged in a longer term perspective, **a revision of the EU Visa Code is recommended**, introducing the possibility of issuing protection visas as "Schengen visas", allowing to travel to any of the State parties to the Schengen system, and to subsequently present a protection request. Again, this would reduce the number of asylum seekers who are shifted from one country to another under the Dublin Regulation, since, in most cases, the protection claim would be presented directly in the country where the asylum seeker wishes to go that coincides with the first country of arrival in the EU.

Criteria for the issuance of protection visas – that could be initially restricted to a certain number of third countries – should be established by binding rules, on the basis of the experiences made during the previous steps.

At the end of this roadmap, the Commission should propose a Directive on protected entry procedures in the spirit of responsibility sharing between EU Member States in accordance with Article 80 of the Lisbon Treaty.

Conditions for benefiting from PEPs should be first of all the personal security of the applicant; the need for obtaining international protection; the impossibility to obtain effective protection in the third country; the vulnerability of the person; links to family members resident in one of the Member States; other relevant links to any of the Member States.

Lastly, in view of the announced Communication of the European Commission on the "new approaches concerning access to asylum procedures" it might be recommended that beforehand a Green Paper allowing for broad consultations is issued.

INTRODUCTION

The difficulties faced by a refugee to obtain international protection can be illustrated by the case of Mr M., of Eritrean origin, who had fled from his country to Libya with the hope to continue and seek asylum in a European country. M. had no other possibility than that of trying to collect money from relatives abroad in order to pay smugglers to bring him by boat to the island of Lampedusa – an island that he can almost see from the port of Tripoli. Under the present asylum system in the European Union, M. has to be physically present in Lampedusa in order to place a request for asylum . There is no possibility to voice this need for asylum in Europe while still in Libya, and before taking the dangerous journey across the sea. Protection visas, for example, are not in the catalogue of the European visa system, and the diplomatic representations in third countries are not entitled to receive protection requests. In other words, at the moment M. cannot return to his country for fear of persecution, cannot remain in Libya where his fundamental rights are not guaranteed and where asylum is not provided, and consequently is bound to go on an unseaworthy boat and to risk his life in order to access protection.

According to estimates, approximately 90% of all asylum seekers enter Europe in an irregular manner, since legal entry has become more and more difficult and in most cases impossible. The number of lives lost on their way to Europe has increased steadily over the last 15 years reaching the peak of more that 2,200 only during 2011. This is not new. Back in the nineties, Bosnian, Serbian and Kosovar refugees had immense difficulties to reach a safe haven in Western Europe as a result of the visa requirements that were introduced during the conflict. The European Council for Refugees and Exiles (ECRE) stated already in Tampere (1999) that: "the best European asylum system is of little use if people are given no possibility to benefit from it, since they cannot reach European territory".

Discussions on the possibility for managed and orderly entry of persons in need of international protection have sporadically taken place in the EU over the last decade, starting with a seminar organised by the Italian EU Presidency in Rome in October 2003. Convinced about the potential of such mechanisms and with the hope to refresh the debate, the Italian Council for Refugees – which also participated in the Rome seminar – designed and implemented the present project together with ECRE and nine European NGOs (funded under the ERF).

Providing persons who may need international protection also with the possibility to seek asylum in Europe without having necessarily to make the journey first means that some, perhaps the most vulnerable, will be spared the risk of paying smugglers, or jumping on boats, or crossing mountains, rivers

and deserts, and making use of false entry documents. Such a complementary form of access does not replace the possibility for anyone who arrives in Europe to seek asylum, neither does it relieve states of their obligation to grant this access to asylum at their borders or inside their territory. This complementary form of access only comes to support that the right to seek asylum as enshrined in the Universal Declaration of Human Rights and codified in the European Charter on Human Rights is ensured.

From a legal point of view, extraterritorial obligations deriving from international refugee law as well as from international human rights law are being intensely discussed, not last, by the European Court of Human Rights in the Judgment Hirsi Jamaa and others v. Italy of February 2012. The Court reaches innovative conclusions on the basis of the conviction that "the (Human Right) Convention is a living instrument which must be interpreted in the light of present day conditions".

The Court states that "Whenever the State through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual…".

This concept is further elaborated in the Concurring Opinion of Judge Pinto de Albuquerque: "Although no State has a duty to grant diplomatic asylum, the need for international protection is even more pressing in the case of an asylum seeker who is still in the country where his or her life, physical integrity and liberty are under threat. Proximity to the sources of risk makes it even more necessary to protect those at risk in their own countries. If not international refugee law, at least international human rights law imposes on States a duty to protect in these circumstances and failure to take adequate positive measures of protection will constitute a breach of that law. States cannot turn a blind eye to an evident need of protection. For instance, if a person is in danger of being tortured in his or her country asks for asylum in an embassy of a State bound by the European Convention on Human Rights, a visa to enter the territory of that State has to be granted, in order to allow the launching of a proper asylum procedure in the receiving State. This will not be a merely humanitarian response, deriving form the good will and discretion of the State. A positive duty to protect will then arise under Article 3. In other words, a country's visa policy is subject to its obligations under international human rights law".

State responsibilities go beyond their territories. Extraterritorial measures to combat irregular migration to assist third countries in the surveillance of their borders, participation in pre-departure controls made in third countries, and similar actions taken by the European Union and its Member States must

be corroborated by mechanisms ensuring access to protection and to asylum procedures for all, including those who have not yet reached EU territories.

These possible mechanisms are discussed in the present report. The report provides an overview and analysis of the policy debate at national and European level, illustrated with examples of mechanisms used by European countries in the past, which could provide a source of inspiration. The report also discusses the stakeholders' main concerns.

The present political climate in Europe is not particularly favourable to introducing more open policies. It is at this very moment where efforts need to be made to inform the public and promote understanding about Europe's role as a key actor in refugee protection.

The report recommends a step-by-step approach that is presented in the form of a "roadmap", starting from a more flexible use of the present European visa regime and leading up to a fully fledged policy. This, together with the analysis of past practices aims to contribute to upcoming policy discussions for and the planned Communication on "new approaches concerning the asylum procedure in transit countries.

The European NGOs involved in the project are convinced that opening complementary ways of access to protection in addition to that ensured for persons already in EU territory should be an essential part of the Common European Asylum System.

Dr Christopher Hein
February 2012

I. THE PROJECT "EXPLORING NEW FORMS OF ACCESS TO ASYLUM PROCEDURES"AND METHODOLOGY OF THE RESEARCH

I.1. The project

"ET - Entering the Territory" aims at exploring and promoting new forms of access to asylum procedures at both national and European levels.

The Project takes place in the context of the renewed debate, arisen at European level and in a number of Member States, on the orderly and managed entry of people in need of international protection as well as on possible modalities of initiating the processing of protection applications outside the European Union.

This project is **co-financed by the European Commission** under the European Refugee Fund – Community Actions 2009.

The Italian Ministry of Interior – Department of Civil Liberties and Immigration- is supporting the project.

The objectives of the project are:

- to promote the debate on the orderly entry into the EU of persons seeking international protection with information and data on experiences made in a number of Member States;
- to stimulate the discussion at national and EU level on orderly entry mechanisms and alternative means of access to asylum procedures;
- to collect opinions of policy makers and other stakeholders on the pros and cons of protected entry procedures and other means of access to protection and evaluate the level of consensus at national as well as at EU level on new policies and legislation regarding access to asylum procedures;
- to rise awareness on the difficulties people face in accessing asylum procedures and search consensus for solutions.

The "E.T. – Entering the Territory" project is implemented by the Italian Council for Refugees – CIR in partnership with the European Council on Refugees and Exiles – ECRE, NGOs, academics and research institutes in **Austria**, **Cyprus**, **Denmark**, **Greece**, **Italy**, **Malta**, **the Netherlands**, **Spain** and **Switzerland**. Activities are also carried out at EU level.

UNHCR has been involved as external evaluator.

The action includes three **different types of partner organisations**:

- NGOs working in the refugee field in Member States that have had or still have the option of off-shore access to asylum procedures in the

national legislation and/or practice: (Asylkoordination - Vienna, Austria**,** Comisión Española de Ayuda al Refugiado - CEAR - Madrid, Spain);

- NGOs in EU countries facing particular pressure on their external borders, whether maritime or territorial (Greek Council for Refugees – GCR – Athens, Greece, Action for Equality, Support, Antiracism – KISA – Nicosia, Cyprus, The People for Change Foundation – PFC - San Gwann, Malta, Iniziative e studi sulla multietnicità – ISMU – Milan, and Associazione culturale Acuarinto – Agrigento, Italy);
- A pan-European Alliance of some 70 organisations in 30 countries: the European Council on Refugees and Exiles - ECRE.

Individual researchers, particularly qualified and experienced on the issue, have provided information and data regarding previous and/or present application of protected entry procedures in Denmark, the Netherlands and Switzerland and have informed on the national debate around abolishing or upholding these schemes.

I.2. Methodology

This final report reflects the results of the main activities carried out in the framework of the Project on complementary forms of access to protection, in particular on Protected Entry Procedures.

An initial **stocktaking activity** was carried out from July 2010 to January 2011 in order to collect the legislative framework and the existing policy documents, the available academic sources, governmental and non-governmental reports as well as practices regarding off-shore access to asylum procedures.

The results of this stocktaking activity have been preparatory to interviews with stakeholders and for the materials distributed during the **national Workshops** held in the partner countries – in Athens (16 May 2011), Rome (23 May 2011), Madrid (9 June 2011) Vienna (16 June 2011), Malta (22 September 2011), and Cyprus(12 October 2011) – to explore the awareness of policy makers, stimulate the debate on the access to asylum procedure and assess opinions on new forms of protected entries of persons in need of protection.

Qualitative interviews with various stakeholders were carried out from September 2010 to July 2011 in the countries involved in the project, on the basis of two semi-structured questionnaires designed by CIR - one specifically for the States which already experienced some form of off-shore protection mechanisms, and the other for those countries without such an

experience. A total number of 140 interviews were conducted with relevant officials of the Ministries involved – Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Justice, Undersecretary of State, Members of Parliament and politicians from different political parties; representatives of EU institutions; judges, lawyers, practitioners and academic experts; International Organisations such as UNHCR, International Organisation for Migration; Amnesty International and other NGOs; Associations of Jurists and journalists.

In Annex II it is possible to find the list of the stakeholders interviewed.

Most stakeholders expressed their wish to remain anonymous, therefore only those who accepted to be mentioned in the report were quoted.

Two Fact Finding Missions were conducted in Tunisia (15-18 November 2011) **and Turkey** (27-30 November 2011) where the project manager interviewed the Swiss asylum decision-makers in the frame of PEPs as well as the Ambassadors and Consuls from Spain and Switzerland and the representative of UNHCR in Tunis. The views of the consular staff and decision–makers currently involved in PEPs were relevant to corroborate the information acquired and to identify the main difficulties encountered in the implementation of such procedures in third countries.

The **European Conference "*Exploring Avenues for Protected Entry in Europe*" was held in Brussels on September 19th 2011.** It gave participants the opportunity to discuss on legal and practical aspects of PEPs which have been included, together with the stakeholders' views, in the second part of this report.

Although the report refers to European States it considers the stakeholders' views and not the official positions of the States.

This report contains a general overview on complementary forms of access to protection, in particular on the different notions of extraterritorial access to protection such as: *Diplomatic asylum*, *Resettlement*, *Humanitarian Evacuation Operations*, *Flexible Use of the Visa Regime*, and *Protected Entry Procedures* (Chapter II). Chapter III provides a brief presentation of the EU policy debate on managed entry in the EU of persons in need of international protection. Chapter IV describes the national experiences formally or informally made on the different use of the complementary forms of access to protection in the countries involved in the project. Chapter V presents the results of the interviews with the stakeholders, by exploring the potential of complementary forms of access to protection, with a specific focus on protected entry procedures. Chapter VI concludes with final remarks and recommendations to European States and to the EU.

It has to be pointed out again that, in the course of the various research activities, the stakeholders expressed their views and did not represent the official positions of governments, EU bodies or political parties.

This report will be disseminated in all the countries involved in the project to sensitise national and European institutions as well as the public opinion to keep exploring the possibility of introducing some of these complementary forms of access to protection from abroad in the spirit of reinforcing a more efficient Common European Asylum System (CEAS). CEAS should in fact be capable to keep up with the evolving times and effectively meet the protection needs of the persons who currently continue to die in search of safety and a dignified life in a worrying deafening silence of the international community.

II. GENERAL OVERVIEW ON COMPLEMENTARY FORMS OF ACCESS TO PROTECTION

The system of refugee protection, as conceived in the 1951 Geneva Refugee Convention, reflects a very different historical context ensuring protection only to persons already present in the territory of the State concerned.

The European legislation does not envisage the possibility to access protection in Europe from abroad. Therefore, there is a tendency to take the territorial notion of asylum as the only one possible, while in reality different notions of complementary forms of access to protection already exist and have emerged in different contexts. As it will be further illustrated, some EU countries have already experienced complementary forms of access to protection as a correlative to more restrictive visa policies and strengthened controls at EU external borders.

II.1 Diplomatic asylum

The term "diplomatic asylum" in the broad sense is used to denote the asylum granted by a State outside its territory, particularly in its diplomatic missions (diplomatic asylum in the strict sense), in its consulates, on board of its ships in the territorial waters of another State (naval asylum), and also on board of its aircrafts and of its military or para-military installations in a foreign territory[2].

This tradition of diplomatic asylum became particularly strong in Latin America during the XIXcentury. In order to regulate it, in the first half of the XX century the Latin American republics negotiated a series of Conventions (The Convention on Asylum signed in Havana in 1928, The Treaty on International Penal Law signed in Montevideo in 1989, The Convention on

[2] UN General Assembly, Question of Diplomatic Asylum: Report of the Secretary-General, 22 September 1975, A/10139 (Part II), available at:
http: //www.unhcr.org/refworld/docid/3ae68bf10.html.

Diplomatic Asylum signed in Caracas in 1954), specifically including diplomatic asylum.

The notion has not been formalized in international instruments on asylum and it is not part of the CEAS framework. The decision of a State of granting the diplomatic asylum remains political in nature.

II.2 Resettlement

Resettlement – as a durable solution – represents an important tool of protection and international responsibility-sharing. It involves the **transfer of refugees from the country where they have sought asylum to another State that has agreed to admit them as refugees and to grant permanent settlement there**. It applies to those individuals who are recognized as refugees under UNHCR mandate and deemed eligible according to UNHCR resettlement guidelines and criteria as put down in the UNHCR Resettlement Handbook.

Resettlement countries rely mostly on UNHCR referrals of refugees in need of resettlement. Governments establish resettlement quotas normally on an annual basis according to their own policies, laws and regulations. Although no European Resettlement Instrument has been adopted so far, **it seems likely that in the coming months a Joint EU Resettlement Programme will be adopted**. This Programme will support national programmes through funding and the promotion of practical cooperation and information-sharing.

In 2010, 4,707 refugees were resettled to the EU, representing 6.5 % of all people resettled during this year worldwide (see tab. 1).

In 2011, also **Bulgaria** and **Hungary** announced the establishment of resettlement programs. Other European resettlement countries are **Norway** (with a quota of 1.120 persons) and **Iceland** (with a quota of 5 persons in 2010).

Other resettlement countries are: Argentina, Australia, Brazil, Canada, Chile, Japan, New Zealand, Paraguay, Uruguay, USA.

According to UNHCR, **in 2010 a total number of 72.914 refugees were resettled, 54.077 of whom were resettled to the USA alone and over 13.000 were resettled to Australia and Canada.**

Tab. 1 - Resettled in 2010 as part of program and announced quota for 2012 in EU resettlement coutries

EU resettlement countries	*Resettled in 2010 as part of program*	*Announced quota for 2012*
Czech Republic	48	40[3]
Denmark	386	500
Finland	543	750
France	217	350[4]
Germany	-	300
Ireland	20	
Netherlands	430	500
Portugal	24	30
Romania	38	20
Spain	-	100
Sweden	1,789	1,900
UK	695	750
TOTAL	**4,707**	**4,940**

Source: UNHCR

Among the Countries involved in this project, only **Denmark** and the **Netherlands** have formally adopted resettlement programs. Since 1986 Denmark has maintained a resettlement program, offering asylum to approximately 500 refugees annually. For the year 2011 both countries assigned a quota of 500 refugees for resettlement.

II.3 Humanitarian Evacuation Operations

Humanitarian evacuation operations are generally activated in the context of temporary protection with the aim of alleviating acute protection crises, especially in situations of mass flight, and in order to bring a form of burden sharing. Humanitarian evacuation does not focus, as resettlement, on addressing individual protection needs, it rather focuses on the protection requirements of the group[5]. These operations are exceptionally activated when host States accept, generally on the basis of quotas, the transfer of groups of refugees and/or protection seekers mainly residing in processing/refugee

[3] Quota not confirmed yet.
[4] 100 cases.
[5] Updated UNHCR Guidelines for the Humanitarian Evacuation Programme of Kosovo Refugees in the Former Yugoslav Republic of Macedonia, 11 May 1999.

camps in third countries and of displaced persons from their countries of origin.

One of the most important humanitarian evacuation and transfer was launched mainly to relieve the Former Yugoslavian Republic of Macedonia. Some 90.000 Kosovo-Albanians were evacuated from the region in 1999.

Most of the countries involved in this project took part in **humanitarian evacuation operations from Macedonia**.

II.4 Flexible Use of the Visa Regime

According to Article 25 of Regulation (EC) No 810/2009 of the EP and of the Council of 13 July 2009 establishing a Community Code on Visas, a **Visa with Limited Territorial Validity** may be issued. This applies, *inter alia*, when the Representation of a State considers that it is necessary in the particular circumstances of humanitarian grounds, national interest, international obligations, although the conditions for the issuing of a "Schengen visa" are not met. The evaluation is generally done by the head of the diplomatic mission or by central authorities and it is linked to the types of visas foreseen by law (tourism, mission, invitation, etc.) at national level. Thus, the Visa with Limited Territorial Validity is not a separate and independent type of visa, but it enshrines the discretionary power of the relevant authorities of the Member States.

The person obtaining this kind of visa is allowed – for a maximum period of three months – to circulate in the territory of the State that has issued it and, in exceptional cases, in those States expressly indicated in the visa itself on the basis of their previous consensus.

The legislations of the countries involved in the present project do not foresee the possibility of issuing a visa for protection reasons. However, some States have issued visas on the basis of humanitarian and political considerations, some on the basis of *ad hoc* mechanisms, others on the existing visa regimes (tourism, etc.). Other States allowed entry without issuing any visa at all.

The possession of a visa does not entitle its holder to entry. It merely entitles the holder to seek entry or transit at a border point of Schengen States, even though the border authorities may still reject the alien, in case the entry conditions are not fulfilled. However, there is a certain opening for protection-related cases in Article 5 (2) of the Schengen Convention: where a Contracting Party considers it necessary, it may derogate from that principle of refusal of entry on a) humanitarian grounds; b) on grounds of national interest; c) on grounds of international obligations. In such cases permission

to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

For the same three exceptional reasons Visas with Limited Territorial Validity may be issued by a Contracting Party according to the Community code on visa which in this respect is extending the provision of Article 5 (2) of the Schengen Convention.

II.5 Protected Entry Procedures (PEPs)

The term PEP is used as « an overarching concept for arrangements allowing a non-national:

- to approach the potential host State outside its territory with a claim for asylum or other form of international protection;
- [and] to be granted an entry permit in case of a positive response to that claim, be it preliminary or final »[6].

Diplomatic asylum and Protected Entry Procedures typically share a focus on the individual, while resettlement, reception in the region as well as humanitarian evacuation and dispersal in temporary protection schemes are best described as collective instruments. Diplomatic asylum and humanitarian evacuation as exceptional practices are, as a rule, not based on a set-up of rigid legal rules, allowing them to be described as a 'system'. By contrast, Protected Entry Procedures and resettlement cater for normalcy, and typically operate with a fixed normative framework.

Diplomatic asylum is characterised by the confrontation between the territorial State (usually the potential persecutor) and the State represented by the embassy. Resettlement, as explained above, is special in that it aims at alleviating limbos in third countries where the quality of protection is insufficient or even inexistent. Evacuation and dispersal in the context of temporary protection is marked by the wish to respond to situations of mass flight and to bring about a form of burden sharing. To a limited degree, Protected Entry Procedures can share the characteristics of all three other responses. However, **[PEPs] are primarily typified by the desire to offer individual protection seekers legal alternatives to illegal migration channels, thus preventing disorderly departures as well as disorderly arrivals**.

In the case of diplomatic asylum and Protected Entry Procedures, [the place where claimant and destination country meet] is clearly an embassy. The *locus* of resettlement is usually a processing centre or even a refugee

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[6] Noll Gregor**,** *Study on the feasibility of processing asylum claims outside the EU against the background of the Common European asylum system and the goal of a common asylum procedure*, 2002, p. 20.

camp in a third country, visited by a selection committee. Finally, the refugee camp in a third country is also pivotal to evacuation and dispersal schemes in the context of temporary protection. Quite naturally, **the locus of all systems is placed *outside* the territory of the destination country** »[7].

Tab. 2 - The Characteristics of Protected Entry Procedures compared to other practices

	Diplomatic Asylum	*Protected Entry Procedures*	*Resettlement*	*Evacuation and dispersal*
Primary focus	Securing protection in situ against the will of the territorial state	Offering alternatives to illegal migration for protection seekers	Alleviating protection limbos in third countries	Alleviating acute protection crises in situations of mass flight
Typically geared towards	Individuals	Individuals	Individuals/ Groups	Groups
"Locus"	Embassy	Embassy	Processing centre/ Refugee camp	Refugee camp
Normal or exceptional practice?	Exceptional	Normal	Normal	Exceptional
Quantitative limitations?	No	No	Quotas	Quotas

Source: Noll G.*, Study on the feasibility of processing asylum claims outside the EU, cit., p. 22.*

Some Member States such as Austria, Denmark, The Netherlands and Spain have adopted PEPs by law which have then been eliminated. Switzerland is the only country still maintaining it.

[7] *Ibid.*, pp. 21-22.

III. EU POLICY DEBATE

The European legislation does not envisage the possibility to access protection in Europe from abroad. According to Article 3 of *Council Directive 2005/85/EC of 1 December 2005* on minimum standards on procedures in Member States for granting and withdrawing refugee status:

1. This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status;

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

The only reference to facilitated entry is made in the ***Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*** (hereinafter "Temporary Protection Directive"). According to this Directive, « 'temporary protection' means a procedure of exceptional character [...] » (Art. 2, lett. a); « 'mass influx' means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme » (Art. 2, let. d). « The Member States shall, if necessary, 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. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum » (Art. 8, par. 3). « The Member States concerned, acting in cooperation with the competent international organisations, shall ensure that the eligible persons defined in the Council Decision referred to in Article 5, who have not yet arrived in the Community have expressed their will to be received onto their territory » (Art. 25, par. 2).

It should be recalled that the **EU Temporary Protection Directive (never applied insofar) offers a negotiation procedure rather than a predetermined legal obligation** to coordinate the reception of a mass influx on the territories of Member States and to share the protective burdens linked there to.

The notion of Protected Entry Procedures (PEPs) has already been explored since the early days of the construction of the Common European Asylum System (CEAS). While PEPs were mentioned in many Commission Communications, this policy option was never taken any further. A few European countries have in the past implemented or currently still implement measures of protected entry, but the numbers of beneficiaries have always

been small. They have, however, the potential to become a useful tool of the CEAS.

The ***Conclusions*** of the **European Council in Tampere (1999)** make a clear reference to the issue of access to territory, sending out a strong signal on the need to balance border control and refugee protection. **Conclusion 3 (*A Common EU Asylum and Migration Policy*)** states that for those whose circumstances lead them justifiably to seek access to the territory of the European Union, the Union is required to develop common policies on asylum and immigration, while taking into account the need for consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related crimes.

Following the Tampere Conclusions, in November 2000 the Commission adopted the Communication ***"Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum"***[8], which makes several references to access to the European territory for people seeking international protection. For instance, it recommends that the EU "*adopt clear principles offering guarantees to those who are legitimately seeking protection in the European Union and seeking access to its territory"*[9]. It raises the possibility to define *"common approaches to policies on visas and external border controls to take account of the specific aspects of* asylum*"*[10], as well as the *idea of processing requests for protection directly in the region of origin*[11] and to develop resettlement schemes to facilitate the safe arrival of refugees to Europe. The Commission announces in this Communication that feasibility studies on these themes will be conducted.

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[8] See COM(2000) 755 final: http: //eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2000: 0755: FIN: EN: PDF.
See as well COM (2000)757 final (Communication jointly published, on a Community immigration policy): http: //eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2000: 0757: FIN: EN: PDF.

[9] See COM(2000) 755 final, Part I, §1.2. "The challenges and objectives of a common asylum procedure and a uniform status".

[10] See COM(2000) 755 final, Part II, §2.3.1. "Visas and external border controls":
"Certain common approaches could be adopted to policies on visas and external border controls to take account of the specific aspects of asylum. The questions to be looked at in depth include re-introducing the visa requirement for third-country nationals who are normally exempt, in order to combat a sudden mass influx, *facilitating the visa procedure* in specific situations to be determined, and *taking account of international protection needs in legitimate measures to combat illegal immigration and trafficking in human beings*, along the lines of the protocols to the United Nations Convention on transnational organised crime".

[11] See COM(2000) 755 final, Part II, §2.3.2. "Requests for asylum made outside the European Union and resettlement": *Processing the request for protection in the region of origin* and facilitating the arrival of refugees on the territory of the Member States by a *resettlement scheme* are ways of offering rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs or having to wait years for recognition of their status.

In November 2001, the Commission adopted a ***Communication on a Common policy on illegal migration***[12]. The Communication stresses that the fight against illegal immigration has to be conducted sensitively and in a balanced way, especially recommending Member States to "*explore possibilities"* for a "*greater use of [their] discretion in allowing more asylum applications to be made from abroad or the processing of a request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by resettlement scheme".*

In 2002, professor Gregor Noll prepared on request of the Commission a ***Study on the feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure***[13]. This study reviewed the international legal and Community framework for access that could be relevant for PEPs, looked at the advantages and disadvantages, evaluated the PEPs implemented at the time by a number of Member States and non-EU countries, identifying five policy options (from less to more ambitious) for a future development of PEPs.

The study was presented in 2003 during the Rome Seminar (see below).

On March 26th 2003, the Commission adopted a new ***Commission Communication COM 2003 (152 final) "on the common asylum policy and the Agenda for protection (Second Commission report on the implementation of Communication COM(2000)755 final of 22 November 2000)"*** For the first time, the text explicitly mentions "protected entry schemes":

> *"Three complementary objectives should now be pursued to improve the management of asylum in the context of an enlarged Europe: improvement of the quality of decisions ("front-loading") in the European Union; consolidation of protection capacities in the region of origin; treatment of protection requests as close as possible to needs, which presupposes regulating access to the Union by establishing protected entry schemes and resettlement programmes"*[14].

