

Red Cross EU Office contribution to the Consultation on the European Union's (EU) legislation on the legal migration of non-EU citizens (Fitness Check on EU legal migration legislation)

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Who are we? What do we do?

The Red Cross EU Office (RCEU) represents the 28 Red Cross National Societies in the EU, the Norwegian Red Cross and the International Federation of Red Cross and Red Crescent Societies. Across Europe, our members are well known as organisations providing services within local communities, in particular in health and social care. Our members are also key stakeholders when it comes to the provision of migration related services, and the implementation of the common EU asylum and migration policy.

We believe that EU legal channels for migration including in cases of asylum, family reunification and labour purposes will crystallize the full benefits of migration be it for the migrant, the country of origin or the country of destination. In February 2013 we put forward 10 ideas and suggestions for setting up such safe and effective legal avenues for persons in need of international protection to access the EU, which we hope will serve as a starting point for more detailed discussions.¹ We remain committed to supporting their implementation in the context of the REFIT and implementation of the Migration Agenda.

We welcome the opportunity given to civil society organisations to contribute to this **Fitness Check on EU legal migration legislation**. This contribution is based on our experiences working with and for migrants across the EU. In the following pages, we would like to share some experience-based recommendations that feeds into the evaluation of this important policy framework, as well as any future making, elaboration and implementation of the EU legal migration legislation.

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Legal avenues to the EU must be further developed in order to reduce the demand for smuggling. Additional opportunities and more effective frameworks for dignified, safe and legal migration should be implemented, be it for employment and educational purposes, or for family reunification.² Legal avenues to access international protection within the EU must be put in place.³ Existing EU migration policies should in our view also be reviewed to ensure that they are fair and truly create opportunities for legal and safe migration in dignity, whether for employment purposes or for family reunification. The promotion of a consistent labour migration framework across the EU would help to mitigate the negative consequences of demographic change and an ageing population. Yet migration cannot be managed solely from the point of view of economic and demographic need; this topic deserves humanitarian attention. From a humanitarian point of view, migration schemes and debates should be guided by the principles of humanity, respect and dignity, with careful provision made for the needs and interests of migrants.

- **Implement an effective framework for safe and legal migration to the EU.**

The EU should facilitate the movement of vulnerable migrants through their consular presence, simplified procedures, and effective access to embassies in third countries. Visa acquisition for people in need of protection should be facilitated, including through humanitarian visas and simpler procedures which take into account the particular situation of the applicant. Visa exemption for certain vulnerable

¹ RCEU, [Legal avenues to access international protection in the EU](#), 27 February 2013.

² RCEU, [Contribution to the European Commission's consultation on the post-Stockholm agenda](#), 21 January 2014.

³ RCEU, [Position Paper on Legal Avenues to Access International Protection in the EU](#), 27 February 2013.

groups and nationalities must be considered, particularly for nationals with high average recognition rates for international protection in the EU.

Family reunification must be facilitated and the legal, practical and/or administrative obstacles which limit or prevent family unity must be addressed. A protection-oriented approach to family reunification procedures should be applied in order for the right to family reunification to be truly effective.⁴ This includes systematically considering the reunification of family members beyond the nuclear family, particularly if they are dependants.

- **Reducing irregular migration through an effective framework for safe and legal migration to the EU.**

The scarcity of safe and legal avenues to the EU for third-country nationals forces many to migrate in an irregular way, often resorting to the services of smugglers due to a lack of viable alternatives. In addition, irregular entry into the EU and criminalisation as a result of illegal border crossings, expose migrants to rights violations, detention, financial sanctions and re-entry bans. This criminalisation adversely affects the public's perception of migrants, facilitating increased discrimination, racism and xenophobia, which in turn impacts migrants' access to basic services and undermines social cohesion within the EU.

Irregularity may be the result of procedural and administrative inadequacies in immigration and asylum legislation which push migrants into a legal limbo. Some persons may not qualify for asylum or subsidiary protection, but cannot be returned to their countries of origin because of concrete practical or legal obstacles, including the risk of being subject to violations of certain fundamental rights, as safeguarded by the principle of *non-refoulement*. Migrants that are in transit, or that have not yet requested international protection, may be considered to be in an irregular situation. Similarly, persons that are waiting for the conclusion of an administrative asylum or regularisation procedure, find themselves without a determined status. Finally, there are persons that have spent years in their countries of residence, actively contributing to its social and economic life, yet have no prospect of regularisation because of the lack of an adequate legal framework.

A secure status must be granted to all migrants who have lodged an application for international protection or filed a claim for legal status, including during the appeals procedure. EU Member States should consider granting migrants access to a provisional independent permit for the purpose of securing a status after the breakdown of personal or employment relationships. The EU should also promote continuous mechanisms to regularise migrants' status and grant them official leave to remain in the country. These types of schemes could offer possible regularisation under conditions related to the length of stay, family and social ties, and/or employment relationships.

- **Uphold a fair and inclusive EU legal migration framework**

Strong legal provisions governing migrant rights, decent work, social protection and the portability of social rights should be mainstreamed into the existing labour migration framework to ensure that legal migration policies are fully rights-based. Such a framework would optimize the positive effects of migration for development.

Effective mechanisms should be in place to protect migrant workers against exploitation, in particular by guaranteeing effective access to justice and access to complaint mechanisms for all migrants irrespective of their administrative status.

There should be a review of the adequacy of current labour migration channels in reflecting the needs of the EU employment market. Consideration should be given to establishing additional channels that increase opportunities for legal migration to the EU for employment purposes.

⁴ RCEU, [Disrupted Flight - The Realities of Separated Refugee Families in the EU](#), co-written with ECRE, 2014.
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Future mobility partnerships should be based on clear human rights and labour rights standards. The implementation of existing ones should be reviewed.

Additional legal migration channels should be considered, especially for labour migration purposes for all wage-brackets and skill-sets. With this in mind, the implementation of the EU's Seasonal Workers Directive Member States should be scrutinized.

- Legal ways to access protection in the EU

Access to the Common European Asylum System remains the key challenge for the EU. Legal avenues to safely access international protection in the EU need to be implemented, for example through protection-sensitive entry mechanisms, including family reunification procedures and humanitarian visas. In particular, the issuing of humanitarian visas must be promoted, with exemptions from EU visa regulations considered for residents of countries where there is a humanitarian crisis and for refugees formally recognised by UNHCR.

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