The Commission calls on the EU to "*embark resolutely on a new approach to international protection based on better management of access for persons*

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[12] See COM(2001) 672 final: http: //europa.eu/legislation_summaries/other/l33191_en.htm

[13] See Gregor Noll, Jessica Fagerlund and Fabrice Liebaut, Study on the feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure: http: //ec.europa.eu/home-affairs/doc_centre/asylum/docs/asylumstudy_dchr_2002_en.pdf

[14] See COM(2003) 152 final, end end of §4 of the introduction.

in need of international protection to the territory of the Member States and on consolidation of the possibilities for dealing with protection needs in the region of origin". More specifically, the Commission asks the EU to consider the "*possibilities offered by processing asylum applications outside the European Union and resettlement"*.

On June 3rd 2003, the European Commission presented a ***Communication COM 2003 (315 final)"Towards more accessible, equitable and managed asylum systems"***[15], mentioning again the aim of "t*reatment of protection requests as close as possible to needs, which presupposes regulating access to the Union by establishing protected entry schemes and resettlement programmes"*. Basing on Noll's study, PEPs are defined as a mechanism to "*allow a non-national to approach the potential host state outside its territory with a claim for asylum or other form of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final"*. To conclude the Communication, the Commission "*suggests that the strategic use and the introduction of Protected Entry Procedures and Resettlement Schemes should be considered"*, and asks the Council, the European Council and the European Parliament to endorse a legislative instrument on Protected Entry Procedures (and one on a EU resettlement scheme).

This Communication has been endorsed by the European Council during its meeting in **Thessaloniki on 19-20 June 2003**, in **Conclusion 26**. The European Council "invites the Commission to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection, and to examine ways and means to enhance the protection capacity of regions of origin with a view to presenting to the Council, before June 2004 a comprehensive report suggesting measures to be taken, including legal implications".

It was then followed by an international **Seminar organised in October 2003 under the Italian Presidency** jointly by the Italian Ministry of Interior and the Italian Council for Refugees (CIR), with the support of the ARGO Programme, under the title "Towards more orderly and managed entry in the EU of persons in need of international protection". Participants from 30 governments discussed on ways to improve access to protection and balance migration control measures through alternative protection possibilities complementing more traditional mechanisms for accessing asylum rather than substituting for these. The seminar examined the possible advantages and disadvantages of a PEP scheme or resettlement. It was stressed that, from a

[15] See COM(2003) 315 final:
http: //eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2003: 0315: FIN: EN: PDF.

governmental point of view, PEPs would save time and funds compared to territorial procedures. Some disadvantages were also identified such as the required level of resources for a rapid processing of applications as well as the difficulty of establishing direct contact with the asylum decision makers and the (non-) access to legal assistance. The debate focused on the practical issues to be addressed, related to PEPs (physical access to consulates in regions of origin, staff expertise, etc) and on how such procedures might affect the developing asylum systems in the regions of origin.

During this Seminar, Gregor Noll presented the above-mentioned feasibility study. One of the working groups of the seminar looked specifically at PEPs. The chairperson of this working group presented his conclusions[16] on the discussion on PEPs as follows:

"I would like to make reference to the suggested choice among two very different options in relation to Protected Entry Procedures. […] The first of the possible two options is a very moderate approach, an approach consisting of making available, at the level of all the European States, the experiences concerning PEPs which have up to now been carried out only by some States [and which] are characterised by the fact that they concern a very limited number of refugees and by the fact that the possibility of obtaining visas for reasons of international protection is kept, I do not want to say secret, but that is not, in any way, advertised. […]

This first approach to PEPs would not have any significant advantage for Member States in the fight against human smuggling but it would be relevant for those who could benefit from it. […]

The second option presented by the conclusions of the working group is a much more visionary one and, in some ways, it is a much more difficult one. It is much more difficult as it implies much greater risk for the Member States. Nevertheless it is also true that the second option, if implemented, has much greater potential advantages. According to the second option, the EU might decide to take a wider approach to PEPs, characterised by a significant number of beneficiaries, vastly and openly advertised in relation to the potential beneficiaries of this programme who are also the clients of smugglers".

[16] The official conclusions of the seminar were included in Council document 14987/03 available at http: //register.consilium.europa.eu/pdf/en/03/st14/st14987.en03.pdf.

In April 2004, the European Parliament adopted a non-legislative ***Resolution on equitable and managed asylum systems (2003)***[17], as a response to the Commission Communication of June 2003.

In this text, the Parliament calls on the EU to work on a new approach to asylum and access to protection based on the Tampere Conclusions, by introducing a "Community-wide resettlement scheme" and by *"the establishment of protected-entry procedures under which a third-country national would be able to submit an application for asylum (or for some other form of international protection) to a potential host country (although from outside the latter's territory) and secure an entry permit if his application is accepted, for which purpose a legislative instrument regulating such matters should be adopted"*[18].

In June 2004, the Commission published another Communication ***"On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin, "Improving access to durable solutions" (2004)***[19], stressing that the legal, orderly and managed entry to the EU would allow Member States to anticipate the arrival of the persons determined to be in need of international protection,[20] referring mainly to Noll's study and the Italian Seminar.

In the Conclusions of the **Hague Council of December 2004** (***The Hague Programme***[21]), the Council asks the Commission to conduct a study "i*n close consultation with the UNHCR"* on the "*merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory, in complementarity with the Common European Asylum System and in compliance with the relevant international standards".*

In its Action Plan presented in May 2005, the Commission announced a *"study, to be conducted in close consultation with the United Nations High Commissioner for Refugees (UNHCR), on joint processing of asylum applications outside EU territory*" for 2006.

The ***Policy Plan on Asylum***[22] (June 2008) listed as one of the overarching objectives of the CEAS to *"ensure access for those in need of protection: asylum in the EU must remain accessible. Legitimate measures introduced to*

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[17] See P5_TA(2004)0260: "European Parliament resolution on the Communication from the Commission to the Council and the European Parliament entitled 'towards more accessible, equitable and managed asylum systems' [COM(2003) 315 - C5-0373/2003 – 2003/2155(INI)]: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P5-TA-2004-0260+0+DOC+PDF+V0//EN.

[18] See P5_TA(2004)0260, §29 a) and b).

[19] See COM(2004) 410 final.

[20] See COM(2004) 410 final, Chapter I.

[21] See Council doc. 16054/04: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX: 52005PC0184: EN: NOT.

[22] COM (2008) 360, adopted on 17 June

curb irregular migration and protect external borders should avoid preventing refugees' access to protection in the EU while ensuring a respect for fundamental rights of all migrants. This equally translates into efforts to facilitate access to protection outside the territory of the EU". The last phrase is especially relevant concerning PEPs, which are mentioned for the first time since 2004 in a Commission Communication.

Thus, Section 5.2.3. (*"Facilitating a managed and orderly arrival for those in need to protection"*) states that: *"It is crucial that the Union should focus its efforts on facilitating the managed and orderly arrival on the territory of the Member States of persons justifiably seeking asylum, with a view to providing legal and safe access to protection, whilst simultaneously deterring human smugglers and traffickers. To this effect, the Commission will examine ways and mechanisms capable of allowing for the differentiation between persons in need of protection and other categories of migrants before they reach the border of potential host States, such as Protected Entry Procedures and a more flexible use of the visa regime, based on protection considerations. As shown by a Commission's study conducted in 2003, some Member States operate or have experimented in the past with some forms of such mechanisms but they are quantitatively of minor importance. There is room for common action in this area, which should lead to better access to protection while reducing smuggling"*.

The roadmap of the Policy Plan indicated that the Commission would take initiatives concerning PEPs in the course of 2009.

The Council of the European Union stressed "that the necessary strengthening of European border controls should not prevent access to protection systems by those people entitled to benefit under them" (*"European Pact on Immigration and Asylum"* (07.10) (OR. fr) – Brussels, 24 September 2008).

In 2009, the European Parliament – in its ***Resolution of 10 March 2009 on the future of the Common European Asylum System (2008/2305(INI))*** – strongly encourages the Commission to give due consideration to the Protected Entry Procedures and the practical implications of such measures (§49), and "looks forward with interest to the results of the study on the joint processing of asylum applications outside EU territory which the Commission plans to conduct in 2009, and warns against any temptation to transfer responsibility for welcoming asylum seekers and processing their requests to third countries or UNHCR" (§50).

The European Council adopted the ***Stockholm Programme***[23] in December 2009, based on a Communication by the Commission of June 2009.

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[23] See COM(2009) 262 final: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2009: 0262: FIN: EN: PDF.

The Programme states that the "*analysis of the feasibility and legal and practical implications of joint processing of asylum applications inside and outside the Union should continue*"[24]. Besides, it says that in the context of solidarity with third countries, "*new forms of responsibility for protection might be considered. Procedures for protected entry and the issuing of humanitarian visas should be facilitated, including calling on the aid of diplomatic representations or any other structure set up within the framework of a global mobility management strategy"*[25].

In the Action Plan for the Stockholm Programme presented in April 2010[26], the Commission includes actions to be taken, among which the adoption of a **"Communication on new approaches concerning access to asylum procedures targeting main transit countries" by 2014**.

The European Commissioner for Home Affairs, Cecilia Malmström, when closing the European Conference "Exploring Avenues for Protected Entry in Europe" held in Brussels on September 19th 2011, underlined that « people in need of protection have an absolute right to apply for asylum once they are on EU territory – it is just that in order to get onto EU territory, many of them will have to turn to human smugglers, enter the territory illegally or, even if they are not smuggled in, carriers may be fined for letting them onboard. It is not logic that, in order to seek protection from harm, somebody would feel that they need to break the law. The stigmatisation that this creates is unfair. At the same time EU Member States have to control their external borders and the people who enter the territory. Facilitating a route of entry for those seeking protection is therefore an important but difficult task ».

IV. NATIONAL EXPERIENCES MADE IN SOME EUROPEAN COUNTRIES

This chapter illustrates the synthesis of the desk researches conducted by partners and experts on formally and informally adopted off-shore protection mechanisms and Protected Entry Procedures in the countries involved in the project.

[24] See COM(2009) 262 final, §5.2.2.
[25] COM (2009) 262 final, §5.2.3.
[26] See COM(2010) 171 final: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2010: 0171: FIN: EN: PDF.

IV.1 Austria

Several times Austria participated "informally" in **resettlement programs** addressed to refugees under the Geneva Convention.

A special legal Regulation was introduced in Article 9 of Asylum Law 76/1997 aiming at avoiding complex investigations when asylum should be granted without further procedure, by introducing the presumption that the person fulfils the condition of a refugee and in the case that Austria has made a declaration according to the international law.

Between 1973 and 1977 Chilean refugees arrived in Austria, followed by refugees from Indochina and Kurds from Iraq in 1976 and 1991. Refugees of Asian origin from Uganda were resettled in Austria in 1972. One of the main criteria for the selection was the integration perspective of refugees in Austria. Education and professional skills were taken into consideration. Preference was given to families. In 1991 the competent Ministry of Interior organised a mission to Turkey in order to conduct interviews with refugees, to assess their need of protection and their perspective to integrate into the Austrian society. 201 refugees of Iraqi origin were selected and arrived in Austria: 108 of them arrived in June 1991 and 93 in October 1991.

Austria also took part in **humanitarian evacuation operations.** In 1999, 5,123 Albanians from Kosovo were transferred from Macedonia with the assistance of the International Organisation for Migration (IOM). Mainly refugees with relatives living in Austria and some in need of medical care were selected by the Austrian officials.

Austria also experienced some forms of **Protected Entry Procedures**. These procedures were introduced by the Asylum Act of 1991[27] (amended by 1997 Asylum Act[28]), providing for the **possibility to submit at an Austrian**

[27] Asylgesetz 1991, BGBl. Nr. 8/1992, Art. 12, Abs 2: « Foreigners who are not present within the territory of the state may submit asylum-applications at Austrian diplomatic authorities abroad ».

[28] Asylgesetz 1997, BGBl. I Nr. 76/1997, Art 16: « Article 16. (1) Asylum applications and asylum extension applications received by an Austrian diplomatic or consular authority in whose sphere of administration the applicants are resident shall be additionally valid as applications for the granting of entry authorization. (2) In cases where such applications are filed, the diplomatic or consular authority shall ensure that the aliens complete an application form and questionnaire drawn up in a language understandable to them; the structure and text of the application form and questionnaire shall be determined by the Federal Minister of the Interior, in agreement with the Federal Minister for Foreign Affairs and after consultation with the United Nations High Commissioner for Refugees, in such a way that the completion thereof serves to establish the material facts of the case. Moreover, the diplomatic or consular authority shall make a written record of the content of the documents submitted to it. The asylum application shall be forwarded to the Federal Asylum Agency without delay. (3) The diplomatic or consular authority shall issue an entry visa to the applicant without further formality if the

diplomatic or consular representation a) an asylum application, or b) a request of extension of international protection to core family members of recognised refugees. In 2003 with the amendment of the Asylum Law, the first possibility (a) was cancelled without public notice, formally limiting Protected Entry Procedures to family reunification cases[29].

The PEP was cancelled in 2004 for Convention refugees. The argument for such an abolition was that this procedure was too burdensome for Austria considering that other EU-Member States did not offer such a possibility.

Therefore, the procedure continued to apply only to family members of recognised refugees, and (since 2005) to persons benefiting from subsidiary protection. Since 2010, instead, core family members of international protection beneficiaries may apply for an entry visa. Upon arrival they have to submit an asylum request to the authorities.

The Austrian procedure catered for the **Convention refugees only**. Applications could be formally filed at diplomatic representations in both the **country of origin and in a third country. In practice, applications filed in the country of origin were routinely rejected**[30].

A written procedure was employed: applicants filled out a questionnaire, which was forwarded by the Austrian representation to the Federal Asylum Office in Austria. The Office proceeded to a **pre-screening** and assessed the prospect of the applicant of being granted asylum in a territorial procedure. In the case of a positive decision, the Consulate issued a visa, the applicant entered Austria legally, and submitted his/her case according to the ordinary asylum procedure. However, entry visas on mere protection grounds have been granted in very few cases, since the Austrian **procedure mainly served family reunification purposes**[31].

Throughout 1990s, the number of asylum applications to the Austrian representations was very low, at the most a few hundred yearly, according to the poor statistical data available for that period. The situation changed dramatically in 2001 when a total of 5.622 applications to the Austrian representations were filed, the vast majority of them by Afghani applicants reporting at the Austrian embassies in Teheran and Islamabad. Claimants in Teheran had obviously been misled: rumours had spread that Australia operated a reception programme, and the Austrian representation was mistaken for that of Australia! In Islamabad, 3.000 questionnaires were

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Federal Asylum Agency has notified it that asylum is likely to be granted. According to Art 2 Asylum Law 1997 asylum may only be granted to foreigners staying in the territory. Applications at embassies (Art.16) are to be closed as irrelevant (Art 31), if the granting of asylum is unlikely ».

[29] See Noll, *cit.*, p. 96.

[30] *Ibid.*, p. 95.

[31] *Id*.

handed out by the Austrian embassy within a ten-day period in October 2001. The embassy was subsequently closed, making the Austrian Protected Entry Procedure practically inaccessible to protection seekers in Pakistan, although the embassy reopened one week later.

The Federal Ministry of the Interior declared that it regarded both Pakistan and Iran as safe countries for Afghans applying for asylum at Austrian representations. Almost all applications of Afghans were closed as irrelevant without decision since the Federal Asylum Office (FAO)stated that the grant of asylum in Austria was likely to be refused, entailing the denial of an entry visa. By contrast, the percentage of positive decisions for Afghans who filed their application for asylum in the Austrian territory is comparably high (56% according to the official statistics of 2001).

Other reasons for the very few positive screening decisions were already found in a 1995 UNHCR survey, where the following were evidenced: lack of instructions for applicants by the embassies, no personal hearing, lack of willingness or ability of embassies to assist the FAO with the assessment of the facts (e.g. requests for additional information or evidence from the applicant), no right to have the decision reviewed.

IV.2 Cyprus

Cyprus has a relatively recent asylum tradition, compared to other EU Member countries[32]. It only started implementing the 1951 Geneva Convention in 2002 in the context of the foreseen accession to the EU. Refugee law applied only to those protection seekers already present in the Cypriot territory.

Cyprus has never had a history of diplomatic asylum or any other similar or close to protected entry procedures nor the possibility of issuing entry visas on humanitarian grounds.

The only possibility for refugees to reach Cyprus is through unauthorized entry and generally through the non controlled areas in the North.

The long lasting *de facto* division of the island has led to a negative, nationalistic environment with a negative impact on refugees and protection seekers. In such a negative climate and in the context of the Government policies to reduce as much as possible the pending asylum applications as well as measures to reduce the flows of asylum seekers in the country, KISA considers it is very difficult in Cyprus to bring up any issue of protected entry procedures, diplomatic asylum or resettlement.

[32] Refugee Law was adopted in 2000.

IV.3 Denmark

In two instances Denmark has applied **ad hoc mechanisms** to ensure access to protection to persons outside the Danish territory. The most recent of these was the **visa scheme** for Iraqi interpreters. Although the scheme was limited to a very narrow category of persons formerly employed by the Danish armed forces in Iraq, the general structure of the procedural design shows that it is possible to make use of visa policies as a tool to ensure access to persons in need of international protection. This model was based on an *ad hoc* political decision; the applicants had a close connection to Denmark; applicants were invited to Denmark on the basis of a pre-screening process by an *ad hoc* inter-ministerial delegation assessing connections to Denmark and potential security risks they might pose if afforded a visa. Upon arrival they were admitted to the ordinary asylum procedure. The legitimacy of such a procedure, however, entirely depends on how the pre-screening procedure to grant visas is organised. Where a national asylum procedure is retained upon arrival, the grant of a protection visa should be based on a *bona fide* assessment of the protection concerns stated by the applicant.

In 1990s in the framework of the Bosnian temporary protection scheme, the Danish embassy in Zagreb was empowered to issue temporary residence permits to Bosnian refugees. On December 1st 1992 Denmark passed a **special law on temporary protection** in favour of persons fleeing former Yugoslavia and the growing conflict in Bosnia. The law contained an **invitation order** allowing persons in particular distress to be granted access to Denmark in order to receive medical treatment or other help that could not be provided in the area where they were staying. The selection of beneficiaries was drawn in cooperation with UNHCR. Similarly, asylum seekers from former Yugoslavia who had already reached Denmark were granted a temporary residence permit. Even though this scheme was an *ad hoc* response to a specific refugee situation and allowed only a temporary protection short of the rights granted to persons receiving full refugee or *de facto* status under the ordinary asylum procedure, this special procedure whereby residence permits were issued on UNHCR protection assessment, serves as an example of the role the Refugee Agency might play in designing extraterritorial asylum mechanisms.

Moreover Denmark did operate a formal **embassy procedure based on national legislation**, and with a general scope, open to all asylum seekers able to launch **an application with a Danish representation in a third country.** This procedure was introduced in the Danish Aliens Act of 1983[33] and abandoned again in 2002.

[33] Aliens Act, 226/83, 8 June 1983.

Although in its design it is **limited to persons able to show a special connection to Denmark**, the Danish embassy procedure demonstrates that it is possible to design an extraterritorial procedure that under many aspects closely resembles the ordinary asylum procedure with regard to the case handling; possibilities for appeal, etc. **As originally introduced the Danish embassy procedure left asylum processing as much as possible to the ordinary asylum authorities**, reducing the role of embassy staff to providing administrative support, practical guidance to applicants and conducting follow-up interviews upon request.

The former Section 7.4 of the Danish Aliens Act allowed asylum applications to be submitted at Danish embassies and consular representations. Applications could be submitted by any asylum seeker outside his or her country of origin and physically able to access a Danish embassy or consulate.

Under the Danish model there is no requirement that embassy staff conduct a formal asylum interview, the majority of cases being decided indeed solely on the basis of a written file. In practice, a more informal interview was often conducted upon return of the registration form in order to verify that the application form had been filled out correctly. Furthermore, the Danish Immigration Service could request that an interview with a particular applicant could be conducted at a later stage.

Following the 1992 amendments to Section 46.b.2 embassy staff became responsible for taking the initial decision on whether to forward asylum applications to the Danish Immigration Service, on the sole basis of the applicant's close connection to Denmark.

Provided that the connection to Denmark was deemed sufficient, the case was then assessed on the basis of protection needs. *On par* with territorial asylum applications, applicants could be afforded protection **either as Convention refugees** (Section 7.1, corresponding to the criteria set out in Art. 1 of the 1951 Refugee Convention) or **as "de facto" refugees** (Section 7.2 covering related cases of persecution e.g. conscientious objectors and gender-related persecution). As a starting point the Immigration Service only considered fear of persecution in the country of origin. Only in exceptional situations did the situation in the third country where the asylum application had been submitted impact on decisions.

The embassy asylum procedure inevitably provided lower legal guarantees compared to the territorial procedure. In principle asylum applicants under Section 7.4 were entitled to legal counselling by the Danish Refugee Council on the same conditions as territorially arriving asylum seekers. In practice the Danish Refugee Council were rarely able to provide legal counselling due to physical distance. In some cases however, the Danish Refugee Council was able to provide assistance to relatives in Denmark.

No formal possibility to appeal negative decisions by the representation was afforded. Negative decisions at the initial stage were however motivated in writing, meaning that applicants could approach the representation again making a renewed case for his/her connection to Denmark. Applicants could further contact the Ministry of Foreign Affairs in Copenhagen, which would then re-consider the case.

Negative decisions made by the Immigration Service could be appealed to the Refugee Appeals Board (the ordinary second instance). **In case of a positive decision the Danish authorities instructed the relevant representation to issue a visa**. If the applicant had no passport, the representation usually helped issuing a *laissez-passer* valid for six months. The practicalities of the travel to Denmark were organised by the Danish Refugee Council in cooperation with the International Organization for Migration and all related costs were borne by the Danish State.

Pending a final decision applicants received no other support of protection from the Danish representations. No procedure for immediately evacuating applicants to Denmark in case of humanitarian emergencies existed. Yet, consular staff always had the possibility to refer asylum applicants for registration to the local UNCHR office. Where UNCHR found a case particularly urgent, it was possible to make a request to Denmark for "urgent resettlement", a special category under the general resettlement scheme for which cases were considered within a matter of days.

No detailed statistics exist as to how many applicants have applied for asylum at Danish consulates and embassies. **In the last five years of operation, an average of 1.202 cases a year was forwarded to the Danish Immigration Service for consideration at the first instance. In the period 1997-2001 a total of 311 cases were granted protection in Denmark** on the basis of Section 7.4 at either the first or the second instance.

IV.4 Greece

The Greek legislation has never provided any protected entry procedures.

However, 45 Vietnamese people, who had been saved by Greek boats in the sea, had been accepted for admission in Greece.

At the International Conference, which took place in Geneva on July 21st 1979, Greece committed itself to the acceptance of the permanent establishment of 150 Vietnamese refugees. This commitment was implemented in the following years, in close cooperation between the Greek Government and UNCHR in Greece.

According to 1978 UNHCR Annual Report for Greece, the fact that the permanent establishment of Vietnamese refugees was authorized by the Greek

authorities indicated a shift from its traditional condition of a transit country to a host country for refugees. As from the end of 1990s Greece, in line with its international obligations, accepted the permanent establishment of a number of refugees[34].

IV.5 Italy

The Italian asylum legislation does not foresee the possibility to lodge an asylum claim from abroad.

However, Italy in several occasions has adopted mechanisms to allow entry and access to asylum to protection seekers on the basis of political decisions, while still maintaining the geographical reservation, eliminated in 1990.

This was the case of:

- **609 persons from Chile who, after the Pinochet coup in September 1973 did seek asylum at the Italian Embassy in Santiago;**
- about 900 of the 3.336 Indochinese people, rescued at sea in 1979 by the Italian Navy in the Sea of China;
- groups of Afghans (1982), Chaldean Iraqis (1987-1988) and Kurdish Iraqis (1988).

In **May 1990 hundreds of Albanians** occupied some Embassies in Tirana. Italy, France and Germany decided to automatically recognise the refugee status to those who occupied their Embassies.

On July 13th 1990, 3.800 Albanians were transferred to the Brindisi Harbour, 804 out of which remained in Italy and were recognised refugee status without following the ordinary asylum procedure.

In **May 1992** the Italian government adopted a Decree which represented the main legal instrument for protection for **Yugoslavs** fleeing the war.

In 1994 a Decree[35] was adopted, (excluding Macedonians and Slovenians from its application), establishing a specific mechanism to allow entry to those displaced persons who were holding the **"protection letter" issued by any UNHCR office in Yugoslavia**. This mechanism was scarcely applied due to bureaucratic difficulties. It should be pointed out that although the entry of displaced persons with the "protection letter" was facilitated, they had, however, to find their way to reach Italy.

In **May 1999**, following the appeal of UNHCR, **5.000 Kosovars** were transferred from Macedonia to Comiso (Sicily) through a **humanitarian evacuation operation** carried out by the Italian Air Force. For the first time

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[34] Maria Stavropoulou: "*Refugees in Greece thirty years ago",* in UNCHR Greece Annual Yearbook of Refugees and Aliens" 2006, p.421

[35] Decree n. 350 converted later in Law 390/1992.

Temporary protection measures[36] were applied to these persons. The law foresees that a Prime Minister Decree may provide a temporary protection measure in case of "relevant humanitarian demands, conflicts, natural disasters or other events of great seriousness in non-EU countries". The purpose of this decree is to maintain the integrity of the asylum system while - at the same time - coping with the arrival of large numbers of asylum seekers.

Three "informal" **resettlement operations** from Libya took place between 2007 and the beginning of 2010. 150 Eritrean refugees recognised under the UNHCR mandate, after having been selected by UNHCR personnel were transferred to Italy where they were admitted to the ordinary asylum procedure. The Italian Embassy issued a **Visa with Limited Territorial Validity** for tourism /courtesy reasons given that the Italian law does not contemplate the possibility to issue a visa for asylum purposes.

Another resettlement operation concerned 160 Palestinian refugees recognised under the UNHCR mandate living in very harsh conditions in the Al Tanf camp situated at the Syrian-Iraqi border. At the end of 2009 these refugees were transferred to Italy where they were admitted to the ordinary asylum procedure. Also in that occasion the Italian Embassy issued a **Visa with Limited Territorial Validity** for tourism /courtesy reasons.

In **March 2011, two humanitarian evacuation operations** from Libya took place in order to urgently ensure safety to 108 persons from Eritrea and Ethiopia who were transferred from Tripoli to Italy. Differently from the previous "informal" resettlement operations, these humanitarian evacuations took place without the involvement of UNHCR and not all persons had been recognised under the UNHCR mandate in Libya. Following the appeal made by the Bishop of Tripoli, Habeshia Association and CIR, a political agreement was reached between the Ministry of Interior and the Ministry of Foreign Affairs to urgently evacuate these persons through an operation conducted by the Italian Air Force. No visa was issued to these protection seekers who upon arrival were admitted to the ordinary asylum procedure.

In 1994 and in 2004 CIR elaborated two proposals for a comprehensive legislation on asylum, including Protected Entry Procedures and Resettlement programmes. In 2007, some members of the two wings of the Parliament, from different political alignments, endorsed the last CIR proposal which, however, reached a deadlock due to an early end of the previous parliament.

Under the present parliament, the bill has been lodged again but at the moment it is not on the agenda for parliamentary debate.

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[36] Decree d.p.c.m. 12 May 1999 issued "on the basis of Article n. 20 of the Immigration Law 286/98.

IV.6 Malta

The Maltese legislative framework does not provide for any clear and specific entry mechanisms for persons seeking protection.

No protection visas are considered and Malta does not enforce any form of PEPs.

While a number of humanitarian evacuations were carried out in the context of the conflict in Libya, these were not linked to asylum requests but rather to migrant workers in Libya fleeing the conflict and using Malta as a stepping stone towards their own countries of origin.

In the course of 2011, Malta issued a number of **Visas with Limited Territorial Validity** on humanitarian grounds.[37] This kind of visa was issued to allow entry to individuals who required evacuation from Libya because of the armed conflict. It would appear, therefore, that it is not specifically a method which has, at least until today, been used as a means of entry for the purposes of filing an asylum application. Although it does not appear to be anything which excludes it from being used as such, there is, similarly, nothing indicating that there is the intention to use it in this way, or if at all, in circumstances which are not very exceptional.

IV.7 The Netherlands

The Netherlands is the only partner country which provides **diplomatic asylum by law**. Diplomatic asylum can be granted in exceptional cases such as an acute emergency. The Minister of Foreign Affairs has the competence to decide whether a foreigner is in acute need. The provision of diplomatic asylum is laid down in *Staatscourant*, TBV 2003/33 C5/25 (TK) (12 January 2003, 19 637, nr. 719). In comparison to the MVV (machtiging tot voorlopig verblijf) procedure, the Minister of Immigration and Asylum (formerly it was the State Secretary of Justice) is personally involved in the decision making process with regard to diplomatic asylum. Another major difference is that protection originated from diplomatic asylum can include temporary reception at the embassy in the country of origin or a third country, whereas a MVV applicant is not offered any form of shelter. Diplomatic asylum is most probably being granted in favour of "high profile" cases. This was not necessarily the case for MVV applications with asylum purposes.

In other cases, people were granted **entry permits** for the Netherlands instead of diplomatic asylum. This happened in particular in relation to

[37] Other reasons are also contemplated and can be found in Article 25 of Regulation (EC) NO 810/2009 of the AP and of the Council of 13 July 2009

Indonesians in communist regimes. Under the government of Soekarno, persons with Indonesian nationality could travel to other communist countries but after the fall of the Soekarno government the various communist countries wanted the Indonesians to leave. The Indonesians were scared to return to their country as the government was not on their side anymore. They feared persecution. These persons went to the Dutch embassies in e.g. China and requested protection. The Dutch authorities would grant them a visa, instead of diplomatic asylum which could cost diplomatic problems. In this way, the Indonesians could travel legally to the Netherlands where they were granted asylum. Afterwards, they merely received a type of protection status, somewhat different from refugee status[38]. However, these people did not travel with a MVV, but with a tourist visa. In that way, it was even less visible for China why these people left the country and went to the Netherlands. Moreover, most Indonesians who could use this possibility, had personal ties and links in the Netherlands.[39]

The only **Protected Entry Procedures** the Netherlands have known was the possibility to approach diplomatic representations abroad and **apply for a provisional sojourn (MVV) with asylum purposes**. This PEP has existed from at least 1990 until August 2003.

The relevant provisions regarding the granting of an MVV for asylum purposes are to be found in the Aliens Regulations of 2000 ("Vreemdelingencirculaire")[40] . **The Dutch Protected Entry Procedure was formally a procedure conducted by the Ministry of Foreign Affairs and not by the asylum authorities**. As such, it was regulated by the provisions of the General Administrative Law Act ("Algemene wet bestuursrecht"). **The Dutch Aliens Act, which applies to all asylum claims submitted inside the Netherlands, does not apply to applications for MVV lodged abroad**[41].

In order to lodge an application for a MVV for asylum purposes, applicants were obliged to physically present themselves at the diplomatic post[42]; nevertheless, other stakeholders stated that a MVV application could also be submitted by the legal counsellor of the applicant or a family member who had resided for a longer period in the Netherlands. The diplomatic staff would thereafter conduct an interview with the applicant. The interview had to

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[38] This status is granted when a person made it plausible that he has grounded reasons that he fears the risk of being subjected to death penalty or execution, inhuman or degrading treatment or punishment, severe and individual life threat or life threat as a result of random violence in the framework of an international or interior conflict.

[39] Interview H. Nawijn, former Minister of Aliens Affairs and Integration (2002-2003), LPF, 3 November 2010.

[40] Part C, Chapter 5, Paragraph 25 (henceforth Chapter C5/25).

[41] *Ibid.*, p. 118.

[42] Noll, Fagerlund & Liebaut, 2002, p.199.

be conducted in Dutch, but the Dutch embassy or consulate was not obliged to pay for an interpreter.

Applications for MVV for asylum purposes and any additional documentation were forwarded by the representations abroad to the Ministry of Foreign Affairs in the Netherlands and were further examined by the Immigration and Naturalisation Service ("Immigratie- en Naturalisatiedienst" – IND, under the Ministry of Justice). If the assessment of the request by the IND showed that the applicant was eligible to be granted asylum, he/she was entitled to be admitted to the Netherlands. **Once in the country, the applicant still had to lodge a formal asylum claim**. However, this was a mere formality and, in practice, refugee status was granted very rapidly without further investigation, unless the applicant had withheld relevant information which could have led to a negative decision in the first place.

Interviews with stakeholders conducted in the course of this research outlined that **none of the respondents was able to explain what the exact course of the procedure was** with regard to the MVV applications with asylum purposes. Former Minister of Aliens Affairs and Integration, Mr Nawijn, even believes that there was not a real official asylum procedure at diplomatic posts, especially compared to the procedure applied on the territory of the Netherlands. In his opinion, it was the personnel at diplomatic posts who determined whether an applicant was in acute need or not.[43] Authors Kuijer & Steenbergen (1999) also stated that there were no general instructions for embassies and consulates on how to deal with such applications.[44] An anonymous senior policy officer of the IND confirms this statement, and he is not familiar with the procedure followed in practice either.[45] On the other hand, the former Minister of Aliens Affairs believes that the Ministry of Foreign Affairs laid down his policy in a circular explaining to the personnel at diplomatic posts how to act in case a person would apply for asylum or a MVV with asylum purposes.[46] The only information about the assessment of the procedure entails a short description in the Dutch official journal of the government.[47]

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[43] Interview H. Nawijn, former Minister of Aliens Affairs and Integration (2002-2003), LPF, 3 November 2010.
[44] Kuijer & Steenbergen, 1999, p. 190.
[45] Interview anonymous, senior policy officer, Immigration and Naturalisation Service (IND), Rijswijk, 7 December 2010.
[46] Interview H. Nawijn, former Minister of Aliens Affairs and Integration (2002-2003), LPF, 3 November 2010.
[47] The *Staatscourant* is an official journal where in some (changes in) Acts, ministerial and kingdom decisions are published. *Staatscourant* of 9 September 2003, nr. 173/p.17, E-mail contact J. van der Zeeuw, head of department Asylum, Resettlement and Return at the Ministry of Foreign Affairs, September/October 2010.

The number of MVV "asylum" applications appears to be very low, although no statistical data could confirm this. Information on this procedure was scarcely made available to the public (mainly to prevent embassies from being overloaded with requests for MVV for asylum purposes, which would disrupt their other activities) and, due to political, practical and logistical difficulties, the possibility to apply for a MVV with asylum purposes was abolished by law in 2003. Since then, asylum seekers can only request protection outside the Dutch territory through either either resettlement or diplomatic asylum.

In the Netherlands **resettlement** is currently laid down in the Aliens Circular. Part A of this Circular, Article 6.2.112 contains a provision which gives invited refugees the possibility to be recognised as such and to be brought to the Netherlands on request of UNHCR . Part. C, Article 2.1.4. of this Circular states that the Netherlands, to support UNHCR, resettle a yearly quota of 500 refugees.

Another form of pre-entry protection mechanism that could be applied by the Dutch authorities, is **temporary protection**. This possibility is stated in the Aliens Act (art. 43a) and its application is mentioned in the Aliens Circular (c) 20 (1). It originates from the Council Directive 2001/55/EC[48]. The EU Council can decide that a group of persons should be offered temporary protection in the event of a mass influx of displaced people. The duration of temporary protection shall be one year. Until today, the option of temporary protection has not been used.

Another complementary form of access to the territory of a State[49] is that provided by **Article 7.1.5** of the **Dutch Aliens Circular** (A): **transporters** have the possibility to contact the Immigration and Naturalisation Service (IND) for permission to transport undocumented persons without no sanctions, when the alien states that his life is in immediate danger. This means that transporters in the country of origin or third countries could request the Dutch authorities to take an asylum seeker to the Netherlands if they believe he is in acute danger. In this case, the transporter will not receive any sanctions.[50] However, until present this provision has never been applied.

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[48] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing **the consequences there of**.

[49] Interview (questionnaire via email) S. Kok, former senior policy officer/strategic analyst VWN, 7 October 2010.

[50] Interview (questionnaire via email) S. Kok, former senior policy officer/strategic analyst VWN, 7 October 2010 and Vc (A) article 7.1.5, vreemdelingen met een vluchtrelaas.

IV.8 Spain

The Spanish Protected Entry Procedure was first established in 1984 with the adoption of the Law 5/1984 Regulating Refugee Status and the Right to Asylum. It has not been changed substantially since then until the adoption of the Asylum Law No. 12/2009 of the 30th October 2009[51].

An essential feature of the Spanish Protected Entry Procedure system is that it was **fully integrated into the ordinary asylum system,** in addition to the border procedure and to the in-country procedure. As a result, asylum claims lodged abroad were, as any other applications for asylum, processed by the asylum determination body, the OAR (Oficina de Asilo y Refugio, as a department of the "Ministerio de Justicia y Interior"). In this process, **representations abroad had a very limited, if any, power of discretion**, and the visa was issued after a decision on the asylum application had been taken. As the authorities considered that the obligation of Spain to grant protection did not include persons still in their own countries, **applications for asylum were only accepted in third countries.** It was not foreseen that applicants could be protected at representations abroad while their applications were under examination. However, the urgent transfer of the applicant to Spain could be authorised before a substantial decision had been taken, if his/her life and security were considered in danger. The applications lodged abroad were examined **without any requirement of having family or cultural links to Spain**. However, only applicants whose claims did fall under the criteria of the **Geneva Convention** could be granted protection, since the provisions for subsidiary protection laid down in the internal asylum legislation could be applied only to asylum seekers already present on the Spanish territory.

A person approaching the embassy with a request for protection has to be provided with **information on asylum translated into a language he/she understands**, as well as an asylum application form, which is identical to the one given to asylum seekers applying within Spain.

Spanish diplomatic and consular representations have no authority to decide on asylum applications which have to be forwarded to the Ministry of Foreign Affairs in Madrid. The Ministry has no other role than verifying that the files are complete before sending them to the OAR.

Once the instruction of the case is completed, the OAR forwards the file, together with an opinion on the case, to the Inter-ministerial Eligibility

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[51] Art. 4.4, Law 9/1994, of the 19th May 1994, modifying the law 5/1984, of 26th March 1984, Regulating the right of asylum and of the condition of refugees, and art. 4.1 Rules on the enforcement of the law 9/1994, of 19th May (modified by the Royal Decree 864/2001, of 20th July 2001; by the Royal Decree 865/2001, of 20th July 2001; by the Royal Decree 1325/2003, of 24th of October 2003 and by the Royal Decree 2393/2004,of 30th December 2004).

Commission on Asylum and Refuge (CIAR). The CIAR has the task of drawing up a proposal for the first instance decision, which is then submitted to the Minister of Interior for a formal ruling.

If the decision taken by the CIAR – formally by the Minister of Interior – is positive, the embassy receives instructions to issue the applicant a visa as refugee. **Negative decisions on asylum applications lodged abroad may be appealed under the same procedure as in-country claims**.

Persons applying for asylum at Spanish representations abroad are generally not allowed to travel to Spain before they are granted asylum. Exceptions may be made if the applicant is in a immediate risk situation, requiring an urgent transfer to Spain.

According to the **2009 asylum law**, the ordinary procedure deals only with applications filed within the Spanish territory and applications filed at border outposts[52], and the lodge of **asylum requests from abroad is ruled as an exceptional case**. If the applicant is not a national of the country where the diplomatic representation is located and his/her physical integrity is actually endangered, Ambassadors have the discretional power to authorise his/her transfer to Spain in order to file the application within the Spanish territory. Thus, the request at the diplomatic facility abroad can no longer be regarded as an asylum application but as an exceptional entry permit. **The formal application shall be filed later, once the asylum seeker enters the Spanish territory**[53]. The regulatory decree, that is still to be adopted, will rule the conditions of access to Embassies and Consulates, as well as the procedure to evaluate the grounds for the transfer.

The number of asylum seekers through diplomatic channels amounted to 22.49% out of the total requests in 2007 (total 7,664 applications). In 2008, the figure decreased down to 7.73% out of the total applications. In 2009 only 83 people sought asylum at embassies, less than 7%.

There have been ongoing discussions regarding the establishment of a resettlement program by the Spanish authorities, but so far this has not materialised. However, the Spanish Protected Entry Procedure can be seen, in some respects, as allowing for "individual resettlement" in Spain, since many cases are, in practice, channelled through UNHCR (not necessarily concerning refugees recognised under the UNHCR mandate). According to Article 4.2 of Royal Decree 203/1995, Spain indeed has the possibility, under the request of UNHCR, to urgently admit a mandate refugee, who is in a high-risk situation in a third country. UNHCR plays indeed an important role in cases where urgent transfers are needed. The Protected Entry Procedure

[52] Art. 20, Law 12/2009, of 30th October 2009, Regulating the right of Asylum and subsidiary protection.
[53] Art. 38, Law 12/2009.

allows also for a – very limited – number of cases to be processed in Spain[54] where UNHCR is not involved

In the past, Spain provided "protection by quotas" in order to offer a response to specific calls made by the UN High Commissioner in cases of extreme emergency. On this basis, 500 Cuban refugees arrived in Spain in the late 1980s, as well as around 1,000 Bosnians fleeing from the Balkan War in the 1990s.

IV.9 Switzerland

Switzerland has not formally adopted resettlement by law.

However, there have been provisions in the asylum legislation that enable granting asylum to groups of refugees upon a decision of the Federal Council (Swiss government). Already the 1979 Asylum Act included, at Article 22, the "admission of refugee groups". The Federal Council was supposed to decide upon the admission of "larger groups of refugees as well as groups of elderly, sick or handicapped refugees that had obtained refugee status in a third country". With "larger group" it is meant more than 100 persons. Smaller groups below this size could be admitted following a decision of the asylum authority.

The actual provisions are the Articles 56 and 57 of the 1998 Asylum law that read as follows:

"Asylum for groups"

Art. 56 Decision

1 A Federal Council decision is required for asylum to be granted to large groups of refugees. The Department shall decide in the case of smaller groups of refugees.

2 The Federal Office shall determine who belongs to such a group.

Art. 57 Allocation and initial integration

1 For the allocation of the refugees to the cantons, Article 27 applies.

2 The Confederation may in the interests of initial integration temporarily allocate groups of refugees to accommodation and, in particular house them in an initial integration centre.

These legal provisions have been used in the past to allow the relocation of refugee groups.

[54] See Noll, *cit.*, p. 147.

When the Swiss authorities have applied them they have always relied on UNHCR support when refugees were transferred to Switzerland. The terminology used is "quota refugees". The idea is to obtain refugee status and asylum in Switzerland as member of a group of individuals for whom a "quota of admission" has been decided without following the procedure. According to a judgement of 1999, only the (then) Federal Office for Refugees (FOR) was supposed to admit an individual into the refugee quota which resulted in a direct granting of asylum without the necessity of an individual proceeding. Usually the selection was based on a list of refugees already screened and approved by UNHCR.

In Switzerland all actions under Article 56 of the Asylum Act are considered as a form of resettlement, even if, in more technical terms, they might rather be *ad hoc* humanitarian evacuations. Between 1950 and 1995 Switzerland participated in UNHCR-led resettlement and evacuation programmes and accepted refugees from Hungary, Tibet, Indochina, Chile, Uganda or former Yugoslavia. Particularly in 1993 and 1994 refugees from Ethiopia, Sudan, Tunisia, Somalia, Iraq and Iran were among the beneficiaries. Larger humanitarian evacuations took place during the war in Bosnia and Herzegovina. Switzerland admitted larger groups of up to 2500 individuals per year in order to evacuate refugees from camps in Bosnia and Croatia.

This activity stopped due to the mass influx of refugees in the course of the civil wars in the Balkans. As for 1995 the policy became more and more restrictive and larger actions under Article 56 of the Asylum Act were officially suspended in 1998, meaning that the possibility of granting of asylum to a larger group was not applied in practice. The suspension was confirmed in 2004, due to financial reasons. Consequently, since then, Switzerland has not participated formally in UNHCR resettlement and evacuation programmes.

Even after interrupting the policy of "quota refugees", the Swiss authorities have sporadically admitted small groups of refugees. Since 2005 UNHCR addressed the Swiss authorities to grant protection for certain individuals. In 2009, the then Minister of Justice decided to grant asylum to a group of 30 refugees from different countries. The process was very confidential and not publicly discussed. UNHCR dealt with it in a diplomatic manner. In some exceptional cases the practice became public, for example the resettlement of ten refugees from Uzbekistan (Andijan-massacre) to Switzerland in 2005. There is no information on the nationality of the refugees but according to UNHCR it is «in line with the EU-resettlement policy».

For the time being, Switzerland is not issuing Visa with Limited Territorial Validity for protection reasons. Such applications are still processed in the Swiss out-of-country asylum procedure.

Currently only the Swiss legislation foresees a Protected Entry Procedure.

The Swiss asylum law[55] provides a formal Protected Entry Procedure (PEP). This procedure of asylum application from abroad has been included into the Swiss asylum law in 1979. Even if the asylum law has been revised on several occasions since then, the so called "Embassy Procedure" has been maintained through the years as a ***complementary option*** and the procedure to apply for asylum from abroad has not been changed so far. However, in 2009, a revision proposal for the Asylum Act presented by the Federal Council proposed the abolishment of the Swiss PEP. The Parliament is currently discussing this option.

An Asylum application can be filed at any Swiss diplomatic representation abroad, ***either in the country of origin or a third country*** (Art. 20 Swiss Asylum Act).

Consular officials of the Swiss diplomatic representation are supposed to conduct an interview[56] with the asylum seeker, assisted by an interpreter if necessary, and to draft a written record on the hearing (Art. 10 Para. 1 Regulation No. 1 on Asylum Procedure). Furthermore, the representation takes the fingerprints of the applicant and sends them to the Federal Office for Migration (FOM). The Swiss representation abroad shall transmit the records of the interview, the written asylum application, any other useful documentation, as well as a complementary report with the opinion of the representation on the asylum claim to the FOM in Berne.

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[55] The Swiss PEP is a formalized procedure laid down in Articles 19 para. 1 and 20 of the Swiss Asylum Act of 1998 (2011). Complementary provisions are included in the Regulation No. 1 on Asylum Procedures of 11 August 1999, (Asylverordung 1 zum Verfahren (AsylV 1), Ordonnance 1 sur l'asile relative à la procédure (OA 1), as well as in Instruction No. III issued by the Federal Office for Migration on Asylum of 1 January 2008, status of 12 December 2008 (III. Asylbereich Weisung, III. Domaine de l'Asile.

[56] In exceptional cases, it may be decided to skip the personal interview. This decision has to be notified to the Federal Office for Migration and an explanation why the interview did not take place has to be given [See published (leading) Judgment of the Federal Administrative Tribunal FAT, BVGE 2007/30, see also BVGE 28 May 2008 (E-6678/2007), http://links.weblaw.ch/BVGer-E-6148/2006]. According to the Federal Administrative Tribunal (Second Instance), the interview is the rule and might be skipped only because of organizational reasons; lack of capacity of the embassy, special circumstances in the country or for personal reasons put forward by the asylum seeker [Decision of the FAT, FN 6, sections 5.2-5.3 of the judgment]. If it is not possible to conduct the interview for the reasons given above, the asylum seeker will be informed on his/her duty to cooperate and asked to answer to individualized questions on the claim in writing. Likewise, an asylum seeker will be asked to submit the claim in writing if s/he cannot reach the embassy.

In practice, many embassies ask the applicants to complete a questionnaire in writing instead of conducting an interview[57].

The **entry will be authorized if the asylum seeker cannot reasonably be expected to remain in his/her country of residence or host country or to travel to another country**. The travel authorization is given if the FOM consents to clarify the merits and facts of the case. Even if it is obvious that the person is very likely to qualify for refugee status, the decision is taken only with regard to the entry permission. However, **a visa will be issued «with regard to the granting of refugee status»**. According to the Swiss practice, Switzerland can only grant refugee status to persons already present on the Swiss soil[58]. **In an emergency situation if there is a current and acute danger for life, limb and freedom of a person, the Swiss representation is authorized to decide by itself on granting a/n travel/entry-permit**[59].

The Swiss practice on granting entry permits is **restrictive**[60]. Following a leading case of the former Asylum Appeals Commission several conditions have to be fulfilled:

- only the person fearing persecution under 1951 Geneva Convention will qualify for an entry visa for the asylum procedure.
- additionally, « all relevant circumstances are leading to the conclusion that it has to be Switzerland that should grant protection ». This definition is considering the following facts:
  - a close relation to Switzerland, manifested through previous legal residence, strong family-ties or close relatives present in Switzerland. In practice, family links are considered if the family-nucleus is concerned (spouses, minor children, parents);
  - the applicant has no possibility to obtain protection by another State. It has to be factually impossible and also objectively not reasonable for the applicant to seek protection elsewhere[61].

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[57] According to FAT, BGVE 2007/30, this practice is approved in case that the consular staff at the embassy cannot interview the asylum seekers due to lack of staff capacity. In practice, many applicants would need assistance for answering the questions. There is no scheme for assistance at the embassies. If asylum seekers have relatives already in Switzerland those might contact a legal aid office in Switzerland and their staff might assist in filing the request. As the resources of the legal aid offices are scarce and in principle concentrate on asylum seekers already in Switzerland, there is no guarantee that the claim will be duly filed.

[58] Published judgment oft he former Asylum Appeals Commission (merged in 2007 into the Federal Administrative Tribunal, FAT), EMARK 1997/15.

[59] Art. 20 Abs. 3 Swiss Asylum Act.

[60] EMARK 1997/15; also FAT, judgment of 30 May 2008 (E-2745/2008).

[61] Published judgment of the former Asylum Appeals Commission (merged in 2007 into the Federal Administrative Tribunal, FAT), EMARK 2004/20.

RELEVANT JURISPRUDENCE: in two very recent judgments[62] the Federal Administrative Tribunal (FAT) has ruled that if a person has a well founded fear of acute persecution, s/he cannot be addressed to seek protection elsewhere if s/he has already contacted the Swiss representation – even if hypothetically s/he might go to another country. In one case, the court decided that a Turkish journalist was allowed to travel to Switzerland. Although she did not have family links to Switzerland, the court decided that she had to leave the country immediately since she was under a pending political court trial. The Federal Office for Migration had suggested her to flee to Croatia, but the Court stated that she had no links to Croatia and it was therefore not reasonable for her to seek protection there. These fairly recent judgments illustrate that the close-link is not a *conditio sine qua non* for granting an entry-permit. As the Court stated rightly, such narrow application practice could in fact deny the possibility to file an application at a Swiss representation to all cases who do not have a link to Switzerland, reducing the scope of application only to cases of family reunion[63]. This however was not the intention of the law.

In practice an entry permit will not be issued if a person is already in a third country and the Federal Office for Migration considers this place sufficiently safe to protect the applicant. This is often the case if a person has already been granted some kind of protection by UNHCR or has been already qualified as refugee by UNHCR or another local authority of the third country. Such claims will most likely be rejected – except if the applicant has strong family ties in Switzerland.

RIGHT TO APPEAL: In case the application is rejected, the denial of the entry permit implies a concurrent rejection of the asylum application. According to Article 10 of the Regulation No. 1 on Asylum Procedure, the applicant should be heard on the content of this decision. S/he should be invited to another interview with the consular staff, explaining the decision and the reasons for the rejection. This practice is based on the constitutional principle of the right to a hearing[64].

An appeal (in German, Italian or French, Article 16 Asylum Law[65]) may be lodged against such a refusal. The appeal shall be submitted to the Federal

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[62] FAT, judgment of 17 December 2010, D-7961/2010 and judgment of 13 December 2010, D-7961/2010, section 5.3–6.

[63] See also EMARK 2005 Nr. 19; Judgment D-8253/2010, p. 9.

[64] FAT, judgment of 24 May 2007 (E 4775/2006) Section 6.2.

[65] According to the experience of OSAR, it is vey difficult to write an appeal without the help of a lawyer in one of the three languages. OSAR estimates that most appeals are handed in with the help from relatives in Switzerland and legal aid lawyers contacted by them. There is however no data available on this.

Administrative Tribunal within 30 days after the applicant was notified the rejection of the application, and the Swiss Appeal Commission will decide.

In case of a positive outcome of the procedure, the entry permit will be issued by the FOM. If the applicant has no travel document the FOM will issue a «*laissez-passer*».

Normally asylum seekers have to pay for their travel expenses. However, if they lack the necessary funds – especially in cases of family reunification to persons with refugee status in Switzerland – the FOM will cover the expenses upon request. In practice, though, if the person has strong family links to Switzerland, the FOM will not consider such person impecunious[66].

ACTORS INVOLVED:

- Swiss diplomatic representations abroad: receive asylum seekers, interview them, reporting to the Federal Office for Migration. If the case is accepted, diplomatic staff issues an entry visa to the asylum seeker;
- Federal Office for Migration: receives the report and the protocol of the embassy staff, decides on the request;
- IOM: facilitates travel to Switzerland if the entry is permitted;
- Legal Aid Offices in Switzerland: assist in filing the request, appeal against a refusal, mostly upon request by relatives already residing in Switzerland.

Tab. 3 – Applications filed from abroad, entry permission granted and cases pending. Statistical data 2000-2011

Year	*Applications filed from abroad*	*Entry-permissions granted*	*Cases pending at the end of the year*
2000	665	No data	No data
2007	2,631	218	No data
2008	2,676	136	1,832
2009	3,820	233	2,275
2010	3,963	185	6,235
2011	6,312	653	6,496

Source: Federal Office for Migration[67]

[66] Instruction No. III issued by the Federal Office for Migration on Asylum of 1 January 2008, status of 12 December 2008, no. 1.1.2.6.

[67] http://www.bfm.admin.ch/content/dam/data/migration/statistik/asylstatistik/jahr/2011/stat-jahr-2011-kommentar-d.pdf.

ONGOING DEBATE ON REFORM PROPOSALS OF ASYLUM LEGISLATION: the Swiss government has proposed a package of reform proposals to amend the asylum and aliens legislation. The main amendments concern the abolition of the current PEP and the introduction of a new visa for humanitarian purposes.

According to the Government, in particular to the Federal Office for Migration and the Foreign Department, the fact that Switzerland is the only European country providing a pre-entry asylum procedure causes an enormous caseload that has a negative impact on the productivity of the Office and binds too many resources. As a result the authorities are not able to deal with such a high number of applications with the consequence that the persons in real need of protection cannot be treated adequately.

Being Switzerland one of the most important destination countries for asylum seekers spontaneously arriving in Europe, the Federal Council proposes to abolish the current out-of-country asylum procedure which obliges the authorities to examine all claims even the ones that will not be successful at first sight, and binds resources of the Federal Office for Migration. The Federal Council proposes to introduce the facilitated granting of a humanitarian visa according to Art. 2 para. 4 of the Directive on Entry and Visa, Verordnung über die Einreise und die Visumerteilung, VEV, SR 142.204[68] for those persons under direct and serious threat of persecution. In fact this proposal would mean to replace the formal PEP with a visa procedure issuing a **Visa with Limited Territorial Validity** for humanitarian reasons. The new system will not automatically lead to a full-fledged asylum procedure and according to the Government will minimize the administrative workload.

During the parliamentary debate that started in December 2011, the authorities pointed out that aside to the Swiss PEP, Article 56 of the Swiss Asylum law offers the possibility of accepting groups of refugees in the framework of a resettlement scheme. With this mechanism, Switzerland can maintain its humanitarian tradition.

The Minister of Justice in charge, argues that PEP is beneficial to both vulnerable people who could access to protection at an earlier stage as well as to Switzerland, considering that the applications are processed in the region of origin before the persons are allowed to travel and enter the territory.

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[68] The relevant provision reads as follows (unofficial translation by S.B): The Federal Office for Migration is allowed to permit an entry visa for a limited stay of maximum three months for humanitarian reasons or to secure national interests or international obligations (Art. 5 para. 4 lit. c of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visa (Visa Code) and Art. 25 of Regulation (EC) No 810/2009 of the EP and of the Council of 13 July 2009 establishing a Community Code on Visas.

She pointed out, however, that the Federal Council is doubting the efficiency of this procedure on the basis of which thousands of applications have to be processed – binding a lot of resources – when considering that (at the end) only very few people would obtain an entry permit. Would it not make more sense to revive the tradition of accepting contingents of refugees (through resettlement) instead? This protection mechanism, although practiced in the past but not applied recently, could offer a real alternative for the most vulnerable refugees who could arrive directly in Switzerland and be integrated without undergoing a full procedure beforehand. She reported her experiences when meeting the immigration Minister of Kenya facing a massive influx of refugees – 1.500 persons arriving each day, ending up in camps hosting 500.000 persons. She emphasized that resettlement is the right instrument to protect such persons and the issuance of a protection visa for individual cases would be a valid replacement of the current PEP.

The Socialist party as well as the Greens and the Swiss Peoples Party voted against the above mentioned reform proposals with diverging arguments: the representatives of the Swiss Peoples Party and the Liberals consider the current procedure as a positive system, admitting moderate numbers of asylum seekers to Switzerland since the triage is made while they are still present in their region of origin and they will most likely remain there.

Another representative of the Socialist Party underlined the benefits of the current PEP, as a system offering a legal and safe entry to the most vulnerable and less "mobile" asylum seekers such as women, children, and the elderly before they travel to Switzerland. On the other hand, Switzerland can save funds through the existing selection mechanism that leads to a reduction of the number of spontaneous arrivals. The abolishment of PEP will not help accelerating the procedure. Switzerland could become a model for other countries. This procedure is to be considered also as a mean of showing solidarity with the regions of conflict hosting large refugee populations. The proposed visa-regulation cannot be considered as an equivalent of PEP: being more exceptional in nature, it will necessarily lead to a more restrictive practice.

Kurdish activist, entering Switzerland via the protected entry procedure in Ankara

I am a Kurdish woman from Turkey. I am a political activist. I was fighting for the freedom of the Kurdish people. That is why I was under great pressure by the State.

When my husband died, his family wanted me to marry his brother in order to maintain the honour of the family. SinceI already had problems with the authorities, I could not address to them for protection against my husband's family. Moreover the family did not want to protect me any longer as I refused to marry my brother in law.

The embassy procedure represented the only way to leave my country legally. To leave illegally is very risky, especially for a single woman like me. You could be separated from the group travelling with you during the journey, something could happen to you during the flight. You could become sick or get killed. Or you could be abused in any way or forced to prostitution. A single woman is very vulnerable and unable to defend herself in such situations.

Without the entry visa I obtained after the embassy procedure I would have been forced to hire a trafficker. This is very expensive. I would have been in the hand of this person completely, a very dangerous way of travelling.

However, I need to add that in Turkey the Police does regular controls in front of the foreign embassies. If you address to the Swiss embassy to ask for asylum or to be interviewed it can be risky. But this risk is smaller compared to the dangers of an illegal flight from Turkey to Switzerland.

Case reported by the Legal Aid Office for Asylum in Berne, Switzerland

V. THE WAY FORWARD: EXPLORING THE POTENTIAL OF COMPLEMENTARY FORMS OF ACCESS TO PROTECTION IN THE EU FRAMEWORK

V.1 Introductory remarks

The summary of the views expressed by 140 stakeholders interviewed in nine EU Member States and in Brussels, as well as in national workshops and the European Conference in September 2011 does not claim to be representative nor does reflect the official positions of Governments, European Institutions or political parties.

However, the opinions and the suggestions expressed by a broad variety of very different actors in public life in Europe provide most useful indications on the perceptions these actors have of the problem and on the way to go forward.

In general the interviews revealed a relatively poor level of knowledge of the policy debate in the EU promoted in particular by the European Commission, but also by ECRE and individual NGOs over the last 10 years.

The interviews, along with the other activities under the project, served to raise awareness among stakeholders and to stimulate the discussion at national and European levels.

V.2 Re-thinking the present system

Most of the persons interviewed expressed their **concern over the current state of lacking access to protection in the European Union**. Considering the number of deaths and the very high risks protection seekers are facing every day, a wide consensus was expressed over **the necessity of a rethink of the present European asylum system**, as the EU legislation does not envisage the possibility to access protection in Europe from abroad.

The more and more restrictive visa policies, the strengthening of controls at EU external borders, carrier sanctions, the deployment of Immigration Liaison Officers (ILOs) and Airport Liaison Officers (ALOs), the financial and logistical support to governments of third countries as well as the provision of "incentives" for the strengthening of control and surveillance systems, and the indiscriminate pushing back of migrants and protection seekers to countries of origin or of transit are all factors in fact restrictively affecting the right to seek asylum. As a consequence, protection seekers do not see other choice than turning to smugglers for transport by land, sea or air. Consequently smuggling organizations use new routes that are more dangerous and more costly. It should also be considered that most people trying to reach Europe are usually subject to grave human rights violations and exploitation during their route to Europe, in particular in transit countries and/or those territories such as the high seas, where State jurisdiction is *de facto* very limited.

As a consequence of the above-depicted scenario, all the stakeholders interviewed agree on the necessity of a re-examination of the current asylum system, also in the light of the Charter of Fundamental Rights of the EU, affirming the right to asylum[69]. In particular persons should be able to access asylum through as many routes as possible.

In this context all the stakeholders interviewed stressed that safety and dignity of persons should be the primary concern and that protected entry mechanisms should not replace the current means of access.

Other stakeholders explicitly mentioned the possibility to introduce off-shore protection mechanisms[70]. However, in relation to these mechanisms some stakeholders of some Member States explicitly mentioned PEPs as an

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[69] *Charter of Fundamental Rights of the European Union* (2000/C 364/01), Art. 18: «The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community».

[70] In Italy Representatives of the Radical Party and of the Democratic Party, in particular, were very keen of the introduction of off-shore protection mechanisms. They however underlined the necessity to deepen knowledge about these procedures and to adopt clear guidelines, specific legislation and procedures, and an effective monitoring system.

alternative that does not receive any political or public attention.

V.3 Promoters of change: EU or Member States?

Most interviewees believe that PEPs should be promoted at European level in order to facilitate managed and orderly arrival of protection seekers. However, it has been underlined by some stakeholders that Member States are not willing to adopt such measures and that asylum issues are not a priority for European Governments currently facing economic crisis and major security problems.

Most stakeholders consider cooperation and burden sharing between EU Member States on this subject as preliminary conditions for the introduction of complementary forms of access to asylum procedures.

An EU wide approach would increase the effectiveness and scale of the current asylum system and would at the same time address the concern, expressed by a number of stakeholders, that individual schemes might result in a disproportionate burden for single Member States.

Few stakeholders think that complementary forms of access to protection at EU level is not likely to be introduced while a simple information exchange and practical cooperation between Member States (MS) on their existing practices could definitely work, as it is low profile and does not require much political will.

In this frame it was also mentioned that these measures should take specificities of single Member States into account and that there should be flexibility in their implementation and consistency with the principles of the subsidiarity[71].

In relation to the organs of the EU that should be involved in this process some stakeholders suggested that the **European Commission should play a stronger role, particularly through the new European Asylum Support Office (EASO).** The EASO could facilitate the exchange of information between MS on their existing practices and lessons learned, and provide a monitoring service. It was also suggested that the Fundamental Rights Agency (FRA) should have a role in the monitoring activities.

Other stakeholders consider that the European Parliament should be primarily involved in the process of adopting a Resolution on the subject. The Parliament could play a key role in urging Member States and the Council to debate on a Commission proposal regarding a specific legal instrument.

[71] This concern was expressed by stakeholders in Cyprus.

V.4 Instruments of change

All interviewees believe that **Resettlement** is one of the best complementary mechanism that offers protection to the most vulnerable persons. Often these are the ones who stay in hopeless situations in refugee camps and/or usually cannot travel to the EU to apply for asylum in one of its MS.

Respondents, especially those in countries where this instrument is foreseen by law, believe that all Member States should introduce resettlement in their legislations on the basis of annual, balanced quota. Some stakeholders underline that the States having low quotas should raise them.

Concerns were raised regarding the resettlement system based on a selection of quota refugees made by States, considering that this instrument is institutionally oriented.

All stakeholders underlined that **Humanitarian Evacuation Operations** have proved in the past to be a fundamental protection tool to be activated also in large-scale influx of persons at high risk for their lives. Some respondents underlined the necessity to establish common rules in case its adoption would take place at EU level.

Most stakeholders are in favour of a **Flexible Use of the Visa Regime**, as well as of the introduction of a **Schengen Asylum Visa**. In fact, broadening the existing system by including asylum among the grounds for a Schengen visa could be considered as the most viable solution.

A necessary precondition for the introduction of a **protection visa** in the Schengen scheme is to reach a multilateral political consensus on this issue, which is currently lacking. The achievement of a consensus among EU Member States on a revision of the Schengen Visa system is actually unrealistic. This scepticism is due to the consideration of the difficult and lengthy discussions among States that characterised the adoption of Regulation (EC) No 810/2009 of the EP and of the Council of 13 July 2009 establishing a Community Code on Visas[72].

Looking to the current visa regime some stakeholders underline that an enlarged use of Visa with Limited Territorial Validity would be welcome. However a definition of this mechanism is still lacking. It was emphasized that if on one side Member States could issue such visas in a flexible way, on the other it would be appropriate to regulate this mechanism, in order to avoid too much discretionary power of Member States.

[72] Concerns raised by Italian institutional stakeholders.

V.4.1 A focus on protected entry procedures

During the European Conference *"Exploring Avenues for Protected Entry in Europe"*[73] a debate was carried on in relation to the **legal basis** of Protected Entry Procedures both in international and EU law.

It was generally accepted that PEPs under certain circumstances, may engage obligations of States under refugee and human rights law.

In particular, some participants argued that when a person at risk presents herself/himself at a diplomatic representation of a Member State and files a claim for international protection that country would be required to accept the request if its denial would be tantamount to violation of fundamental human rights. This conclusion flows from existing positive obligations by State parties to the European Charter of Human Rights and Fundamental Freedoms (ECHR), or the Convention on the Rights of the Child (CRC), or both, to avert the risk of torture or other forms of ill-treatment. In particular, Articles 1 and 3 ECHR and Articles 22.1 and 37 CRC are at issue here.

According to the long-standing case-law of the European Court of Human Rights (ECtHR), activities of diplomatic agents may be considered as an exercise of jurisdiction under Article 1 ECHR, triggering the obligations to guarantee rights such as the prohibition of torture and other forms of ill-treatment in Article 3.

With regard to **the introduction of PEPs**, reactions of interviewees vary. While in principle stakeholders were positive on the idea of helping refugees to reach Europe legally so that they are not obliged to rely on human smugglers, when thinking about the practical and legal aspects of such a mechanism and its complications, they were mostly hesitant.

Respondents (particularly NGOs) are in favour of the introduction of off-shore protection mechanisms as long as they do not negatively affect spontaneous asylum seekers from the possibility of entry in the EU territory. The stakeholders who in general terms were in favour of PEPs doubted the existence of the political willingness to introduce them. In particular it was underlined that if Member States were concretely oriented towards the establishment of such mechanisms, they would have already done it within the "Procedures Directive "[74].

Many stakeholders raised concerns in relation to the fact that PEPs could have a pull factor increasing the number of asylum applications. In relation to this, States also suggested that diplomatic staff already facing difficulties to cope with their ordinary activities, would be further overburdened. In addition to this, the caseload would slow down the whole system with the potential

[73] The Conference was held in Brussels on 19 September 2011.
[74] This circumstance was underlined by Italian institutional stakeholders.

consequence that cases of persons in real need of protection cannot be adequately treated.

Some stakeholders, in order to avoid the pull factor effect, proposed to establish *ad hoc* PEPs that could be politically activated when a special need arises.

Others expressed concerns in relation to the procedural fairness of PEPs and to the fact that a failure to access PEPs could be used in the territorial procedure as a reason to deny an asylum seeker access to the ordinary procedure and/or to negatively influence the genuineness of the claim.

V.4.2 Eligibility criteria

There is broad agreement on the idea that **PEPs should cater for both Convention refugees and beneficiaries of subsidiary protection**, in line with EU directives on asylum.

Some stakeholders suggested that PEPs could also apply to beneficiaries of humanitarian forms of protection. Others referred to environmentally displaced persons, others to trafficked persons.

Some stakeholders opposed this proposition because they believe that broadening the ambit of protection inevitably implies allowing access to a greater number of persons, being counter-productive to the objectives set by the EU immigration policy.

All stakeholders believe that *in primis* security and protection criteria should be applied. In second instance other criteria may be established, in particular those referring to vulnerability of the persons (torture victims, minors, etc.), and to family links. In this regard, some stakeholders underlined that the existing rules on family reunification should be applied in a wider and more flexible way. Therefore family links should be taken into consideration within PEPs only when family members are unable to meet reunification criteria.

Other stakeholders expressed their fear that family links in practice could prevail on immediate protection criteria: in this case asylum applications from asylum seekers not having any family linkscould be taken into no consideration.

Some stakeholders expressed their concerns in relation to the risk that language requirements and /or specific links to a given country as a criteria could overburden some States.

Concerns were also raised regarding the integration potential as a criterion for eligibility, since it could overshadow the protection element and even lead to a “brain-drain” effect.

Most stakeholders agree that **protection seekers should be able to file**

their application in both country of origin and third country.

According to some stakeholders, PEPs should be initially established in those regions where there is an urgent need to ensure humanitarian response and from where most asylum seekers flee to reach Europe. At a later stage PEPs could be introduced in third countries and in countries of origin on the basis of the experiences acquired.

Some stakeholders highlighted the risk related to the possibility of filing an application in the country of origin where Embassies are under the risk of being controlled by secret services: it would be difficult, if not impossible, for asylum seekers and family members to approach the asylum office at the consular offices and walk out without risking any repercussions. In this case also diplomatic staff could face the risk of being blackmailed and threatened.

V.4.3 Decision making

Most stakeholders believe that any decision should be taken by the central authorities competent for the examination of territorial asylum requests in Member States .

Embassies/consulates should play an **intermediary role** between protection seekers and national asylum authorities.

Only few stakeholders stated that, in order to strive for coherence within the PEP system, the role of embassies should be enhanced, e.g. recognizing them a first instance decisional role on asylum claims.

Independently from the degree of involvement of the consulates/embassies staff, stakeholders agree on the importance to allocate adequate financial and human resources and to properly train the consular staff.

Some stakeholders suggest that, as it already happens with the Visa regime, some activities related to off-shore protection mechanisms could be outsourced to specialized asylum bodies, in particular UNHCR and independent specialized international or national organizations. However, concerns were raised on the risk that intermediaries would be open to corruption and that security could not be guaranteed (e.g. their premises do not enjoy diplomatic inviolability as embassies do).

The feasibility of on line procedures should be explored.

V.4.4 Rights of asylum seekers during the protected entry procedures

All stakeholders stress the importance of having a clear legal framework on legal procedural guarantees, asylum seekers' rights and a transparent monitoring system.

Procedural rights of protection seekers should be as far as possible equal to those foreseen in the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

In particular, these are the main issues pointed out:

- **Right of information** (clear and accessible) on PEPs should be ensured in the widest possible way, in order to provide all protection seekers with an effective chance to benefit from these complementary forms of protection.
- To ensure **access to embassies** for the purpose of submitting PEPs claims. Taking into consideration security concerns, the possibility for applicants to file their applications via post or email could be explored. Phone/Skype interviews could also be envisaged.
- The **time scale** within which PEPs decisions would be taken should be kept within rational proportions.
- **Legal assistance and representation** should be provided to effectively fill in applications, either by specifically trained diplomatic or consular officers or by accredited International Organizations (IOs) and NGOs.
- **Qualified translation/interpretation services** should be available or the option of running the procedure in the language of the applicant be provided.
- **The potential involvement of non state actors in the PEP procedure** in particular of international and non-governmental organisations. These could play a key role in pre-screening procedures, interviewing candidates, providing legal and other assistance, monitoring the good functioning of PEPs.
- **Effective remedies**. Asylum seekers should have the possibility to lodge an appeal against the decision taken on their claims.
- **Financial/logistical assistance** should be envisaged for those receiving a positive answer to their applications with sufficient resources and identity or travel documents to reach Europe.

V.4.5 Legal Instruments

A number of stakeholders suggested that in a first stage Common Guidelines at EU level could be issued in order to harmonize national mechanisms for protected entry procedures.

Practical cooperation between representations of Member States could be promoted through Common Consular Instructions.

In prevision of a further step which would include the adoption of a EU binding instrument stakeholders were divided regarding the proposal of a Directive or of a Regulation. The fear was expressed that a Directive might

leave too much margin of discretion to States leading to heterogeneous implementation.

Pros and cons related to the introduction of pre-entry protection mechanisms from the perspective of States and protection seekers - Views of the stakeholders

Perspective of States

Pros

- States could organise managed and orderly arrivals through *ad hoc* assistance and integration programmes: this would prevent emergencies and have a better control on procedures; this would also reduce efforts and resources in border control activities and the number of undocumented migrants arriving in the EU; if applicants, notwithstanding their previous rejection in the framework of PEPs, irregularly arrive in a country and apply for asylum, they could be admitted to accelerated asylum procedures;
- PEPs would deter the business of smuggling and trafficking networks and contribute to the fight against transnational organized crime;
- PEPs would facilitate the process of verifying information on the county of origin and the identity of a person, especially if he/she comes with a trusted source; a better knowledge of Country of Origin (COI) and an effective early-warning system;
- The costs which are involved with PEPs could be lower than those employed in national asylum procedures; this could be attained especially if these procedures are conducted under multilateral agreements, which imply a burden sharing of costs and responsibilities;
- Off-shore protection mechanisms together with **fingerprints procedures *in loco***, would allow States to filter applicants (e.g. persons considered as a threat to national security and public order) before their entry in their territories and to avoid their compulsory repatriation; there could be a reduction of costs related to compulsory repatriation for rejected applicants and *tout court* migrants; PEPs could reduce the number of persons notified with an expulsion order which cannot be enforced and therefore, of irregular migrants;
- Preventive protection of the territory of the Union against illegal entries would reinforce a proactive approach to preserve a space of freedom, security and justice. The EU would therefore have a great interest in developing PEPs to enhance security for its citizens and those entering its borders;
- The number of "Dublin cases"[75] would be reduced considering that protection

[75] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

seekers may from the outset choose the country where to request asylum, and secondary movements would occur very rarely;

- If the system would lead to particular high numbers of asylum seekers in individual Members States, internal relocation mechanisms could be applied, under the principle of responsibility sharing.

Cons

- States are unable to predict the caseload to be expected, being PEPs a system not based on quota. States could face unexpected high costs; increased possibility to legally enter in the EU would lead to a higher use of the asylum mechanisms instead of migration instruments;
- States are afraid of the unequal distribution of asylum requests among them; the geographical location could be a con, if it would result in an unfair distribution of refugees and burden;
- Embassies could become overburdened and lack the necessary capacity and resources;
- PEPs would require the availability of highly qualified state officials, able to correctly interview asylum seekers and to take first instance decisions on asylum applications, considering that most diplomatic personnel currently lack the necessary expertise to determine whether a certain person deserves protection or not;
- It would be very expensive to engage interpreters and cultural mediators in the whole procedure. Expenses could be reduced if interpreters are recruited locally since the wage would be lower;
- Some debate is required on what kind of subsistence would be provided and by which country;
- Third countries could be unable to organise reception facilities;
- The alleged pull-factor of PEPs would have an enormous impact on third States wherein diplomatic posts are located. The reception of a large quantity of asylum seekers is extremely expensive, logistically difficult and it could provoke social tensions or conflicts between citizens of third countries and foreigners;
- PEPs raise the legal question on the responsibility to eventually return rejected asylum seekers from the third country to their countries of origin;
- If PEPs would be adopted by EU Member State(s), third Countries could eventually stop making efforts to improve their asylum systems and their level of protection of refugees. For the countries signatory to the 1951 Convention the question will also be raised as to why not seek asylum in third countries rather than in Europe through the Embassy;
- States may face public disfavour for participating in mechanisms facilitating the access of migrants to a European country. This might be a factor which could deter political parties to engage in these schemes.

Perspective of protection seekers

Pros

- Asylum seekers could benefit from protection at the earliest possible stage .
- Asylum seekers (and especially the most vulnerable) would not have to undertake dangerous journeys and would not be obliged to turn to human smugglers and traffickers; therefore they would not spend huge amounts of money often indebting entire families/clan/communities.
- Asylum seekers without economic resources could have the opportunity to apply for asylum directly from their country of origin or third countries without moving from one country to another.
- Protection seekers would have the possibility to choose a country where they could have greater chances of protection and integration, also considering that family ties, the existence of diasporas, or a common language may play an important role for the successful establishment of a new life in exile.
- Asylum seekers would have a better knowledge of the asylum process and of the destination country before their transfer; this would also favour a better integration of the persons concerned.
- PEPs could reduce the risk of *refoulment* .
- Asylum seekers would probably be in a better psychological position to travel and integrate in European countries if they had already been recognized the right to legally access and/or stay in those countries.
- Protection seekers would not be detained upon arrival in the host country. Documented asylum seekers would have better chances to be granted with protection, taking into account that in some countries being undocumented decreases the credibility of asylum seekers (Dutch law in particular emphasizes the importance of having documents).
- Asylum seekers would be keen to use PEPs as long as the procedure is uniform, accessible, simple and short, in order to avoid discrimination and exclusion from protection and being exposed to dangerous situations.
- Asylum seekers would be in the position to be reunited with their family members, avoiding the more lengthy family reunification procedure that often leads to irregular movements.
- Legal entry of asylum seekers would improve the solidarity of the public opinion towards them.

Cons

- PEPs could lead to stricter border controls in transit countries as well as in the EU.
- The risk of large caseload could have a negative impact on guarantees of individual assessment on the basis of high quality standards.

- PEPs would probably invoke unequal procedural rights and/or an unequal treatment of asylum seekers, mainly referring to the procedural rights as those laid down in the European Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status as well as those of the Reception Directive 2003/9/EC; would the asylum seeker have sufficient legal aid, interpretation and translation, would there be a remedy mechanism to challenge a negative decision at the embassy?
- Asylum seekers might be not provided with legal assistance during the administrative phases of their application for asylum, and in case of appeal procedures.
- PEPs could be affected by the lack of a independent monitoring system.
- Rejected asylum requests under PEPs could lead to justify the non admission of an asylum seeker to the territorial procedure or have a negative impact on the genuineness of his/her claim.
- Access to PEPs could be limited by the absence of diplomatic posts in some countries, or in the case of a civil war, by the closure of embassies.
- PEPs could be exposed to corruption of the local personnel of embassies; a person truly persecuted could be at high risk in case interpreters or local guards working at the embassies are paid by the suppressing political system as informants.

VI. Conclusions and Recommendations

There is a common feature in almost all the 140 interviews with the stakeholders carried out within the project: the problem of access to protection is evident but the political will to change the scenario appears, in present times, rather doubtful.

The overriding recommendation is therefore a **step by step approach**. Such an approach is in line with what has been experienced over the last 20 years regarding the evolution of the common European refugee policies: from the intergovernmental cooperation under the Third Pillar of the Maastricht Treaty to an initial step of EU legislative competence under the Amsterdam Treaty, however governed by rules different from the ordinary community procedures for law making (no co-decision by the EP; no judicial competences of the ECJ etc.). Only after 2004, asylum became fully incorporated under the First Pillar.

And there has been also a step-by-step development regarding the substance of common refugee policies: from the notion of harmonization of laws and practices in the different Member States to the establishment of minimum conditions, and further, to a Common European Asylum System.

EU policies on asylum during the whole process were influenced by the experiences made previously in individual Member States and their national legislations, and ideally based on best practices in some countries.

This is true in particular with regard to the introduction, after a long process, of subsidiary protection into the Qualification Directive[76], based on notions like "B status", "de facto refugees" and "humanitarian protection" in a number of Member States.

It is therefore proposed to envisage measures regarding complementary forms of access to protection simultaneously in a number of Member States, at national level, and at EU level.

As a result of the research work carried out, it appears that the general objective should be to enlarge step by step the possibilities of persons in need of international protection to reach EU territories in a regular and orderly manner.

This would mean a significant shift of the tendency observed over the past quarter of a century when the space for regular and orderly entry into the EU for these categories of people was more and more narrowed down, as detailed in other parts of this report. First and foremost, the definition of this objective would mean a cultural change to be shared with the public opinion in Europe. In spite of many critical and pessimistic views expressed by stakeholders regarding more technical questions of how to go forward, enlargement of space for legal entry for refugees, in a broader sense, is perceived as necessary and desirable by almost all the interviewees.

It goes without saying that all measures recommended are supplementary to access to asylum procedures of persons arriving spontaneously and eventually in an irregular manner in European territories.

Opening ways of orderly arrivals should in no circumstances allow derogation from the obligation to examine protection requests irrespective of the mode of arrival.

The focus is on entry, rather than on procedures and it is not so much a question of authorizing a person already present at the border to enter a territory, but a legal guarantee, provided prior to the departure from the country of origin or a third country, to enter that territory. Only on the basis of such a guarantee the travel can be safe and regular.

All complementary forms of access to protection have in common this notion of travel authorization.

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[76] 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.

Therefore, it is all about visas, whether a derogation from visa requirement or the facilities to obtain a visa.

Consequently, in the first avenue of intervention, visa policies play a predominant role.

Measures taken in this phase do not entail change of the existing EU legislation but rather a protection sensitive application of the existing rules, as a necessary correlation to current practices.

Both the Schengen Convention of 1990 (Article 16) and the EU Visa Code of 2009 (Article 25) allow exceptionally derogation from normal entry requirements for humanitarian reasons, national interests or international obligations and requirements for the issuance of a Schengen visa.

The **Visa with Limited Territorial Validity**, valid only for the Member State which issued it, may be provided by diplomatic representations of Member States in countries of origin or in intermediate countries. This tool may prove particularly useful in *ad hoc* situations requiring a quick transfer of persons in immediate need of protection.

It is recommended that Member States issue national guidelines in order to reduce the space for pure discretion regarding the issuance of the Visa with Limited Territorial Validity. Moreover, it is recommended that the EU should adopt non binding guidelines in order to harmonize the application of Article 25 EU Visa Code between Member States. In both cases, it is recommended that requests for the issuance of a Visa with Limited Territorial Validity evaluated under a protection aspect, i.e. if the refusal of such requests might expose the applicant to persecution or to serious harm.

The EU guidelines could follow the example of those issued in 2010 for the Frontex[77] operations.

In a next step, those guidelines may be incorporated into the Common Consular Instructions on Visas.

On a national basis, diplomatic representations may also be authorized to issue a travel document, where necessary, in cases of a positive evaluation of a request for a Visa with Limited Territorial Validity, and EU guidelines should encourage it.

It is recommended that the European Asylum Support Office - EASO is entrusted with monitoring the national practices of issuance of Visa with Limited Territorial Validity, and eventually suggest amendments to the guidelines. It is also recommended that the European Union Agency for

[77] FRONTEX The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was established by Council Regulation (EC) 2007/2004/ (26.10.2004, OJ L 349/25.11.2004) and was last amended by the Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011.

Fundamental Rights – FRA is entrusted with monitoring the application of visa policies more in general, under a broader human rights perspective.

If the overall objective of enlarging the space for legal entry of people requiring international protection is shared in principle, measures in this direction by individual Member States should be incentivized by the EU, *inter alia*, through financial compensation.

Based on the experience that has just started regarding financial incentives for Member States offering resettlement places, it is recommended to use the European Refugee Fund or similar future funds envisaged from the period as from 2014 in such a way that Member States receive a "bonus" in relation to the number of asylum seekers who entered the country on the basis of a Visa with Limited Territorial Validity.

In addition, it is recommended to envisage exceptionally the exemption from visa requirements in favour of nationals of a country where massive violations of human rights take place.

This, again, would make a breach with the past when, on the contrary, EU imposed visa obligations regarding such countries in the frame of armed conflicts and most serious mass persecutions.

Among the advantages of a protection sensitive application of visa policies is the decrease of the number of asylum seekers subject to procedures under the Dublin II Regulation. Potential asylum seekers would approach the diplomatic representation of a Member State with which they have a link and in which they actually want to be received, and would not enter a country for the only reason of geographical distance and travel facilities.

Thus, it is assumed that people entering the territory of a Member State with a Visa with Limited Territorial Validity, or exempted from visa requirement, will not undertake "secondary movements" to other countries, or at least will do so at a lower extent.

In parallel to this avenue of intervention, it is further recommended to establish the **European Resettlement Programme.** The political will has been developing over the last 10 years, and the recent introduction of national resettlement programmes – even at very low numbers – in a number of Member States is a positive sign.

The impact, however, of access to protection in Europe is very limited as long as the number of places offered altogether remains at the present level.

It is therefore recommended to invest in campaigns informing the public opinion all over Europe on the advantages and the need for resettlement of refugees. The future EU programmes should provide more generous incentives for Member States to join the programme and to increase the number of beneficiaries.

It must be highlighted, again, that resettlement programmes do not substitute for the need to envisage other means of protected entry.

Resettlement can never take place from the country of origin, and assumes that the refugee has already reached a third country. Protection sensitive visa policies and protected entry procedures should be applicable in both countries of origin and third countries as the only way to avoid persecution and serious harm.

In a second step, it is recommended that Member States are encouraged to introduce or re-introduce **national protected entry schemes** for asylum seekers in their countries of origin as well as those unable to obtain protection in third countries of first haven or transit.

These schemes should, by and large, follow the present Swiss model and should also foresee supplementary forms of access to diplomatic representations like on-line applications and/or channelling applications through UNHCR or international NGOs recognised and present in the country of stay of the asylum seeker.

In case of a positive result of the initial screening of the application, again a Visa with Limited Territorial Validity would be issued however on the basis of a far more reduced discretional power of the issuing authority, and rejection would be subject to judicial reviews.

Encouragement by the EU could take the form of policy direction and guidance and should include, again, a financial incentive and compensation.

EASO should monitor material practices and experiences.

In a third step, it is recommended **to recast the Procedures Directive**, introducing non-binding rules for embassy procedures that should be as similar as possible to the rules governing the procedures following asylum applications made in the territory of Member States.

Article 3 (2) of the Directive, excluding requests for a diplomatic asylum or territorial asylum submitted to the representations of Member States from the scope of the Directive would consequently be amended, allowing, where feasible, for the application of procedural rules and guarantees applicable for territorial procedures also to off-shore procedures.

Scope of the recast would be the harmonization of material practices and the establishment of minimum standards applicable for Member States that have introduced protected entry schemes.

In a fourth step, to be envisaged in a longer term perspective, **a revision of the EU Visa Code is recommended**, introducing the possibility of issuing protection visas as "Schengen visas", allowing to travel up to three months to any of the State parties of the Schengen system, and for the subsequent presentation of asylum requests. Again, this would reduce the number of asylum seekers shifting from one country to another under the Dublin Regulation, since, in most cases, the protection claim would be presented directly in the country where the asylum seeker wishes to go, and coincide with the first country of arrival in the EU.

Conditions for the issuance of protection visas – that could be initially restricted to a certain number of third countries – should be established by binding rules, on the basis of experiences made during the previous steps.

At the end of this roadmap, the Commission should propose a Directive on protected entry procedures (PEPs) to be introduced in all Member States, in the spirit of responsibility sharing between EU Member States in accordance with Article 80 of the Lisbon Treaty.

Conditions for benefiting from PEP should be first of all the personal security of the applicant; the need for obtaining international protection; the impossibility to obtain effective protection in the intermediate country; the vulnerability of the person; links to family members resident in one of the Member States; other relevant links to any of the Member States.

In view of the announced Communication of the European Commission on "new approaches concerning access to asylum procedures" it might be recommended to issue beforehand, a Green Paper allowing for broad consultations.

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ANNEX I

SUMMARIES IN GERMAN, GREEK, ITALIAN AND SPANISH

COPERTINA TEDESCA

ZUSAMMENFASSUNG

Das Beantragen von Asyl in der Europäischen Union ist abhängig von der physischen Anwesenheit der Schutzsuchenden im Gebiet eines Mitgliedsstaats. Der Zugang zu Schutz ist verbunden mit dem Zugang zu, und der Einreiseerlaubnis in, die Territorien.

Die Kombination von Maßnahmen, die im Zuge der Grenz- und Visaregime eingeführt wurden, erschwerten zunehmend die Inanspruchnahme des in der EU-Grundrechtecharta verbürgten Rechts auf Asyl, und machten es für die überwiegende Mehrheit von Schutzsuchenden unmöglich, die EU-Territorien auf legale Weise zu erreichen.

Nicht nur die Kontrollen der EU-Außengrenzen wurden verstärkt, sie erstrecken sich auch auf die Territorien von Drittstaaten. Sanktionen für Beförderungsunternehmen, der Einsatz von Verbindungsbeamten für Einwanderungsfragen (ILO) und von Verbindungsbeamten an Flughäfen (ALO), finanzielle und logistische Unterstützung für Regierungen von Drittstaaten ebenso wie das Anbieten von „Anreizen“ zur Verstärkung ihrer Kontroll- und Überwachungssysteme, der Einsatz von FRONTEX in „sensiblen“ Gebieten, und, in manchen Fällen, das unterschiedslose Zurückschieben von Migranten und Schutzsuchenden in Herkunfts- oder Transitstaaten, sind einige der Maßnahmen des Pakets, das für die Bekämpfung illegaler Einwanderung entwickelt wurde, die sich aber auf das Recht, Asyl zu suchen, negativ auswirken.

Als Folge davon sehen Schutzsuchende keine andere Möglichkeit, als Schlepper für einen Transport am Boden, auf See oder in der Luft zu bezahlen. Nach Schätzungen, die auf bekannt gewordenen Fällen beruhen, starben zwischen 1998 und August 2011, 17.738 Personen bei dem Versuch nach Europa zu kommen. Allein während des Jahres 2011 starben etwa 2000 Kinder, Männer und Frauen im Kanal von Sizilien. Allein auf dem Weg von Libyen zur Insel Lampedusa haben, im Jahr 2011, 5 % all jener, die versuchten Europa zu erreichen, ihr Leben verloren.

Die meisten Menschen, die versuchen nach Europa zu kommen, sind üblicherweise schweren Menschenrechtsverletzungen und Ausbeutung während ihres Weges nach Europa ausgesetzt, speziell in Durchgangsstaaten und /oder Gebieten wie die hohe See, wo sie de facto als „herrenlose Sache“ angesehen werden.

Menschen, die in gemischten Migrationsströmen ankommen, werden Kontrollen auf dem Meer unterzogen, und bei verschiedenen Anlässen hatten sie keine Möglichkeit, Asyl in der EU zu beantragen, so, dass ein konkretes Risiko der Verletzung des Nicht-Zurückweisungsgebots besteht.

Personen, die es schaffen EU-Territorium zu erreichen und um Schutz zu ersuchen, sind, trotz all dieser Risiken und Schwierigkeiten, nicht unbedingt

jene, die internationalen Schutz am meisten brauchen. Die „Auswahl“ beruht auf den finanziellen Möglichkeiten dieser Personen und ihrer Familien, ihrer Migrationsfähigkeit, Bildung und ähnlichen Faktoren, die nicht mit den Gründen zusammen hängen, die sie zum Verlassen ihres Heimatlandes gezwungen haben.

Diese Szenarien sind der Ausgangspunkt für das Projekt „E.T. Einreise in das Territorium: neue Formen des Zugangs zum Asylverfahren erkunden“, kofinanziert von der EU durch den Europäischen Flüchtlingsfonds, und durchgeführt in 2011/2012. Das Projekt wird durchgeführt vom Italienischen Flüchtlingsrat (CIR) in Zusammenarbeit mit dem Europäischen Flüchtlingsrat (ECRE) sowie NROs, Akademikern und Forschungseinrichtungen in Dänemark, Griechenland, Italien, Malta, den Niederlanden, Österreich, Spanien, der Schweiz und Zypern. Das UNHCR war als externer Gutachter einbezogen.

Ziele sind:

1. die Debatte über den rechtmäßigen Zugang von Flüchtlingen zum EU-Raum durch Daten und Informationen über die in zahlreichen Mitgliedstaaten gemachten Erfahrungen zu unterstützen;
2. die Auseinandersetzung mit Mechanismen regulärer Einreise und alternativer Instrumente des Zugangs zum Asylverfahren auf nationaler und EU-Ebene anzuregen;
3. Meinungen von politischen Entscheidungsträgern und anderen Ansprechpersonen zum Für und Wider geschützter Einreiseverfahren und anderer Modalitäten des Zugangs zu Schutz zu sammeln, und Übereinstimmungen auf nationaler und EU-Ebene zu einer neuen Politik und Gesetzen bezüglich Zugang zum Asylverfahren festzustellen;
4. Bewusstsein schaffen über die Schwierigkeiten, die Menschen beim Zugang zum Asylverfahren begegnen, und einen Konsens über die Lösungen zu finden.

In Athen, Rom, Madrid, Wien, Malta und Zypern fanden dazu Workshops, und im September 2011 eine internationale Konferenz in Brüssel statt. Zu den Projekttätigkeiten gehörten zudem Interviews mit über 130 Ansprechpersonen, darunter führende PolitikerInnen und RegierungsvertreterInnen in allen beteiligten Ländern und auf EU Ebene, sowie Forschungsreisen zu einigen Botschaften in Drittstaaten, Medienarbeit und Kampagnen.

Erfahrungen in einer Reihe von Mitgliedsstaaten mit verschiedenen Formen der organisierten und rechtmäßigen Einreise von Personen mit internationalem Schutzbedarf wurden analysiert. Es können 5 verschiedene Arten der legalen Einreise unterschieden werden: **diplomatisches Asyl, Wiederansiedlung, humanitäre Aussiedlungen, flexible Anwendung von Visaregelungen, Verfahren zur geschützten Einreise.** Es zeigte sich, dass

in den meisten Staaten eine oder mehrere dieser Möglichkeiten in der Vergangenheit durchgeführt wurden bzw. noch immer bestehen. Die Gesamtzahl der Personen, denen solche Mechanismen zugute kamen oder kommen, ist jedoch sehr niedrig.

Verschärfte Visa-Bestimmungen und verstärkte Grenzkontrollen, die Schutzsuchenden den Zugang zu Schutz verwehren, sind bereits bereits seit den Anfängen des Gemeinsamen Europäischen Asylsystems Gegenstand der politischen Debatte der EU. Die Schlussfolgerungen von Tampere (1999) verwiesen eindeutig auf die Frage des Zugangs zum Territorium, und betonten die Ausgewogenheit die zwischen Grenzkontrolle und Flüchtlingsschutz bestehen muss. Die Europäische Kommission hat in einer Reihe von Mitteilungen die Notwendigkeit der Schaffung geschützter Einreisemöglichkeiten vorgestellt, und im Jahr 2002 eine Machbarkeitsstudie über die Durchführung von Asylverfahren außerhalb der EU in Auftrag gegeben. Die Ergebnisse wurden bei einem internationalen Seminar in Rom im Oktober 2003 unter der italienischen Ratspräsidentschaft vorgestellt und diskutiert, gemeinsam mit einer Machbarkeitsstudie über ein Europäisches Wiederansiedlungsprogramm.

Im Stockholmer Programm (Dezember 2009) legte der Europäische Rat fest, dass „die Verfahren für die geschützte Einreise und die Ausstellung von Visa aus humanitären Gründen erleichtert werden sollten“ und dass „die Machbarkeit und die rechtlichen und praktischen Auswirkungen der gemeinsamen Bearbeitung von Asylanträgen innerhalb und außerhalb der EU weiter geprüft werden“ müssen. Im Aktionsplan für das Stockholmer Programm (April 2010) kündigt edie Kommission eine „Mitteilung über neue Konzepte für den Zugang zum Asylverfahren mit Blick auf die wichtigsten Durchgangsländer“ für 2013 an.

Nach über 10 Jahren Verhandlungen liegen für die Festlegung eines Europäischen Resettlement-Programms konkrete Schritte vor, während Programme für die geschützte Einreise nicht nur auf europäischer Ebene nicht entwickelt werden, sondern auch in Mitgliedsstaaten die solche Programme hatten, diese eingeschränkt werden. In der Schweiz, dessen Verfahren für eine geschützte Einreise als ein positives Beispiel gelten kann, beabsichtigt die Regierung derzeit dessen Abschaffung. Ein häufig herangezogenes Argument bei der Revision nationaler Instrumente geschützter Einreise ist, dass solche Aufgaben von einzelnen oder wenigen Ländern nicht alleine bewerkstelligt werden können, sondern unter einer größeren Zahl europäischer Staaten aufgeteilt werden muss.

Das derzeitige politische und wirtschaftliche Umfeld in Europa ist zweifellos nicht von Vorteil für die Einführung von Modellen geregelter Ankunft von Schutzsuchenden. Die Befürchtung wurde von zahlreichen InteressensvertreterInnen vorgebracht, dass solche Modelle zu einer

unkontrollierbaren Zahl an AsylwerberInnen führen, oder einen Anziehungsfaktor darstellen könnten, zusammen mit einer Erhöhung der Kosten und einer nötigen Aufstockung von MitarbeiterInnen in diplomatischen Vertretungen. In der derzeitigen Lage könnte diese Angst politische EntscheidungsträgerInnen und die öffentliche Meinung beeinflussen. Aus diesem Grund basieren folgende Vorschläge und Empfehlungen auf einem stufenweise fortschreitenden Ansatz.

Recherchen ergaben, dass das allgemeine Ziel ist, die Möglichkeiten von Personen, die internationalen Schutz benötigen, Schritt für Schritt auszuweiten, um EU-Territorien ordnungsgemäß und in geregelter Art und Weise zu erreichen.

In erster Linie würde die Festlegung dieses Ziels eine kulturelle Veränderung bedeuten, die von der öffentlichen Meinung in Europa geteilt werden muss. Trotz aller Kritik und pessimistischer Ansichten der verschiedenen Akteuren bezüglich eher technischer Fragen über die weiteren Vorgangsweisen, ist die Ausweitung im Bereich der legalen Einreise für Flüchtlinge im weitesten Sinne von fast allen interviewten Personen als nötig und wünschenswert erkannt worden.

Schwerpunkt ist die *Einreise* und weniger die Verfahren. Es geht nicht so sehr um die Frage der Einreisebewilligung einer Person, die bereits an der Grenze ist, sondern um die Bereitstellung einer legalen Garantie zur Einreise *vor* der Ausreise aus dem Herkunftsland oder einem dazwischenliegendem Land. Nur auf der Grundlage dieser Garantie kann eine Reise sicher und regulär sein.

Alle ergänzenden Formen des Zugangs zu Schutz haben dieses Konzept der Reisebewilligung gemein.

Visabestimmungen spielen daher eine zentrale Rolle, sei die Aufhebung der Visaerfordernissen oder Erleichterungen, ein Visum zu erhalten.

Im ersten Schritt der Intervention spielt die Visapolitik daher eine herausragende Rolle.

Maßnahmen, die in dieser Phase getroffen werden, verursachen keine Veränderung der existierenden EU-Gesetze, sondern eher die Sicherung einer sensiblen Anwendung bestehender Regeln als ein notwendiges Gegenstück gegenwärtiger Praxis.

Sowohl das Schengener Abkommen von 1990 (Artikel 16) als auch der Visa-Kodex von 2009 (Artikel 25) erlauben ausnahmsweise eine Aufhebung der normalen Einreiseanforderungen für die Ausstellung eines Schengen-Visums aus humanitären Gründen, wenn nationale Interessen oder internationale Verpflichtungen vorliegen.

Das **Visum mit gebietsbeschränkter Gültigkeit (Visa with Limited Territorial Validity - LTTV)** - nur für den Mitgliedsstaat gültig, der es ausgestellt hat - kann durch die diplomatische Vertretung von Mitgliedstaaten

in den Herkunfts- oder Zwischenländern ausgestellt werden. Es wird vorgeschlagen, dass Mitgliedstaaten nationale Richtlinien ausstellen, um den Bereich des Ermessens bei der Ausstellung von Visa mit gebietsbeschränkter Gültigkeit zu reduzieren. Darüber hinaus wird empfohlen, dass die EU nicht-verbindlicheRichtlinien einführen soll, um die Anwendung des Artikels 25 des EU Visa-Kodex zwischen Mitgliedstaaten zu vereinheitlichen. In beiden Fällen wird empfohlen, Anträge auf Ausstellung eines LTTV unter dem Schutz-Aspekt zu bewerten, sollte die Verweigerung einer solchen Visaerteilung die AntragsstellerInnen möglicherweise einer Verfolgung oder ernsthaften Schaden aussetzen.

Die EU-Richtlinien könnten jenen, die für die FRONTEX-Operation im Jahr 2010 erstellt wurden, folgen.

Im folgenden Schritt können diese Richtlinien in die **Gemeinsamen Konsularischen Anweisungen für Visa** aufgenommen werden.

Auf nationaler Ebene könnten diplomatische Vertretungen auch dazu berechtigt werden, ein Reisedokument auszustellen, wo es notwendig ist, im Fall einer positiven Bewertung eines Antrags auf ein Visum mit gebietsbeschränkter Gültigkeit, und die EU-Richtlinien sollten dazu anregen.

Es wird empfohlen, dem Europäische Unterstützungsbüro für Asylfragen (EASO) die Überwachung der nationalen Ausstellungspraxis von Visa mit gebietsbeschränkter Gültigkeit anzuvertrauen; dieses könnte schließlich Abänderungen der Richtlinien vorschlagen. Es wird außerdem suggeriert, dass der Agentur der Europäischen Union für Grundrechte (FRA) ein eher allgemeines Monitoring dieser Visaverfahren aus menschenrechtlicher Perspektive anvertraut wird.

Basierend auf den Erfahrungen mit den kürzlich eingeführten finanziellen Anreizen für Mitgliedstaaten, die Wiederansiedlung anbieten, wird die Verwendung des Europäischen Flüchtlingsfonds oder ähnlicher zukünftiger Fonds, welche 2014 geplant sind, empfohlen. Mitgliedstaaten sollten einen „Bonus“ in Relation zu der Anzahl an Asylsuchenden erhalten, die mit Hilfe des Visums mit gebietsbeschränkter Gültigkeit eingereist sind.

Zusätzlich wird empfohlen, besondere Ausnahmen von den Visa-Anforderungen zu planen, zugunsten von Staatsangehörigen eines Landes, in dem es zu massiven Verletzungen der Menschenrechte kommt.

Zu den Vorteilen einer schutzorientierten Visa-Politik gehört die Verringerung der Zahl der Asylsuchenden, die einem Verfahren im Rahmen der Dublin II-Verordnung unterliegen. Potentielle AsylwerberInnen würden die diplomatische Vertretung eines Mitgliedstaates ansteuern, zu dem Anknüpfungspunkte bestehen und in welchem sie aufgenommen werden möchten Die Einreise in ein Land nur aufgrund der geografischen Gegebenheiten und der Reisemöglichkeit würde sich erübrigen. Vermutlich werden Personen, die in ein Territorium eines Mitgliedstaates mit einem

Visum mit gebietsbeschränkter Gültigkeit oder mit einer Visum-Befreiung einreisen, keine „Weiterwanderung“ in andere Länder versuchen bzw. nur in geringem Ausmaß.

In der ersten Phase wir zudem empfohlen, das **Europäische Wiederansiedlungsprogramm** einzuführen. Der politische Wille hat sich dazu in den letzten 10 Jahren entwickelt, und die jüngste Einführung von nationalen Wiederansiedelungsprogrammen in einigen Mitgliedstaaten – auch wenn nur in geringer Zahl –ist ein positives Zeichen. Die Auswirkung auf den Zugang zu Schutz ist allerdings sehr begrenzt, solange die Zahl der angebotenen Plätze auf dem momentanen Niveau bleibt.

Es wird daher empfohlen in Kampagnen in ganz Europa zu investieren, um über den Vorteil und den Bedarf an Neuansiedlungen von Flüchtlingen zu informieren. Zukünftige EU-Programme sollen mehr Anreize für Mitgliedstaaten anbieten, um sich diesem Programm anzuschließen und um die Zahl der Nutznieser zu erhöhen.

Es muss noch einmal hervorgehoben werden, dass Wiederansiedlung nicht die Notwendigkeit ersetzt, andere Mittel für eine geschützte Einreise ins Auge zu fassen.

Wiederansiedlung kann nie vom Herkunftsland aus erfolgen und setzt voraus, dass der Flüchtling das Drittland schon erreicht hat. Visaverfahren unter Berücksichtigung des Schutzbedarfs und geschützte Einreiseverfahren dürften der einzige Weg sein, um Verfolgung und ernsthafte Gefährdung zu verhindern und sollten sowohl im Herkunftsland, als auch in Durchgangsländern anwendbar sein.

In einem zweiten Schritt wird empfohlen, Mitgliedstaaten zu ermutigen**, nationale Modelle geschützter Einreise** für Asylsuchende einzuführen bzw. wiedereinzuführen, und zwar in Herkunftsländern von Schutzsuchenden, aber auch für jene, die keinen Schutz in einem Aufenthaltsland erhalten haben.

Diese Modelle sollten im Großen und Ganzen dem jetzigen schweizer Modell folgen, und auch zusätzliche Formen des Zugangs zu diplomatischen Vertretungen vorhersehen, wie zum Beispiel online-Anwendungen und/oder das Weiterleiten über das UNHCR oder internationale NROs, die im Aufenthaltsland des/der AsylwerberIn anwesend und anerkannt sind.

Im Fall eines positiven Ergebnisses einer ersten Prüfung des Antrags, würde wieder ein Visum mit gebietsbeschränkter Gültigkeit ausgestellt werden, jedoch auf der Grundlage eines weitaus reduzierteren Ermessensspielraums der ausstellenden Behörde, und eine Ablehnung würde auch durch ein Gericht überprüfbar sein. Unterstützung durch die EU könnte als politische Weisung und Orientierung erfolgen, und sollte wiederum einen finanziellen Anreiz und Ausgleich beinhalten.

Das EASO sollte die Anwendungspraxis und die Erfahrungen überprüfen.

In einem dritten Schritt wird empfohlen, die Verfahrensrichtlinie dahingehend so zu adaptieren, dass unverbindliche Regeln für Botschaftsverfahren eingeführt werden, die so weit wie möglich denen für nationale Asylverfahren ähnlich sein sollten. Artikel 3 (2) der Richtlinie, der Anträge auf Botschaftsasyl oder nationales Asyl bei Vertretungen von Mitgliedstaaten vom Anwendungsbereich der Richtlinie ausnimmt, würde dementsprechend geändert es ermöglichen, die in nationalen Verfahren anwendbaren Verfahrensvorschriften und –garantien auch bei Anträgen im Ausland, soweit praktikabel, anzuwenden. Der Regelungsbereich der Neufassung wäre die Harmonisierung der realen Anwendungen, sowie die Einführung von Mindeststandards in den Mitgliedstaaten, die Verfahren der geschützten Einreise eingeführt haben.

Als vierten Schritt, der längerfristig ins Auge gefaßt werden sollte, wird eine Revision des EU-Visa-Codes empfohlen, wobei die Möglichkeit geschaffen werden soll, „Schutzvisa“ als „Schengen-Visa“ auszustellen, die das Reisen innerhalb von drei Monaten im Gebiet der Schengen-Vertragsparteien und das anschließende Beantragen von Asyl erlauben. Das würde die Anzal der AsylwerberInnen reduzieren, die von einem Land in ein anderes aufgrund der Dublin-Regelungen verschoben werden, da die AsylwerberInnen in den meisten Fällen ihren Antrag direkt in jenem Land stellen würden, in das sie gehen wollen, und das mit dem Ersteinreisestaat zusammenfallen würde.

Die Voraussetzungen für das Ausstellen von „Schutzvisa“, die Anfangs auf eine bestimmte Anzahl von Drittstaaten beschränkt sein könnten – sollten durch verbindliche Regelungen, basierend auf den Erfahrungen der vorangegangenen Schritte, festgelegt werden.

Am Ende dieser Roadmap sollte die Kommission eine Richtlinie zu „geschützten Einreiseverfahren“ (PEP) vorschlagen, die in allen Mitgliedstaaten eingeführt werden, getragen vom Geist der geteilten Verantwortung zwischen den EU Mitgliedstaaten und in Übereinstimmung mit Artikel 80 des Vertrags von Lissabon.

Die Bedingungen, um von den Möglichkeiten der geschützten Einreise zu profitieren, sollten insbesondere die persönliche Sicherheit des Antragstellers sein, der Bedarf nach internationalem Schutz, die Unmöglichkeit effektiven Schutz in anderen Staaten zu erhalten, die Verletzlichkeit der Person, Bindungen zu in einem Mitgliedsstaat lebenden Familienangehörigen, andere relevante Beziehungen zu einem der Mitgliedstaaten.

In Anbetracht der von der Kommission angekündigten Mitteilung zu den „neuen Ansätzen in Bezug auf den Zugang zum Asylverfahren“ könnte vorweg ein Grünbuch veröffentlicht werden, um eine breite Debatte zu ermöglichen.

INSERIRE COPERTINA GRECA

ΠΕΡΙΛ
Η αναζήτηση πολιτικού ασύλου στην Ευρωπαϊκή Ένωση εξαρτάται από την φυσική παρουσία του δικαιούχου διεθνούς προστασίας στην επικράτεια του κράτους μέλους. Η πρόσβαση στην προστασία συνδέεται με την πρόσβαση και είσοδο στην επικράτεια των κρατών μελών.

Ο συνδυασμός των μέτρων που έχουν ληφθεί υπό τα καθεστώτα των Συνόρων και Θεωρήσεων Visa της Ευρωπαϊκής Ένωσης έχουν κάνει όλο και πιο δύσκολη την άσκηση του δικαιώματος της αναζήτησης πολιτικού ασύλου, όπως αυτό κατοχυρώνεται από τον Χάρτη των Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης , καθιστώντας την νόμιμη πρόσβαση σε επικράτεια κράτους- μέλους της Ευρωπαϊκής Ένωσης σχεδόν αδύνατη.

Όχι μόνο οι έλεγχοι στα εξωτερικά σύνορα της Ευρωπαϊκής Ένωσης είναι μεγαλύτερης κλίμακας, αλλά και οι μηχανισμοί ελέγχου έχουν επεκταθεί και σε επικράτειες τρίτων χωρών.Οι κυρώσεις των μεταφορών, η ανάπτυξη των σωμάτων Αξιωματικών- Συνδέσμων Μετανάστευσης και Αεροδρομίου, η οικονομική και υλικοτεχνική υποστήριξη σε κυβερνήσεις τρίτων χωρών , όπως επίσης και η προσφορά κινήτρων για την ισχυροποίηση των συστημάτων ελέγχου και επίβλεψης των χωρών αυτών, η ανάπτυξη της FRONTEX σε «ευάλωτες περιοχές»,και σε ορισμένες περιπτώσεις η χωρίς διάκριση επαναπροώθηση των μεταναστών και αιτούντων προστασία στις χώρες καταγωγής ή η μεταφορά τους σε αυτές είναι κάποια από τα μέτρα του πακέτου σχεδιασμένου να καταπολεμήσει την ακανόνιστη παράνομη μετανάστευση αλλά στην ουσία επηρεάζει περιοριστικά το δικαίωμα της αίτησης ασύλου.

Συνέπεια αυτού είναι ότι οι αιτούντες διεθνή προστασία δεν αναγνωρίζουν καμία άλλη λύση παρά μόνο να πληρώσουν λαθρέμπορους μετακίνησης από ξηρά, θάλασσα ή αέρα. Σύμφωνα με εκτιμήσεις περιστατικών που γνωστοποιήθηκαν από το 1998 έως τον Αύγουστο του 2011, 17.738 άνθρωποι πέθαναν στην απόπειρά τους να φτάσουν στην Ευρώπη. Κατά τη διάρκεια μόνο του 2011, 2000 παιδιά, άντρες και γυναίκες πέθαναν στο κανάλι της Σικελίας. Λαμβάνοντας υπόψη μόνο τη διαδρομή από τη Λιβύη στο νησί Lampedusa το 2011, 5% όλων αυτών που προσπάθησαν να φτάσουν στην Ευρώπη έχασαν τη ζωή τους.

Οι περισσότεροι άνθρωποι που προσπαθούν να φτάσουν στην Ευρώπη υφίστανται συνήθως σοβαρές παραβιάσεις ανθρωπίνων δικαιωμάτων καθώς και εκμετάλλευση κατά τη διάρκεια της διαδρομής τους προς την Ευρώπη. Πιο συγκεκριμένα στις χώρες διέλευσης ή /και σε περιοχές όπως η ανοικτή θάλασσα θεωρούνται de facto *res nullius.*

Οι άνθρωποι που φτάνουν σε πλαίσιο μεικτών ροών υφίστανται διακοπή της πορείας τους στη θάλασσα και σε πολλές περιπτώσεις δεν τους είχε δοθεί η δυνατότητα να ζητήσουν άσυλο στην Ε.Ε.. Αυτό έχει ως σοβαρή επίπτωση την παραβίαση της αρχής της μη επαναπροώθησης.

Αυτοί οι οποίοι καταφέρνουν να φτάσουν στην Ε.Ε. και κάνουν αίτηση για προστασία, παρ' όλες τις δυσκολίες και τους κινδύνους που έχουν υποστεί, δεν είναι απαραίτητα αυτοί που χρειάζονται περισσότερο τη διεθνή προστασία. Η «επιλογή» βασίζεται στις οικονομικές δυνατότητες των ιδίων και των οικογενειών τους , στις μεταναστευτικές τους ικανότητες, στο επίπεδο μόρφωσής τους, και σε παρόμοιους παράγοντες που δεν συνδέονται με τους λόγους που τους οδήγησαν να εγκαταλείψουν τις χώρες καταγωγής τους.

Αυτά τα σενάρια αποτελούν το αρχικό σημείο του προγράμματος που εφαρμόζεται το 2011/2012 με τίτλο: «Ε.Τ. Είσοδος στην Επικράτεια: Εξερευνώντας καινούριες μορφές πρόσβασης στις διαδικασίες ασύλου», συγχρηματοδοτούμενο από την Ε.Ε. υπό το Ευρωπαϊκό Ταμείο Προσφύγων. Το πρόγραμμα διενεργείται από το Ιταλικό Συμβούλιο για τους Πρόσφυγες σε συνεργασία με το Ευρωπαϊκό Συμβούλιο για τους Πρόσφυγες και τους Εξόριστους (ECRE) καθώς και με ΜΚΟ, ακαδημαϊκούς και ερευνητικά ινστιτούτα σε Αυστρία, Κύπρο, Δανία, Ελλάδα, Ιταλία, Μάλτα, Ολλανδία, Ισπανία και Ελβετία. Η Ύπατη Αρμοστεία του Ο.Η.Ε. για τους Πρόσφυγες έχει αναμειχθεί ως εξωτερικός αξιολογητής.

Οι στόχοι είναι:

1.Η προώθηση και δημόσια συζήτηση (debate) σχετικά με την ομαλή είσοδο στην Ε.Ε. ατόμων,,που ζητούν πολιτικό άσυλο βάσει πληροφοριών και στοιχείων , που συλλέγονται σε κάποια κράτη μέλη.

2. Η παρακίνηση της συζήτησης σε εθνικό επίπεδο και επίπεδο Ε.Ε. σχετικά με μηχανισμούς εισόδου και εναλλακτικών μέσων πρόσβασης στις διαδικασίες ασύλου.

3. Η συλλογή γνωμών των φορέων χάραξης πολιτικής και άλλων ενδιαφερομένων μερών σχετικά με τα υπέρ και τα κατά των διαδικασιών προστατευμένης εισόδου (protected entry procedures, P.E.Ps.) και άλλων μέσων πρόσβασης στην προστασία και η αξιολόγηση του επιπέδου της ομοφωνίας σε εθνικό επίπεδο καθώς και σε επίπεδο Ε.Ε. σχετικά με νέες πολιτικές και νομοθεσία σε ότι αφορά την πρόσβαση στις διαδικασίες του ασύλου.

4.Η ευαισθητοποίηση σχετικά με τις δυσκολίες, που οι αιτούντες άσυλο αντιμετωπίζουν κατά την απόπειρα πρόσβασής τους στις διαδικασίες και την εύρεση ομοφωνίας για λύσεις.

Οι δραστηριότητες των προγραμμάτων συμπεριελάμβαναν την οργάνωση εργαστηρίων σε εθνικό επίπεδο στην Αθήνα, Ρώμη, Μαδρίτη, Βιέννη, Μάλτα και Κύπρο και μίας Ευρωπαϊκής Διάσκεψης πάνω στο αντικείμενο το Σεπτέμβριο του 2011. Επίσης μέρος των δραστηριοτήτων ήταν συνεντεύξεις με πάνω από 140 ενδιαφερόμενα μέρη, μεταξύ των οποίων πολιτικοί αρχηγοί και κυβερνητικοί αξιωματούχοι, σε όλες τις συμμετέχοντες χώρες καθώς και σε επίπεδο Ε.Ε., καθώς και αποστολές σε

πρεσβείες που βρίσκονται σε τρίτες χώρες, δραστηριότητες στα μέσα ενημέρωσης και εκστρατείες.

Έγινε ανάλυση των σχετικών εμπειριών σε αριθμό Κρατών Μελών λαμβάνοντας υπόψη τις διαφορετικές μορφές της ελεγχόμενης και ομαλής άφιξης ατόμων με ανάγκη διεθνούς προστασίας ή αιτούντες πολιτικό άσυλο. Μπορούν να διακριθούν πέντε διαφορετικοί τρόποι νόμιμης εισόδου: διπλωματικό άσυλο, επανεγκατάσταση, αποστολές ανθρωπιστικής εκκένωσης, ευέλικτη χρήση του καθεστώτος visa, διαδικασίες προστατευμένης εισόδου (P.E.P.s). Ήταν εμφανές ότι στις περισσότερες χώρες ένας ή περισσότεροι τρόποι εισόδου εφαρμόστηκαν στο παρελθόν ή σε ορισμένες περιπτώσεις ακόμα εφαρμόζονται. Παρ' όλ' αυτά ο συνολικός αριθμός των ατόμων που επωφελήθηκαν ή ακόμη επωφελούνται από αυτά τα συστήματα είναι εξαιρετικά μικρός.

Το πρόβλημα είναι το γεγονός ότι τα περιοριστικά καθεστώτα visa και οι αυξημένοι συνοριακοί έλεγχοι αποτρέπουν τους δικαιούχους προστασίας από την πρόσβαση στην προστασία . Το θέμα αυτό έχει υπάρξει αντικείμενο πολιτικού διαλόγου στην Ε.Ε. από τις πρώτες μέρες της διαμόρφωσης του Κοινού Ευρωπαϊκού Συστήματος Πολιτικού Ασύλου. Τα Συμπεράσματα του Συμβουλίου της Ευρώπης στο Τάμπερε (1999) έκαναν μία ξεκάθαρη αναφορά στο θέμα της πρόσβασης στην επικράτεια των κρατών μελών, στέλνοντας ένα ισχυρό σήμα για την ανάγκη ισορροπίας μεταξύ συνοριακού ελέγχου και προστασίας των προσφύγων. Η Ευρωπαϊκή Επιτροπή έχει σε αριθμό Επικοινωνιών (Communications) παρουσιάσει την ανάγκη για την εγκαθίδρυση σχεδίων προστατευμένης εισόδου και το 2002 διεξήγαγε μία μελέτη σκοπιμότητας /χρησιμότητας σχετικά με την επεξεργασία αιτήσεων ασύλου εκτός της Ε.Ε. Τα αποτελέσματα παρουσιάστηκαν και συζητήθηκαν σε ένα διεθνές Σεμινάριο στην Ρώμη , τον Οκτώβριο του 2003, υπό την Προεδρία του Ιταλικού Συμβουλίου, μαζί με την μελέτη σκοπιμότητας/ χρησιμότητας πάνω στο Ευρωπαϊκό Πρόγραμμα Επανεγκατάστασης.

Στο Πρόγραμμα της Στοκχόλμης (Δεκέμβριος 2009) το Συμβούλιο της Ευρώπης δηλώνει ότι «οι διαδικασίες για προστατευμένη είσοδο και η έκδοση ανθρωπιστικής visa θα πρέπει να διευκολυνθούν» όπως επίσης ότι « θα πρέπει να συνεχιστεί η ανάλυση της σκοπιμότητας και η νόμιμες και πρακτικές επιπτώσεις της κοινής διαδικασίας αιτήσεων πολιτικού ασύλου εντός και εκτός της Ε.Ε.». Στο Σχέδιο Δράσης για το Πρόγραμμα της Στοκχόλμης η Ευρωπαϊκή Επιτροπή ανακοινώνει την «Επικοινωνία για νέες προοπτικές σχετικά με διαδικασίες ασύλου , στοχεύοντας κυρίως στις χώρες διέλευσης» μέχρι το 2013.

Μετά από 10 χρόνια πολιτικού διαλόγου, το σχέδιο για την εγκαθίδρυση ενός Ευρωπαϊκού Προγράμματος Επανεγκατάστασης έχει κάνει σημαντικά βήματα ενώ τα σχέδια προστατευμένης εισόδου(P.E.P.s) όχι μόνο δεν αναπτύχθηκαν σε ευρωπαϊκό επίπεδο αλλά καταργήθηκαν ή περιορίστηκαν

σε κράτη μέλη, που προηγουμένως είχαν υιοθετήσει τέτοια σχέδια. Στην Ελβετία , όπου το εθνικό μοντέλο προστατευμένης προστασίας εισόδου θεωρούνταν παράδειγμα καλής πρακτικής, η Κυβέρνηση προτείνει την κατάργησή του. Το διαρκές επιχείρημα για την αναθεώρηση των εθνικών συστημάτων προστασίας εισόδου είναι το γεγονός ότι μία τέτοια πρακτική δεν μπορεί να γίνει σε μία μόνο ή σε μερικές χώρες, αλλά πρέπει να διεξαχθεί από ένα μεγάλο αριθμό Ευρωπαϊκών Χωρών.

Το παρόν πολιτικό και οικονομικό περιβάλλον της Ευρώπης δεν είναι ευνοϊκό για την εισαγωγή σχεδίων για την ομαλή άφιξη ατόμων που αναζητούν διεθνή προστασία. Ο φόβος ότι τέτοια σχέδια θα μπορούσαν να έχουν ως αποτέλεσμα τον ανεξέλεγκτα αυξημένο αριθμό αιτούντων πολιτικό άσυλο, ή τη δημιουργία ενός παράγοντα έλξης- κάτι το οποίο συνεπάγεται αυξημένο κόστος και την ανάγκη της αύξησης προσωπικού διπλωματικών αποστολών- εκτέθηκε από ένα μεγάλο αριθμό ενδιαφερομένων μερών. Δεδομένου του τωρινού κλίματος, αυτός ο φόβος μπορεί να επηρεάσει τους φορείς χάραξης πολιτικής και την κοινή γνώμη. Για το λόγο αυτό, οι παρακάτω προτάσεις και συστάσεις βασίζονται σε μία σταδιακή προσέγγιση.

Ως αποτέλεσμα της διενεργούμενης ερευνητικής εργασίας , φαίνεται ότι ο γενικός στόχος είναι να διευρυνθούν βήμα προς βήμα ,οι δυνατότητες προσβαση στο έδαφος της Ε.Ε. ανθρώπων με ανάγκη διεθνούς προστασίας με ένα τακτικό και ομαλό τρόπο.

Πρώτα’ απ’ όλα , ο ορισμός αυτού του στόχου θα σήμαινε την αλλαγή κουλτούρας ,η οποία πρέπει να συμφωνεί με την κοινή γνώμη στην Ευρώπη. Παρ’ όλες τις κριτικές και απαισιόδοξες γνώμες των ενδιαφερομένων μερών σε ότι αφορά πιο τεχνικά ζητήματα για το πώς θα πορευτούν, η διεύρυνση των ορίων για την νόμιμη είσοδο των προσφύγων, με την ευρύτερη έννοια , εκλαμβάνεται ως επιθυμητή από σχεδόν όλους τους ερωτηθέντες των συνεντεύξεων. Η εστίαση είναι στην *είσοδο* και όχι στις διαδικασίες. Δεν είναι τόσο το θέμα του να δοθεί η άδεια να μπει κάποιος στη χώρα που είναι ήδη στα σύνορα , αλλά μία νόμιμη εγγύηση εισόδου στη χώρα *πριν* την αναχώρηση από την χώρα καταγωγής ή την ενδιάμεση χώρα. Μόνο βάσει αυτής της εγγύησης το ταξίδι μπορεί να είναι ασφαλές και ομαλό.

Έτσι λοιπόν αυτό που έχει σημασία είναι η visa – εάν υπάρχει παρέκκλιση από κάποιο απαραίτητο στοιχείο για τη θεώρησή της ή η ευχέρεια για την απόκτησή της.

Συνεπώς, σε πρώτο στάδιο παρέμβασης, οι πολιτικές για τις visa παίζουν έναν κυρίαρχο ρόλο. Τα επιληφθέντα μέτρα σε αυτή τη φάση δεν συνεπάγονται αλλαγή της υπάρχουσας νομοθεσίας της Ε.Ε. αλλά την εφαρμογή των υπαρχόντων κανόνων με τρόπο που καθορίζεται από τον παράγοντα της προστασίας, ως απαραίτητος συσχετισμός με τις τωρινές πρακτικές.

Η Συνθήκη του Schengen του 1990 στο άρθρο 16 καθώς και ο Κώδικας Θεωρήσεων του 2009 στο άρθρο 25 επιτρέπουν την κατ' εξαίρεση παρέκκλιση από τις κανονικές απαιτήσεις εισόδου για ανθρωπιστικούς λόγους, εθνικά συμφέροντα ή διεθνείς υποχρεώσεις και απαιτήσεις για την έκδοση visa σύμφωνα με τη Schengen.

Η Visa περιορισμένης εδαφικής ισχύος, η οποία είναι έγκυρη μόνο στο Κράτος Μέλος που την έχει εκδώσει, μπορεί να παρέχεται από διπλωματικές αποστολές των Κρατών Μελών σε χώρες καταγωγής και ενδιάμεσες χώρες. Προτείνεται η έκδοση από τα Κράτη Μέλη εθνικών κατευθυντήριων γραμμών, έτσι ώστε να μειωθεί το εύρος της διακριτικότητας σχετικά με την έκδοση visa περιορισμένης εδαφικής ισχύος. Επιπλέον, συστήνεται η υιοθέτηση από την Ευρωπαϊκή Ένωση μη δεσμευτικών κατευθυντήριων γραμμών έτσι ώστε να εναρμονίσει την εφαρμογή του άρθρου 25 του Κώδικα Θεωρήσεων μεταξύ των Κρατών Μελών . Και στις δύο περιπτώσεις προτείνεται η αξιολόγηση των αιτημάτων για την έκδοση visa περιορισμένης εδαφικής ισχύος υπό το πρίσμα της προστασίας, π.χ. αν η απόρριψη τέτοιου αιτήματος μπορεί να εκθέσει τον αιτούντα σε δίωξη ή σε σοβαρή βλάβη.

Οι κατευθυντήριες γραμμές της Ε.Ε. ακολουθούν το παράδειγμα αυτών που εκδόθηκαν το 2010 για τις αποστολές της Frontex.

Σε επόμενο βήμα αυτές οι κατευθυντήριες γραμμές μπορούν να ενσωματωθούν στις Κοινές Προξενικές Οδηγίες για τις θεωρήσεις visa.

Σε εθνική βάση , μπορεί να επιτραπεί σε διπλωματικές αποστολές να εκδίδουν ταξιδιωτικά έγγραφα , όπου είναι αυτό απαραίτητο σε περιπτώσεις θετικής αξιολόγησης αιτήματος visa περιορισμένης εδαφικής ισχύος. Οι κατευθυντήριες γραμμές της Ε.Ε. θα πρέπει αυτό να το ενθαρρύνουν.

Προτείνεται να ανατεθεί στο Ευρωπαϊκό Γραφείο Υποστήριξης Προσφύγων –EASO η παρακολούθηση των εθνικών πρακτικών έκδοσης visa περιορισμένης εδαφικής ισχύος όπως και η πρόταση τροπολογιών των κατευθυντήριων γραμμών. Επίσης προτείνεται ο Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης –FRA να αναλάβει την παρακολούθηση σε γενικότερο επίπεδο της εφαρμογής των πολιτικών θεωρήσεων visa , υπό μία ευρύτερη προοπτική ανθρωπίνων δικαιωμάτων. Βάσει της εμπειρίας που μόλις ξεκίνησε να λαμβάνει υπόψη τα οικονομικά κίνητρα των Κρατών Μελών που προσφέρουν χώρους επανεγκατάστασης, προτείνεται η χρήση του Ευρωπαϊκού Ταμείου για τους Πρόσφυγες ή παρόμοια ταμεία που θα συστηθούν στο μέλλον, για την περίοδο μετά το 2014. Με αυτό τον τρόπο τα Κράτη Μέλη λαμβάνουν "bonus" σχετικά με τον αριθμό των αιτούντων άσυλο, οι οποίοι εισέρχονται στη χώρα βάσει της visa περιορισμένης εδαφικής ισχύος.

Επιπλέον, προτείνεται η πρόβλεψη εξαίρεσης από τις απαιτήσεις θεώρησης visa σε εξαιρετικές περιπτώσεις, υπέρ υπηκόων χωρών που

προέρχονται από χώρες όπου γίνονται μαζικές παραβιάσεις ανθρωπίνων δικαιωμάτων.

Μεταξύ των προτερημάτων μίας πολιτικής θεώρησης visa που καθορίζεται από τον παράγοντα της προστασίας είναι η μείωση του αριθμού των αιτούντων άσυλο που υπόκεινται στις διαδικασίες του Κανονισμού Δουβλίνο ΙΙ Πιθανοί αιτούντες άσυλο θα απευθύνονταν σε διπλωματικές αποστολές Κρατών Μελών με τα οποία υπάρχει κάποιος σύνδεσμος και στα οποία θέλουν πράγματι να εισέλθουν. Έτσι δεν θα εισέρχονταν σε μία χώρα για τους λόγους και μόνο της γεωγραφικής απόστασης και των ταξιδιωτικών διευκολύνσεων.

Συνεπώς, υποτίθεται ότι άνθρωποι που εισέρχονται σε επικράτεια Κράτους Μέλους με visa περιορισμένης εδαφικής ισχύος δεν θα επιχειρήσουν «δευτερεύουσες μετακινήσεις» σε άλλες χώρες ή τουλάχιστον θα το κάνουν σε μικρότερη κλίμακα.

Σε αυτή την πρώτη φάση , προτείνεται επιπλέον, η εγκαθίδρυση του **Προγράμματος Ευρωπαϊκής Επανεγκατάστασης**. Η πολιτική βούληση που αναπτύσσεται τα τελευταία 10 χρόνια καθώς και η πρόσφατη εισαγωγή εθνικών προγραμμάτων επανεγκατάστασης σε κάποια Κράτη Μέλη-ακόμη και σε μικρό αριθμό- αποτελούν θετικά σημάδια.

Παρ΄όλ' αυτά οι αλλαγές στην πρόσβαση προστασίας στην Ευρώπη θα παραμείνουν πολύ περιορισμένες, εάν ο συνολικός αριθμός των ατόμων που τους παρέχεται διεθνής προστασία παραμείνει στα σημερινά επίπεδα.

Έτσι λοιπόν, προτείνεται η επένδυση σε εκστρατείες πληροφόρησης, σχετικά με την ανάγκη επανεγκατάστασης των προσφύγων, για τη διαμόρφωση της κοινής γνώμης σε όλη την Ευρώπη . Τα μελλοντικά προγράμματα της Ε.Ε. θα πρέπει να παρέχουν πιο γενναιόδωρα κίνητρα στα Κράτη Μέλη, έτσι ώστε να ενταχθούν στα προγράμματα και να αυξηθεί ο αριθμός των δικαιούχων.

Πρέπει πάλι να επισημανθεί ότι τα προγράμματα επανεγκατάστασης δεν υποκαθιστούν την ανάγκη πρόβλεψης άλλων μέτρων προστατευμένης εισόδου (P.E.P.s). Η επανεγκατάσταση μπορεί να λαμβάνει χώρα από την χώρα καταγωγής και προϋποθέτει ότι ο πρόσφυγας έχει ήδη φτάσει σε μία τρίτη χώρα. Οι πολιτικές θεώρησης visa με έμφαση στην προστασία και οι διαδικασίες προστατευμένης εισόδου (P.E.P.s) θα πρέπει να είναι εφαρμοστέες στις χώρες καταγωγής καθώς και στις ενδιάμεσες χώρες, αφού αποτελούν το μόνο τρόπο αποφυγής διωγμού και βαριάς βλάβης.

Σε δεύτερο επίπεδο , προτείνεται η ενθάρρυνση των Κρατών Μελών να εισάγουν ή να επανεισάγουν, **εθνικά σχέδια προστατευμένης εισόδου** για αιτούντες άσυλο στις χώρες καταγωγής καθώς και για αυτούς που αδυνατούν να λάβουν προστασία στις ενδιάμεσες χώρες πρώτου καταφύγιου ή διέλευσης.

Αυτά τα σχέδια θα έπρεπε κυρίως να ακολουθούν το Ελβετικό Μοντέλο και να προβλέπουν επίσης πρόσθετες μορφές πρόσβασης σε διπλωματικές αποστολές, όπως π.χ. διαδικτυακές αιτήσεις, και/ ή τη διοχέτευση αιτήσεων μέσω της Ύπατης Αρμοστείας του ΟΗΕ για τους Πρόσφυγες ή Διεθνών ΜΚΟ, αναγνωρισμένες και παρούσες στην χώρα που διαμένει ο αιτών πολιτικό άσυλο.
Σε περίπτωση θετικού αποτελέσματος προσυμπτωματικού ελέγχου (screening) , και πάλι θα πρέπει να εκδίδεται visa περιορισμένης ισχύος . Παρ 'όλ' αυτά η έκδοση θα πρέπει να γίνεται βάσει μειωμένης διακριτικής ευχέρειας της εκδούσας αρχής και η απόρριψη θα πρέπει να υπόκειται σε δικαστικό έλεγχο. Η ενθάρρυνση από την Ε.Ε θα μπορούσε και πάλι να έχει τη μορφή καθοδήγησης και κατεύθυνσης της πολιτικής του Κράτους Μέλους και θα πρέπει και πάλι να περιλαμβάνει οικονομικό κίνητρο και αποζημίωση.

Το EASO θα πρέπει για ακόμη μία φορά να παρακολουθεί τις ουσιώδεις πρακτικές και εμπειρίες.
Σε τρίτη φάση προτείνεται **η αναδιατύπωση της Οδηγίας Διαδικασίας,** εισάγοντας μη δεσμευτικούς κανόνες για διαδικασίες στις πρεσβείες, οι οποίες θα πρέπει να είναι όσο το δυνατόν πιο παρόμοιες γίνεται με τους κανόνες που διέπουν τις διαδικασίες που επακολουθούν των αιτήσεων ασύλου στα εδάφη των Κρατών Μελών.

Το άρθρο 3 παράγραφος 2 της Οδηγίας , το οποίο αποκλείει αιτήματα για διπλωματικό άσυλο ή εδαφικό άσυλο, θα μπορούσε συνεπώς να τροποποιηθεί, επιτρέποντας όπου είναι δυνατό, την εφαρμογή διαδικαστικών κανόνων και εγγυήσεων εφαρμοσμένων σε εδαφικές διαδικασίες σε διαδικασίες off-shore.
Το πεδίο εφαρμογής της αναδιατύπωσης θα ήταν η εναρμόνιση ουσιωδών πρακτικών και η εγκαθίδρυση ελάχιστων προτύπων εφαρμόσιμα σε Κράτη Μέλη, που έχουν εισαγάγει σχέδια προστατευμένης εισόδου.

Σε τέταρτο στάδιο, σε μια μακροπρόθεσμη προοπτική, προτείνεται η αναθεώρηση του Κώδικα Θεωρήσεων, εισάγοντας την πιθανότητα της έκδοσης visa προστασίας ως "visa Schengen", επιτρέποντας έτσι τη μετακίνηση για μέχρι τρεις μήνες σε οποιοδήποτε μέλος του συστήματος Schengen, καθώς επίσης και επακόλουθη αίτηση ασύλου. Και πάλι, αυτό θα μείωνε τον αριθμό των αιτούντων άσυλο, που μετατοπίζονται από τη μία χώρα στην άλλη σύμφωνα με τον Κανονισμό του Δουβλίνου, αφού στις περισσότερες περιπτώσεις το αίτημα προστασίας θα παρουσιαζόταν απευθείας στην χώρα όπου ο αιτών άσυλο επιθυμεί να πάει και θα συνέπιπτε με την πρώτη χώρα άφιξης στην Ε.Ε.
Οι προϋποθέσεις για την έκδοση visa προστασίας, η οποία θα μπορούσε αρχικά να περιοριστεί σε έναν συγκεκριμένο αριθμό τρίτων χωρών, θα

πρέπει να εγκαθιδρυθεί με δεσμευτικούς κανόνες βάσει εμπειριών από τα προηγούμενα στάδια.
Στο τέλος αυτού του χάρτη πορείας, η Ευρωπαϊκή Επιτροπή θα πρέπει να προτείνει μία Οδηγία για διαδικασίες προστατευμένης εισόδου (PEPs), η οποία θα υιοθετηθεί από όλα τα Κράτη Μέλη, στο πνεύμα της ευθύνης μεταξύ των Κρατών Μελών της Ε.Ε. , σύμφωνα με το άρθρο 80 της Συνθήκης της Λισσαβώνας.
Προϋποθέσεις για το ωφέλεια από τα σχέδια Ρ.Ε.Ρ. πρέπει να είναι πρώτα απ' 'όλα η προσωπική ασφάλεια του αιτούντος, η ανάγκη απόκτησης διεθνούς προστασίας, η έλλειψη δυνατότητας απόκτησης αποτελεσματικής προστασίας στην ενδιάμεση χώρα, η ευπάθεια του ατόμου, οι δεσμοί με μέλη της οικογένειας που διαμένουν σε ένα Κράτος Μέλος και κάθε σχετικός σύνδεσμος με οποιοδήποτε Κράτος Μέλος.
Εν όψει της Ανακοίνωσης της Ευρωπαϊκής Ένωσης σχετικά με «τις νέες προσεγγίσεις για πρόσβαση στις διαδικασίες ασύλου» μπορεί να προταθεί η έκδοση εκ των προτέρων ενός Πράσινης Βίβλου , επιτρέποντας ευρείες διαβουλεύσεις.

INSERIRE COPERTINA ITALIA

SOMMARIO

La presenza fisica del richiedente protezione nel territorio dello stato membro è requisito fondamentale per chiedere asilo nell'Unione Europea. L'accesso alla protezione è dunque legato all'ammissione al territorio.

Le misure introdotte nell'ambito del regime dei visti e delle frontiere dell'UE hanno reso sempre più difficoltoso l'esercizio del diritto di chiedere asilo ai sensi della Carta dei diritti fondamentali dell'UE, rendendo praticamente impossibile per la maggior parte dei richiedenti protezione raggiungere i territori dell'UE in modo regolare.

Non solo sono stati rafforzati i controlli alle frontiere esterne dell'UE, ma i meccanismi di sorveglianza sono stati estesi anche ai territori dei paesi terzi. Le sanzioni ai vettori, il dispiegamento di funzionari di collegamento incaricati dell'immigrazione (ILOs) e di funzionari di collegamento negli aeroporti (ALO); il supporto finanziario e logistico ai governi di paesi terzi così come gli "incentivi" per il rafforzamento dei sistemi di controllo e di sorveglianza; l'attuazione delle attività FRONTEX nelle "aree sensibili"; e in alcuni casi, il respingimento indiscriminato dei migranti e dei richiedenti asilo verso i paesi di origine o di transito sono solo alcune delle misure del pacchetto designato alla lotta contro l'immigrazione irregolare ma che di fatto restringe sostanzialmente il diritto di chiedere asilo.

Di conseguenza, ai richiedenti asilo non resta altra scelta che pagare i trafficanti per il trasporto via terra, mare o aria. Secondo stime calcolate sulla base di incidenti che si sono verificati tra il 1998 e il mese di agosto 2011, 17.738 persone hanno perso la vita nel tentativo di raggiungere l'Europa. Solo nel 2011, circa 2.000 bambini, donne e uomini sono morti nel Canale di Sicilia. Considerando soltanto la rotta dalla Libia verso l'Isola di Lampedusa, nel 2011, ha perso la vita 5% di tutti coloro che hanno tentato di raggiungere l'Europa.

La maggior parte delle persone che cercano di raggiungere l'Europa sono generalmente soggette a gravi violazioni dei diritti umani e sfruttamento durante il percorso e in particolare nei paesi di transito e/o in altri territori, come ad esempio l'alto mare considerato de facto *res nullius.*

Nel contesto dei flussi migratori misti, le persone sono spesso intercettate in mare e in molte occasioni non hanno alcuna possibilità di chiedere asilo nell'UE, con il concreto rischio che il principio di *non refoulement* venga violato.

Le persone che nonostante le difficoltà e i rischi riescono comunque a raggiungere i territori dell'UE e a chiedere asilo non sono necessariamente quelle che hanno maggiormente bisogno di protezione internazionale. La "selezione" si basa sulle risorse finanziarie a disposizione di queste persone e

delle loro famiglie, le capacità migratorie, il livello di istruzione e altri fattori non collegati ai motivi che le hanno spinte a lasciare il paese di origine.

Questi scenari sono il punto di partenza del progetto "E.T. Entering the territory: exploring new forms of access to asylum procedures" (ET ingresso nel territorio: esplorando nuove forme di accesso alle procedure di asilo), cofinanziato dall'UE nell'ambito del Fondo Europeo per i Rifugiati e attuato tra il 2011 e 2012. Il progetto è attuato dal Consiglio Italiano per i Rifugiati (CIR) in partenariato con il Consiglio Europeo per i Rifugiati e gli Esuli (ECRE) e le Organizzazioni Non Governative (NGOs), accademici e istituti di ricerca in Austria, Cipro, Danimarca, Grecia, Italia, Malta, Paesi Bassi, Spagna e Svizzera. L'UNHCR è coinvolto come valutatore esterno.
Gli obiettivi sono:

1) Promuovere il dibattito sull'ingresso ordinato dei richiedenti la protezione internazionale nell'UE tramite l'uso di informazioni e dati riguardanti le esperienze fatte in un determinato numero di stati membri;

2) Stimolare la discussione a livello nazionale e dell'UE sui meccanismi di ingresso ordinato e forme alternative di accesso alle procedure di asilo;

3) Raccogliere opinioni di politici e di altri stakeholder sui pro e i contro delle procedure di ingresso protetto e sulle altre forme di accesso alla protezione nonché valutare il livello del consenso a livello nazionale e dell'UE su nuove politiche e legislazioni relative all'accesso alle procedure di asilo;

4) Promuovere attività di sensibilizzazione sulle difficoltà che le persone incontrano nell'accesso alle procedure di asilo e cercare consensi per trovare soluzioni.

Tra le attività progettuali si annovera l'organizzazione di seminari nazionali svoltisi ad Atene, Roma, Madrid, Vienna, Malta e Cipro e di una Conferenza europea realizzata nel settembre 2011; 140 interviste a vari stakeholder tra cui leader politici e funzionari governativi di tutti i paesi coinvolti ed anche a livello dell'UE; missioni presso alcune ambasciate in paesi terzi; campagne e attività di comunicazione.

Sono state altresì analizzate le esperienze fatte in alcuni stati membri riguardo alle diverse forme di arrivi gestiti e ordinati di persone alla ricerca di protezione internazionale. Possono essere distinte cinque modalità di ingresso regolare: asilo diplomatico; reinsediamento; operazioni di evacuazione umanitaria; uso flessibile del regime dei visti; procedure di ingresso protetto. Nella maggior parte di questi paesi una o più di queste modalità sono state attuate in passato o, in alcuni casi, sono tuttora presenti. Tuttavia, il numero totale delle persone che hanno avuto o che tuttora beneficiano di questi schemi è estremamente basso.

La questione relativa alle misure restrittive sui visti e ai controlli rafforzati alle frontiere che ostacolano l'accesso dei richiedenti asilo alla protezione è stata oggetto di dibattiti politici nell'ambito dell'UE sin dall'inizio della costruzione del sistema comune di asilo europeo. Le Conclusioni del Consiglio Europeo adottate a Tampere (1999) fanno un chiaro riferimento alla questione inerente l'accesso al territorio, mandando un forte segnale circa la necessità di bilanciare i controlli alla frontiera e la protezione dei rifugiati..

La Commissione europea, in alcune Comunicazioni, ha indicato la necessità di introdurre schemi di ingresso protetto e, nel 2002, ha commissionato uno studio di fattibilità riguardante le procedure di asilo al di fuori dell'UE. I risultati sono stati presentati e discussi durante il seminario internazionale svoltosi a Roma nell'ottobre del 2003, sotto la Presidenza Italiana del Consiglio dell'UE insieme ad uno studio di fattibilità su un Programma Europeo di Reinsediamento.

Nel Programma di Stoccolma (dicembre 2009) il Consiglio Europeo indica che le "procedure di ingresso protetto e il rilascio di visti umanitari dovrebbero essere facilitati" e che lo "studio relativo alla fattibilità e alle implicazioni giuridiche e pratiche del congiunto esame delle richieste di asilo all'interno e al di fuori dell'Unione dovrebbe continuare". Nel Piano di Azione del Programma di Stoccolma (aprile 2010) la Commissione annuncia una "Comunicazione su nuovi approcci concernenti l'accesso alle procedure di asilo per quanto riguarda i principali paesi di transito" entro il 2013.

Dopo più di dieci anni di dibattito politico, il piano per l'istituzione di un Programma Europeo di Reinsediamento ha ottenuto risultati concreti mentre gli schemi di ingresso protetto non solo non sono stati sviluppati a livello europeo ma sono stati addirittura aboliti o limitati negli stati membri che hanno già sperimentato tali procedure.

In Svizzera, sebbene vi sia un modello nazionale di procedure di ingresso protetto considerato un esempio di buone prassi, il governo sta attualmente proponendo la sua abolizione. Una ricorrente argomentazione in favore della revisione della procedura di ingresso protetto si basa sulla considerazione che tale procedura non può essere attuata soltanto in un singolo stato o in alcuni paesi, ma deve essere realizzato in un numero significativo di stati europei.

L'attuale situazione politica e finanziaria europea non favorisce l'introduzione di politiche di ingresso ordinato e regolare di richiedenti protezione internazionale. Il timore, sollevato da alcuni stakeholder, è che tali procedure generino un flusso imprevedibile e consistente di richiedenti asilo o che possanoo sviluppare un "fattore di attrazione" – che provocherebbe un incremento dei costi e la necessità di aumentare il personale presso le rappresentanze diplomatiche..

Nell'attuale contesto tale timore potrebbe influenzare i politici e l'opinione pubblica. Per tale motivo, le seguenti proposte e raccomandazioni sono basate su un approccio graduale.

Sulla base dei risultati della ricerca, sembra che l'obiettivo generale sia quello di allargare gradualmente le possibilità per le persone bisognose di protezione internazionale di raggiungere i territori dell'UE secondo modalità regolari e ordinate.

Innanzitutto, la definizione di questo obiettivo comporterebbe un cambiamento culturale che deve essere condiviso con l'opinione pubblica in Europa. Nonostante le molte critiche e le opinioni pessimistiche espresse dagli stakeholder riguardo a questioni più tecniche su come andare avanti, l'allargamento dello spazio per l'ingresso regolare dei richiedenti protezione internazionale è considerato come necessario ed auspicato da quasi tutti gli intervistati.

Il focus è sull'ingresso piuttosto che sulle procedure. E non è tanto una questione di autorizzare una persona già presente alla frontiera a fare ingresso nel territorio, bensì una garanzia legale all'ingresso nel territorio prima della partenza dal paese di origine o da un paese terzo.

Solo sulla base di tali garanzie il viaggio può essere sicuro e regolare.

Tutte le modalità complementari di accesso alla protezione hanno in comune questa nozione di autorizzazione al viaggio. Comunque si tratta di visti, sia nel caso di una deroga dai requisiti del visto che di facilitazione nell'ottenimento del visto.

Conseguentemente, in una prima fase di intervento, le politiche dei visti giocano un ruolo predominante. Le misure adottate in questa fase non comportano cambiamenti dell'esistente legislazione dell'UE ma piuttosto un'applicazione delle norme esistenti che tengano conto delle esigenze di protezione come un necessario bilanciamento delle prassi correnti. Sia la Convenzione Schengen del 1990 (articolo 16) che il Codice Visti dell'UE del 2009 (articolo 25) consentono eccezionalmente deroghe dai normali requisiti di ingresso per motivi umanitari, d'interesse nazionale oppure per obblighi internazionali.. Il visto con validità territorialmente limitata, valido solo per lo stato membro che lo ha emesso, può essere rilasciato dalle rappresentanze diplomatiche degli stati membri nei paesi di origine o nei paesi terzi.

Si raccomanda che gli stati membri emettano linee guida nazionali per ridurre l'ambito di discrezionalità riguardo il rilascio del visto con validità territoriale limitata. Inoltre, si raccomanda che l'UE adotti linee guida non vincolanti per armonizzare l'applicazione dell'articolo 25 del Codice visti dell'UE tra gli stati membri. In entrambi i casi si raccomanda che le richieste del rilascio del visto con validità territoriale limitata siano esaminate sotto l'aspetto di protezione (ad esempio se il rifiuto di tali richieste potrebbero esporre il richiedente alla persecuzione o al danno grave.

Le linee guida dell'UE potrebbero seguire l'esempio di quelle emesse nel 2010 per le operazioni FRONTEX.

In una fase successiva, le linee guida potrebbero essere incorporate nelle Istruzioni Consolari Comuni sui visti.

A livello nazionale, le rappresentanze diplomatiche potrebbero anche autorizzare il rilascio di un documento di viaggio, laddove necessario, in caso di valutazioni positive della richiesta di un visto con validità territoriale limitata; le linee guida dell'UE dovrebbero incoraggiarne il rilascio.

Si raccomanda che l'Ufficio Europeo di Sostegno per l'Asilo sia incaricato di monitorare le prassi nazionali sul rilascio dei visti a validità territoriale limitata, ed eventualmente di proporre emendamenti alle linee guida. Si raccomanda, altresì, che l'Agenzia dell'Unione Europea per i diritti fondamentali – FRA sia incaricata di monitorare più in generale l'applicazione delle politiche dei visti sotto una prospettiva più ampia dei diritti umani.

Sulla base delle esperienze fatte, riguardo agli incentivi finanziari agli stati membri che offrano posti di reinsediamento, si raccomanda l'uso del Fondo Europeo per i Rifugiati o di futuri fondi simili previsti dal 2014 in modo tale che gli stati membri ricevano un "bonus" in relazione al numero dei richiedenti asilo che fanno ingresso nel paese in base al visto con validità territoriale limitata. Inoltre, si raccomanda di prevedere in casi eccezionali esenzioni dal requisito del visto in favore di cittadini di un paese dove vengono attuate massicce violazioni dei diritti umani.

Tra i vantaggi di un'applicazione delle politiche di visti che tengano conto delle esigenze di protezione si annovera la diminuzione del numero dei richiedenti asilo sottoposti alle procedure previste dal Regolamento Dublino II. Potenziali richiedenti asilo potrebbero rivolgersi alle rappresentanze diplomatiche di uno stato membro con cui esiste un legame o che sia disposto ad accoglierli, e non entrerebbero in un paese solo per questioni relative alla distanza geografica e alle facilitazioni di viaggio.

Di conseguenza, si suppone che le persone che entrano nel territorio di uno stato membro con un visto a validità territorialmente limitata o esente dal requisito del visto, non intraprenderanno "movimenti secondari" verso altri paesi, o quanto meno lo farebbero in misura ridotta.

In questa fase, si raccomanda inoltre di istituire un Programma europeo di reinsediamento. La volontà politica sviluppatasi negli ultimi 10 anni, e la recente introduzione di programmi nazionali di reinsediamento, anche se in numeri molto bassi, in vari stati membri è da considerarsi un segnale positivo. Tuttavia, l'impatto dell'accesso alla protezione in Europa sarà molto limitato fintanto che il numero dei posti disponibili nel suo insieme rimarrà ai livelli attuali.

Si raccomanda quindi di investire in campagne di sensibilizzazione rivolte all'opinione pubblica in tutta Europa sui vantaggi e sulla necessità di reinsediamento dei rifugiati. I futuri programmi dell'UE dovrebbero prevedere incentivi più generosi in favore degli stati membri affinché essi partecipino al programma e aumentino il numero dei beneficiari.

Occorre nuovamente sottolineare che i programmi di reinsediamento non sostituiscono le altre forme di ingresso protetto che dovrebbero essere comunque previste. Il reinsediamento non può essere attuato nel paese di origine e si presume che il rifugiato abbia già raggiunto un paese terzo. Le politiche dei visti che tengono conto delle esigenze di protezione e le procedure di ingresso protetto, dovrebbero a loro volta, essere applicate sia nei paesi di origine che nei paesi terzi, in quanto sarebbe il solo modo per evitare la persecuzione e il danno grave.

In una seconda fase, si raccomanda che gli stati membri siano incoraggiati ad introdurre o re-introdurre schemi nazionali di ingresso protetto per i richiedenti asilo nei loro paesi di origine e per coloro che non riescono ad ottenere protezione nei paesi terzi di primo approdo o di transito.

Questi schemi dovrebbero, in linea di massima, seguire l'attuale modello svizzero e dovrebbero prevedere anche modalità supplementari di accesso alle rappresentanze diplomatiche come richieste on-line e/o presentare le richieste attraverso l'UNHCR oppure le ONG internazionali, riconosciute e presenti nel paese in cui si trovano i richiedenti asilo.

Nel caso di un risultato positivo della preliminare verifica della richiesta, dovrebbe essere emesso un visto con validità territoriale limitata. In questo caso, l'autorità emittente avrà un potere discrezionale molto più ridotto; le decisioni di rigetto dovrebbero essere sottoposte a ricorsi.

L'incoraggiamento da parte dell'UE potrebbe concretizzarsi in direttive politiche che dovrebbero includere, anche incentivi finanziari e compensazioni.. L' EASO dovrebbe svolgere un'attività di monitoraggio dell'esperienza acquisita e delle prassi.

In una terza fase, si raccomanda la revisione della Direttiva Procedure, con l'introduzione di norme non vincolanti riguardanti le procedure presso le ambasciate che dovrebbero essere quanto più possibile simili a quelle che regolamentano le procedure territoriali negli Stati Membri.

L'articolo 3(2) della Direttiva, che esclude la possibilità di presentare le richieste di asilo diplomatico o territoriale presso le Rappresentanze degli Stati Membri dallo scopo della Direttiva stessa, verrebbe dunque emendato consentendo, laddove possibile, che anche all'estero siano applicate le stesse norme e garanzie procedurali in vigore nel territorio nazionale.

Tale revisione sarebbe finalizzata ad armonizzare le prassi e a stabilire standard minimi applicabili negli stati membri che abbiano adottato schemi di ingresso protetto.

In una quarta fase, da prevedere in una prospettiva di lungo termine, si raccomanda una revisione del Codice Europeo sui visti, introducendo la possibilità di emettere visti di protezione come " Visti Schengen", che consentano di viaggiare per un massimo di tre mesi in ogni stato parte del sistema Schengen e conseguentemente di fare richiesta di asilo. Anche in tal caso si ridurrebbe il numero dei richiedenti asilo che vengono trasferiti da un paese ad un altro ai sensi del Regolamento Dublino, poiché nella maggior parte dei casi, la richiesta di protezione verrebbe presentata direttamente nello stato dove il richiedente asilo vorrebbe recarsi, e che coincide con il primo paese di arrivo nell'UE.

I criteri per il rilascio dei visti di protezione, che inizialmente potrebbe essere ristretto ad un determinato numero di paesi terzi, dovrebbero essere stabiliti secondo norme vincolanti, sulla base delle esperienze fatte nelle fasi precedenti.

Alla fine della tabella di marcia, la Commissione dovrebbe proporre una Direttiva sulle procedure di ingresso protetto (PEP) da introdurre in tutti i paesi membri nel rispetto del principio della condivisione delle responsabilità tra gli stessi stati dell'UE in linea con l'articolo 80 del Trattato di Lisbona.

I requisiti per poter beneficiare delle procedure di ingresso protetto dovrebbero essere innanzitutto basate sulle esigenze di sicurezza personale del richiedente; il bisogno di ottenere la protezione internazionale; l'impossibilità di ottenere effettiva protezione nel paese terzo; la vulnerabilità della persona; i legami familiari residenti in uno degli stati membri; altri rilevanti legami con qualsiasi stato membro.

In vista dell'annunciata Comunicazione della Commissione Europea su "nuovi approcci riguardanti l'accesso alle procedure di asilo" si raccomanda di pubblicare dapprima un Green Paper consentendo così una più vasta consultazione.

INSERIRE COPERTINA SPAGNA

SUMARIO

La búsqueda de asilo en la Unión Europea depende de la presencia física del solicitante de protección en el territorio de un Estado Miembro. El acceso a la protección está supeditada al acceso y admisión al territorio europeo.

La combinación de medidas introducidas bajo los regímenes de frontera y de visado de la UE ha hecho cada vez más difícil ejercer el derecho a solicitar asilo consagrado en la Carta de Derechos Fundamentales de la UE, habiendo hecho imposible para la gran mayoría de los solicitantes de protección, alcanzar los territorios de la UE de una manera legal.

No sólo se han endurecido los controles en las fronteras exteriores de la UE, sino que los mecanismos de control se han extendido a los territorios de terceros países. Las sanciones económicas impuestas a las compañías de transporte de pasajeros; el despliegue de los oficiales de enlace de inmigración (ILO o Immigration Liaison Officers) y de los oficiales de enlace aeroportuarios (ALO o Airport Liaison Officers); el apoyo logístico y financiero a los Gobiernos de terceros países así como proporcionar "incentivos" para el endurecimiento de su control y sistemas de supervisión; despliegue del FRONTEX hacia "áreas sensibles": y, en algunas instancias, el retorno forzoso e indiscriminado de inmigrantes y solicitantes de protección internacional a los países de origen o de tránsito, son algunas de las medidas de un plan diseñado para luchar contra la inmigración irregular pero que de hecho afectan restrictivamente al derecho de solicitar asilo.

Como consecuencia, los solicitantes de asilo no ven otra opción más que pagar a contrabandistas por el transporte por tierra, mar o aire. Conforme a las estimaciones basadas solamente en los incidentes que se hicieron públicos, desde 1998 hasta agosto de 2011, 17.738 personas murieron en el intento de alcanzar Europa. Sólo durante 2011, alrededor de 2.000 niños, hombres y mujeres murieron en el canal de Sicilia. Tomando en consideración sólo la ruta de Libia a la isla de Lampedusa, en 2011, el 5% de todos aquellos que intentaron alcanzar Europa han perdido la vida.

La mayor parte de las personas que intentan alcanzar Europa son, generalmente, objeto de explotación y violaciones graves de los derechos humanos durante su travesía hacia Europa, en particular en los países de tránsito y/o en aquellos territorios, tales como altamar, considerados de facto *res nullius.*

La gente que llega en el marco de flujos mixtos son interceptados en el mar y en numerosas ocasiones no tienen la posibilidad de solicitar asilo en la UE con el riesgo concreto de que se viole el principio de no devolución.

Quienes, a pesar de todos estos riesgos y dificultades, tienen éxito en alcanzar los territorios de la UE y presentan su solicitud de protección

internacional, no son necesariamente quienes más la necesitan. La "selección" está basada en la capacidad financiera de estas personas y sus familias, habilidades para migrar, nivel de educación y factores similares no conectados con las razones que les forzaron a abandonar sus países de origen.

Estos escenarios son el punto de partida del proyecto "E.T. Entering the Territory (Entrada en el Territorio): explorando nuevas formas de acceso a los procedimientos de asilo", cofinanciado por la UE bajo el Fondo Europeo para los Refugiados, e implementado en 2010/2012. El proyecto llevado a cabo por el Consejo Italiano para los Refugiados (CIR) en colaboración con el Consejo Europeo para los Refugiados y Exiliados (ECRE), así como con ONG, académicos e institutos de investigación en Austria, Chipre, Dinamarca, Grecia, Italia, Malta, los Países Bajos, España y Suiza. ACNUR ha estado involucrada como examinador externo.

Los Objetivos son:

1. Promover el debate sobre la entrada ordenada en la UE de personas que busquen protección internacional, con información y datos sobre las experiencias realizadas en un número de Estados Miembros.
2. Estimular la discusión en el ámbito nacional y de la UE sobre los mecanismos de entrada ordenada y medios alternativos de acceso a los procedimientos de asilo.
3. Reunir las opiniones de los legisladores y otras partes interesadas sobre los pros y los contras de los procedimientos de entrada protegida y otros medios de acceso a la protección; evaluación del nivel de consenso tanto en el ámbito nacional, así como en el de la UE sobre nuevas políticas y legislación con respecto al acceso al procedimiento de asilo;
4. Incrementar la conciencia sobre las dificultades que la gente afronta al acceder a los procedimientos de asilo y buscar el consenso para obtener soluciones.

Las actividades realizadas en el marco del proyecto han sido la organización de talleres nacionales en Atenas, Roma, Madrid, Viena, Malta y Chipre y de una conferencia europea sobre la materia en septiembre de 2011; entrevistas con más de 140 partes interesadas, entre ellas, líderes políticos y oficiales gubernamentales en todos los países involucrados, así como en la UE; misiones a un número de embajadas localizadas en terceros países, publicidad y marketing y campañas de sensibilización.

Las experiencias realizadas en un número de Estados Miembros fueron examinadas, en atención a las diferentes formas de llegada dirigida y ordenada de personas, que están necesitadas de protección internacional o que están buscando asilo.

Deben distinguirse cinco modalidades diferentes de entrada legal: **Asilo por vía diplomática; reasentamiento; operaciones de evacuación humanitaria; uso flexible del régimen de visados; procedimientos de**

entrada protegida. En la mayoría de los países, se llevaron a cabo una o más de estas modalidades en el pasado y en algunos casos, todavía se llevan a cabo en el presente. El número total de personas que se beneficiaron o se benefician de estos planes es sin embargo, extremadamente bajo.

El problema consiste en el hecho de que los regímenes de visados restringidos y el aumento de controles fronterizos impiden a quienes buscan protección, el acceso a la misma, lo que ha sido objeto de debate político en la UE desde el comienzo de la construcción del Sistema Europeo Común de Asilo. Las conclusiones del Consejo Europeo en Tampere (1999) hicieron una clara referencia a la cuestión del acceso al territorio, emitiendo una señal contundente sobre la necesidad de equilibrar el control fronterizo y la protección al refugiado.

La Comisión Europea ha presentado en varios comunicados la necesidad de establecer programas de entrada protegida y en 2002, encargó un estudio de viabilidad que observara la tramitación las solicitudes de asilo fuera de la UE. Los resultados fueron presentados y discutidos en un seminario internacional en Roma bajo la presidencia del Consejo Italiano, en octubre de 2003, junto con un estudio sobre viabilidad de un programa europeo de reasentamiento.

En el Programa de Estocolmo, diciembre de 2009, el Consejo Europeo expuso que "los procedimientos de entrada protegida y la emisión de visados humanitarios debería facilitarse" y que "los análisis de viabilidad e implicaciones legales y prácticas de los procedimientos conjuntos de las solicitudes de asilo dentro y fuera de la UE, deberían continuar". En el plan de acción del programa de Estocolmo, abril de 2010, la Comisión anunció para 2013 una "Comunicación sobre nuevos enfoques concernientes a los procedimientos de asilo focalizando (en los) principales países de tránsito".

Después de más de 10 años de debate político, el plan para el establecimiento de un Programa Europeo de Reasentamiento ha alcanzado pasos concretos mientras que los planes de entrada protegidos no sólo no fueron desarrollados a nivel Europeo, sino mas bien abolidos o restringidos en los Estados Miembros que habían tenido experiencias previamente con dichos planes. El Gobierno de Suiza está proponiendo la abolición de su procedimiento de entrada protegida que solía ser considerado como un ejemplo de buenas prácticas. El hecho de que este procedimiento de entrada sólo sea garantizado por un país es un motivo de discusión permanente para la revisión de los planes de entrada protegida.

Ciertamente, el medio político y económico actual en Europa no es favorable a la introducción de planes para la llegada ordenada de personas en búsqueda de protección internacional. El miedo a que de dichos planes pudieran resultar un número incontrolablemente elevado de personas que busquen de asilo, o crearan un efecto de atracción – lo que implicaría costes

elevados y la necesidad de incrementar el personal en las representaciones diplomáticas – fue expuesto por varias de las partes interesadas. Este miedo podría influir en los legisladores y en la opinión pública en el entorno presente. Por esta razón, las propuestas y recomendaciones que siguen, se basan en un acercamiento gradual.

Como resultado del trabajo de investigación llevado a cabo, parece que el objetivo general es ampliar paso a paso, las posibilidades de alcanzar los territorios de la UE de manera regular y ordenada de las personas necesitadas de protección internacional.

En primer lugar, la definición de este objetivo significaría un cambio cultural que debe ser compartido por la opinión pública en Europa. A pesar de las numerosas visiones críticas y pesimistas expresadas por las partes interesadas -en atención a las cuestiones más técnicas sobre cómo avanzar y ampliar el espacio para la entrada legal de refugiados- es percibido como necesario y conveniente por casi todas las personas entrevistadas.

El foco está puesto en la entrada más que en otros procedimientos. Y no es cuestión tanto de autorizar la entrada a un territorio, a una persona ya presente en la frontera, sino de la garantía legal de poder entrar en el territorio estipulado antes de la salida del país de origen o de un país intermedio. El viaje sólo puede ser seguro y regular, sobre la base de una garantía de acceso.

Todas las formas complementarias de acceso para la protección tienen en común esta noción de autorización de viaje.

Por tanto, todo gira sobre los visados, sobre la derogación de un requisito para obtener el visado o la facilidad para obtener un visado.

En consecuencia, en la primera posible intervención, las políticas sobre visados juegan un papel predominante.

Las medidas tomadas en esta fase no implican un cambio en la legislación de la UE existente, sino más bien una aplicación sensible y protectora de las normas ya existentes, como correlativo a las prácticas actuales.

Tanto la Convención Schengen de 1990, artículo 16, como el Código sobre visados de la UE permiten excepcionalmente la derogación de los requisitos de emisión de un visado Schengen, por razones humanitarias, de interés nacional u otras obligaciones internacionales.

El **visado con validez territorial limitada,** válido sólo para el Estado Miembro que lo emitió, podría ser proporcionados por las representaciones diplomáticas del Estado Miembro en los países de origen o en países intermedios. Se recomienda que los Estados Miembros emitan directrices nacionales con el objeto de reducir el espacio de discrecionalidad pura en observancia de la emisión de visados con validez territorial limitada. Es más, se recomienda que la UE adopte directrices no vinculantes con el objeto de armonizar entre los Estados miembros, la aplicación del artículo 25 del Código de Visados. En ambos casos, se recomienda que las solicitudes para la

emisión de un visado con validez territorial limitada sean evaluadas bajo criterios de protección, es decir, si el rechazo de tales solicitudes pudieran exponer al solicitante a persecuciones o serios daños.

Las directrices de la UE podrían seguir el ejemplo de aquellas directrices emitidas en 2010 para las operaciones de Frontex.

En un paso siguiente, esas directrices podrían incorporarse a las instrucciones consulares comunes sobre visados.

Sobre una base nacional, las representaciones diplomáticas también podrían estar autorizadas, en caso necesario, a emitir un documento de viaje cuando se obtenga una evaluación positiva de la solicitud de visado con validez territorial limitada: las directrices de la UE deberían fomentar esta práctica.

Se recomienda que la supervisión de las prácticas nacionales de emisión de visados con validez territorial limitada sea encomendada a la Oficina de Apoyo Europeo al Asilo -EASO- y, eventualmente, se sugieren modificaciones a las directrices. También se recomienda encomendar a la Agencia Europea para los Derechos Fundamentales el control de las políticas de solicitud de visado más en general, bajo una perspectiva más amplia de los Derechos Humanos.

Basado en la experiencia que acaba de empezar, en atención a los incentivos financieros para los Estados Miembro que ofrecen lugares de reasentamiento, se recomienda usar el Fondo Europeo para los Refugiados o futuros fondos similares, previstos para el periodo que va desde 2014, de tal modo que los Estados Miembro reciban un "bonus" en relación con el número de solicitantes de asilo que entraran al país sobre la base de un visado con validez territorial limitada.

Además, se recomienda preveer exenciones excepcionales para los requisitos de visado, a favor de nacionales de un país donde tengan lugar violaciones masivas de derechos humanos.

Entre las ventajas de una aplicación sensible de la protección en la política de visados está la disminución del número de solicitantes de asilo bajo la sujeción de los procedimientos del Reglamento de Dublín II. Los potenciales solicitantes de protección internacional se acercarían a las representaciones diplomáticas de un Estado miembro con el que hay una conexión y en el que quieren ser acogidos, y no entrarían en un país por el único motivo de la distancia geográfica y facilidad del viaje.

De este modo, se supone que la gente que entre en un Estado Miembro con un visado sin validez territorial limitada, o exentos del requisito de visado, no realizarán movimientos sucesivos a otros países, o por lo menos lo harán en menor grado.

Aún más, en esta primera fase, se recomienda establecer el **Programa Europeo de Reasentamiento.** La voluntad política se ha estado desarrollando

a lo largo de los últimos 10 años y la introducción reciente de programas nacionales de reasentamiento –incluso en números muy bajos- en varios Estados Miembro, es un signo positivo.

Sin embargo, el impacto del acceso a la protección en Europa estará muy limitado si el número de plazas ofrecidas en conjunto permanece en el nivel actual. Por eso, se recomienda invertir en campañas de información a la opinión pública de toda Europa sobre las ventajas de y la necesidad de reasentamiento de refugiados. Los futuros programas de la UE deberían proveer incentivos más generosos a los Estados Miembro con el objeto de de que se unan al programa e incrementen el número de beneficiarios.

Debe ponerse de relieve, de nuevo, que los programas de reasentamiento no sustituyen la necesidad de prever otros medios de entrada protegida. El reasentamiento no puede tener lugar nunca desde el país de origen y asume que el refugiado ya ha alcanzado un tercer país. Las políticas de visados de protección sensibles y los procedimientos de entrada protegidos deberían ser aplicables tanto en los países de origen como en los países intermedios, como el único modo de evitar la persecución y serios daños.

En un segundo paso, se recomienda que los Estados Miembro sean animados a introducir **planes nacionales de entrada protegida** para solicitantes de asilo en sus países de origen, así como en aquellos en los que no sea posible obtener protección en un país intermedio de primer refugio o tránsito.

En líneas generales, los programas deberían seguir el modelo suizo actual y deberían preveer también formas suplementarias de acceso a las representaciones diplomáticas, como solicitudes on-line y/o encauzar las solicitudes a través del ACNUR o de ONG´s internacionales, reconocidas y presentes en el país de estancia del solicitante de asilo.

En caso de un resultado positivo del examen inicial de la solicitud, se emitiría de nuevo un visado con validez territorial limitada, pero sobre la base de un poder discrecional de emisión de la autoridad mucho más reducido, y los rechazos serían objeto de revisión judicial.

El estímulo por parte de la UE podría tomar forma de política de dirección y guía y debería incluir incentivos financiero y compensaciones.

La EASO debería controlar las prácticas materiales y las experiencias.

En un tercer paso, se recomienda **refundir la Directiva de Procedimiento,** introduciendo reglas no vinculantes para los procedimientos en embajadas que deberían ser tan parecidas como fuera posible a las normas que rijan los procedimientos que siguen a la solicitud de asilo en el territorio de los estados miembro.

El artículo 3 (2) de la directiva, excluyendo las solicitudes por vía diplomática o el asilo territorial solicitado a las representaciones de los Estados Miembros sería consecuentemente enmendado, permitiendo, cuando

fuera posible, la aplicación de normas de procedimiento y las garantías aplicables en los procedimientos en territorio y también en los procedimientos en las costas.

El ámbito de la refundición sería la armonización de las prácticas materiales y el establecimiento de estándares mínimos pertinentes para los Estados miembro que hayan introducido programas de entrada protegida.

En un cuarto paso, desde una perspectiva prevista en un periodo más largo, **se recomienda una revisión el Código de Visados de la UE,** introduciendo la posibilidad de emitir visados de protección como si fueran "Visados Schengen", permitiendo viajar hasta tres meses a cualquiera de los Estados parte del sistema Schengen y presentar la subsiguiente solicitud de asilo. De nuevo, esto reduciría el número de solicitantes de asilo que se desplazan de un país a otro bajo el procedimiento de Dublín, pues, en la mayoría de los casos, la reclamación de protección se presentaría directamente en el país donde el solicitante de asilo deseara ir, y coincidiría con el primer país de llegada a la UE.

Las condiciones para la emisión de visados de protección – que podrían restringirse inicialmente a un número limitado de terceros países- deberían estar establecidas por reglas vinculantes, sobre la base de las experiencias hechas durante los pasos previos.

Al final de esta hoja de ruta, la Comisión debería proponer una directiva sobre procedimientos de entrada protegidos (PEP) a introducir en todos los Estados Miembro, con el espíritu de compartir la responsabilidad entre los Estados Miembro de la UE de acuerdo con el artículo 80 del Tratado de Lisboa.

La condición para beneficiarse del PEP debería ser la seguridad del solicitante; la necesidad de obtener protección internacional; la imposibilidad de obtener protección efectiva en el país intermedio; la vulnerabilidad de la persona; los vínculos con miembros de su familia residentes en uno de los Estados Miembro; otros vínculos relevantes en cualquiera de los Estados Miembro.

En vista de la Comunicación anunciada de la Comisión Europea sobre "nuevos acercamientos sobre el acceso al procedimiento de asilo", debería recomendarse emitir de antemano un *Green Paper* permitiendo extensas consultas.

ANNEX II

LIST OF STAKEHOLDERS INTERVIEWED

AUSTRIA

WOLFGANG TAUCHER	Ministry of the Interior, Federal Asylum Agency, 24 January 2011
CHRISTIAN FELLNER	Ministry of European and International Affairs , 10 January 2011[78]
ALEV KORUN	The Greens, Deputy of National Parliament , 26 January 2011
PETRA BAYR	Social Democrats, Deputy of National Parliament, 18 January 2011
SONJA ABLINGER	Social Democrats, Deputy of National Parliament, 12 January 2011
HEINZ FASSMANN	University Vienna, Migration Expert, 1 February 2011
ERICH LEITENBERGER	Spokesman Kardinal Schönborn, 24 February 2011
FELIX BERTRAM	Former official, Caritas, Austria, 27 May 2011
KHABAT MAROUF	Representative of a Kurdish Organization, 7 June 2011
ANONYMOUS	Ministry of Interior, Department III, Asyl-und Betreuung, 12 January 2011

[78] This is a personal opinion not representative of the Ministry of European and International Affairs.

CYPRUS

NEOKLIS SYLIKIOTIS	Minister of Interior, 11 August 2011
KYRIAKOS POGIATZIS	Representative of Ministry of Foreign Affairs, 7 February 2011
ANONYMOUS	Representative of the Asylum Service, 19 January 2011
GIORGOS PERDIKIS	MP, Green Party, 14 January 2011
ANONYMOUS	MP, Socialist Party, 5 August 2011
DOROS POLYKARPOU	Action for Equality, Support, Antiracism –KISA NGO, 14 April 2011
CORINA DROUSIOTOU	Future Worlds Centre –NGO, 24 January 2011

DENMARK

EVA SINGER	Head of Asylum and Protection Department, Danish Refugee Council (former deputy head of Asylum Danish Ministry for Refugee Immigration and Integration Affairs)
JENS VEDSTED-HANSEN	Professor of Human Rights Law, Aarhus University School of Law (former member of Danish Refugee Council Appeals Board)
ANNE LA COUR	Head of asylum department, Danish Red Cross (former Chair of the Danish Refugee Council)
HANS GAMMELTOFT-HANSEN	Parliamentary Commissioner (former Chair of the Danish Refugee Council)
CLAUS JUUL	Legal Advisor, Amnesty International Denmark
KARSTEN LAURITZEN	MP, Immigration spokesperson, Danish Liberal Party, 26 November 2010
NASER KADER	MP Immigration Spokesperson, Conservative Party, 16 November 2010
HENRIK DAM KRISTENSEN	MP Immigration Spokesperson, The Danish Social Liberal Party, 24 November 2010
MARIANNE JELVED	MP Immigration Spokesperson, The Danish Social Liberal Party, 30 March 2010
JOHANNE SCHMITH - NIELSEN	MP, Immigration Spokesperson , Red-Green Alliance, 6 April 2010

GREECE

ZOE PAPASSIOPI-PASSIA	Professor of Law, Aristotle University of Thessaloniki, 10 April 2011
IOANNIS PAPAGEORGIOU	Lecturer, Aristotle University of Thessaloniki, 21 March 2011
HERACLES MOSKOFF	Expert Counsellor, National Coordination Mechanism to Monitor and Combat Rights (NCHR), 11 May 2011
LILIAN CHRISOHOIDOU-ARGIROPOULOU	First Vice-President of National Commission for Human Rights (NCHR), 11 May 2011
MARIA DELITHANASSI	Journalist specialised in migration for " *Kathimerini"* *5* April 2011
DANIEL ESDRAS	Head of International Organization for Migration (IOM), Greece, 25 May 2011
STAVROS TZOUKAKIS	Mayor of Municipality of Nea Smyrni, 8 June 2011
YONUS MUHAMMADI	President of Afghani Community in Greece and Representative of Greek Forum of Refugees, 26 May 2011
MOAVIA AHMED	Head of Greek Forum for Migrants, 3 March 2011
ANONYMOUS	High-level governmental official, Ministry of Interior, 7 June 2011

ITALY

ALFONSO PIRONTI	Head of the National Commission for the Right of Asylum, 9 December 2010
RENATO FINOCCHI GHERSI	Magistrate of the Cassation Court, 14 December 2010
MATTEO MECACCI	MP for Democratic Party (Delegazione dei Radicali) ; President of the General Committee on Human Rights, Democracy and Humanitarian Questions – OSCE, 17 January 2011
JEAN LEONARD TOUADI	MP for Democratic Party, 24 January 2011
ANTONIO RUSSO	Head of the Immigration Division Associazioni Cristiane Lavoratori Italiani (ACLI), 26 January 2011
RENATO FRANCESCHELLI	Deputy prefect, Office of International Relations, Central Directorate of Immigration and Asylum Policies, Ministry of the Interior, 26 January 2011
MARCELLA LUCIDI	Lawyer, Director of the legal Department of the Democratic Party; former Undersecretary of the Ministry of Interior, 27 January 2011
OLIVIERO FORTI	Director Immigration department, Caritas Italy, 3 February 2011
LUIGI MARIA SALVATORE ESTERO	Diplomat – Head of Office VII (Bilateral and Multilateral Cooperation on Migration – General Directorate for the Italians abroad and Migratory Policies), 4 February 2011.
FATHER FRANS THOOLEN	Head of Asylum Department- SMA Vatican Pontifical Council for the Pastoral Care of Migrants and Itinerant People, 8 February 2011
GIUSY D'ALCONZO	Amnesty International, Head of Campaign and Research Department, 8 February 2011
FERRUCCIO PASTORE	Director of the Forum of International and European Research on Immigration (FIERI), 17 February 2011

SANDRO DE LUCA	Responsible Area Africa , International Committee for the Development of Peoples CISP, 14 April 2011
PAOLO POMPONIO	Senior Police Manager Directorate, Central Management Directorate of Immigration and Border Police, 16 May 2011
PAOLO BENVENUTI	Professor of International Law, Dean of Faculty of Law, Università di Roma Tre, 17 May 2011
FLAVIA ZORZI GIUSTINIANI	Researcher, Faculty of Law, Università Telematica Internazionale Unitettuno, 17 May 2011
MARINELLI FUMAGALLI	Professor of International Law, Università Cattolica di Milano, 4 February 2011
PAOLO BONETTI	Associate Professor of Constitutional Law, Università degli Studi di Milano-Bicocca, 14 December 2010
MOSE' ZERAI	President of Habesha organization, Refugee Community Organization
PATRIZIO GATTARI	Judge, Tribunale di Milano (1 Sezione Civile), 7 February 2011
ANONYMOUS	Professor of Sociology , Università degli Studi di Trento, 8 February 2011
ROBERTO ZACCARIA	MP for Democratic Party (PD), Professor of Institute of Public Law – Università di Firenze 4 April 2011
ANONYMOUS	Councillor of the Lombardia Region (Assessore), 3 February 2011

MALTA

BRIGUGLIO MICHAEL	Chairperson of Alternattiva Demokratika (the Green Party) and Assistant Lecturer of Sociology in the University of Malta, 17 January 2011
CARUANA MARIO	Director General of Operations at the Ministry of Justice and Home Affairs, 7 December 2010
FALZON NEIL	National Contact Point (Expert Consultant) at the European Council for Refugees and Exiles; Assistant Lecturer in International Law and European Union Migration and Asylum Law at the University of Malta; National Reporter (Expert Consultant) at the COC (Cultuur en Ontspannings, Centrum); Former Head of UNHCR Office in Malta, 5 November 2010
FRIGGIERI MARIO	Refugee Commissioner for Malta, 7 December 2010
GRECH HERMAN	Journalist with the Times of Malta, awarded a Malta Journalism Award for e-journalism, 19 November 2010
HOISATER JON	Head of UNHCR Office in Malta, 21 December 2010
LUTTERBECK DEREK	Deputy Director (Academic Affairs) and Holder of the Swiss Chair; Lecturer in International History at the Mediterranean Institute of Diplomatic Studies (MEDAC), 4 November 2010
MEKONNEN MERID KAHSAY	A Refugee in Malta, 6 November 2010
WARNIER DE WAILLY CELINE	Legal Advisor at the Jesuit Refugee Service of Malta, 10 November 2010

THE NETHERLANDS

ANONYMOUS	Officer of ACVZ and Senior Policy Officer IND, 23 September 2010
J. VAN DER ZEEUW	Head of Department of Asylum, Resettlement and Return at the Ministry of Foreign Affairs, September 2010
STEPHAN KOK	Former Senior Policy Officer/ Strategic Analyst VWN, 7 October 2010
J. VAN ETTEN	Senior Policy Officer of the Direction of Migration Policy at the Ministry of the Interior and Kingdom Relations, under the Minister of Immigration and Asylum, 19 October 2010
A. RICCI ASCOLI	Policy Officer of Amnesty International (NL), 20 October 2010
R. BRUIN	Former legal Coordinator for Refugees, Amnesty International (NL), 26 October 2010
H. NAWIJN	Former Minister of Aliens Affairs and Integration, LPF, 3 November 2010
A. VAN DRIEL	Former Asylum Lawyer and Current External Migration Lawyer at Collet Advocaten, 10 November 2010
M. WIJNKOOP	Senior Policy Officer, VWN, 15 November 2010
ANONYMOUS	Senior Policy Officer, Immigration and Naturalization Service (IND), Rijswijk, 7 December 2010
N. ALBAYRAK	MP for the PvdA; Former State Secretary of Justice, 8 December 2010

SPAIN

ENRIQUE SANTIAGO	Izequierda Unida, Political Party, 26 April 2011
CRISTINA ALBALADEJO	Coordinadora Programa de Informacion y Orientacion Delegacion, CEAR, 16 May 2011
ALEJANDRO ROMERO	Lawyer, Center for Migrants in Ceuta, 25 May 2011
EUGENIA GARCIA	Freelance Journalist, 11 April 2011
KIMI AOKI	Lawyer in Canary Islands, 19 May 2011
LENTXU RUBIAL	Senator, Socialist Party, 24 May 2011
MAURICIO VALIENTE OTS	Deputy of the Autonomous Community of Madrid Regional Assembly, 25 May 2011
NICOLAS CASTELLANO	Journalist, SER Radio, 11 May 2011
MARCOS SUFARTE	President of the Chile Association, Violeta Parra, Refugee-Dictatorship in Chile, 11 April 2011
SUNIVA	Lawyer in the Vasque Country, 30 May 2011
MARIA OVIEDO	Lawyer in Extremadura, 31 May 2011
JANVIER CANIVELL	Lawyer in Vasque Country, 4 May 2011
MARIA ANGELES VEGA PASQUIN	Social Area, NGO Rescate, 9 June 2011
MARIA GUTIERREZ RODRIGUEZ	Juridical Area , NGO Rescate, 9 June 2011
SONIA GARCIA	Social Area, CEAR, 10 June 2011
LAURIE SMOLENSKI	Interior Policy Area, Amnesty International, 9 June 2011
ADAMOU PETEYAP	Sensibilization in Canary Islands NGO, 12 May 2011
WILLIAM MORALES	Valencia University, 2 May 2011
CARMINA PEREZ	Freelance Lawyer, 16th May 2011
VIRGINIA LOPEZ	Employment Department, FERINE, 29 June 2011

PALOMA FAVIERES	Juridical Area, CEAR, 8 June 2011
BELEN WALLISER	Lawyer, 1 April 2011
MARICELA DANIEL	UNHCR Director, 9 June 2011
RAQUEL HERNANDO	Freelance Journalist, 9 June 2011
DULCE M. GONZALEZ DIAZ	Responsible of Migration Department Amnesty International, 9 June 2011
TANIA GOMEZ CARRION	Freelance Lawyer, 25 April, 2011
MIGUEL ANGEL ARIAS	Freelance Lawyer, 1 June 2011
ALESSIA CONTI	Freelance Lawyer, 4 May 2011
PALOMA JEREZ	Lawyer in the Centre for Migrants in Madrid , 6 May 2011
ROMAN MORENCOS	Documentation Area, NGO Rescate, 23 May 2011
ADA SARKISOVA	Freelance Translator Specialized in Migrations and Asylum, 5 May 2011
RENE MALDONADO	President of the Federation for Migrants and Refugee Associations, 9 June 2011
ESTE-LA PAREJA	Director of the Catalan Comission for Assistance to Refugees, 9 June 2011
PASCALE COISSARD	Member of the Board at the Catalan Commission for Assistance to Refugees, 9 June 2011
PAULA MOSCOUZZA	Technician in Volunteer Department, SOS Racismo, 10 May 2011
MARTA GARCIA	Responsible of Protection Unit, UNHCR, 28 March 2011
ESTELA GARCIA CANO	Juridical Area General Coordinator, CEAR, 7 June 2011
FRANCISCO JAVIER ROSCO MATAS	Freelance Journalist, 10 June 2011
MAYRA GARCIA DE LUCAS	Psychosocial Area, NGO Rescate, 20 April 2011
BERTA MUNOZ	Juridical Area, NGO Rescate, 21 April 2011

SWITZERLAND

GOTTFRIED ZURCHER	Vice-Director Migration Policy Federal Office for Migration, 18 March 2011
DAMIAN CORNU	Responsible for Out of Country Procedures in Tunisia, Egypt Sudan, Etiopia, Federal Office for Migration, 20 July 2011
EDUARD GNESA	Special Ambassador for Migration Issues and former Director of the Federal Office for Migration until mid 2010, Federal Department for Foreign Affairs, 8 April 2011
DOMINIQUE WETLI	Head of the Legal Aid Office for Asylum Seekers, Berne, 19 June 2011
SUSIN PARK	Head of the UNHCR Liaison Office for Switzerland and Liechtenstein, Geneva, July 2011 via e.mail and telephone
CARSTEN SCHMIDT	Political Secretary of the Fraction of the Socialist Party, 4 April 2011
HANS FEHR	MP for the Swiss Peoples Party (and migration expert of the party), 10 May 2011
PHILIPP MULLER	MP for the Liberal Party (and migration expert of the party), May 2011, e.mail exchange

ECRE

JEANNE LAMBERTS	European Parliament, MEP Greens, 23 March 2011
HELENE BOURGADE	European Commission, DG EuropeAid, 25 May 2011
JOAN DE VASCONCELOS	European Commission, DG EuropeAid, 25 May 2011
SYLVIE GUILLAUME	European Parliament, MEP Socialist, 25 May 2011
VICTOR HOLLEBOOM	Consilium, 16 June 2011
JORDI GARCIA MARTINEZ	European Commission, DG Home, 14 July 2011

FACT FINDING MISSION IN TUNISIA AND TURKEY

MICHEL MALIZIA	Consul of the Swiss Embassy in Tunisia , Tunis 16 November 2011
ENRIQUE CONDE LEON	Consul of Spain , Tunis, 17 November 2011
ELIZABETH EYSTER	UNHCR Deputy Representative, Tunis, 17 November 2011
CRISTOBAL GONZALEZ-ALLER	Ambassador of Spain, Ankara, 28 November 2011
FRANCESCA CARDILLO	Second Secretary Federal Department of Foreign Affairs, (DFA) Embassy of Switzerland , Ankara November 2011