



To
Members of the European Parliament
LIBE Committee



ccme

churches' commission for migrants in europe



Protestant Church
of Germany
Brussels Office

Brussels, 15 September 2015

Eurodiaconia 

**Humanitarian visa within the EU Visa Code
(recast)**



International Catholic
Migration Commission

Dear Members of the EP LIBE Committee,



Europe
accompany - serve - advocate

Our organizations represent Churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian agencies particularly concerned with migrants, refugees, and asylum seekers. Our position on humanitarian visas has been developed in close cooperation with the Brussels' office of the Protestant Church of Germany EKD. Today, we are writing to you regarding the Commission's proposal for a new EU Visa Code - COM(2014) 164 final.



Quaker
Council for
European
Affairs

In our policy paper released in November 2014 we urgently called for the development of a 'toolbox' of safe and legal ways to protection in Europe. Among the proposed 'tools' was the issuing of humanitarian visas.



SANT'EGIDIO

Recently, the European Union has taken several encouraging steps regarding asylum policy. Now, the recast of the EU Visa Code represents a unique opportunity to introduce humanitarian visas throughout the EU which would be an important way to allow for safe access to EU territory and could help save thousands of lives and contribute to putting people smugglers out of business.

The European Commission's communication on the EU Agenda on Migration May 2015 mentions that **safe and legal ways need to be available** for the most vulnerable groups of people reaching our borders. Moreover, in its resolution on the latest tragedies in the Mediterranean, adopted on 29 April 2015, the European Parliament has, *inter alia*, called on Member States in point 7: **“to make full use of the existing possibilities for issuing humanitarian visas at their embassies and consular offices”**.

The UN High Commissioner for Refugees Mr António Guterres called in a speech on 9 July 2015 for developing ways for legal migration giving the example of humanitarian visas. Additionally, in its recent recommendations for the Luxembourg and Netherlands' EU Presidencies, UNHCR underlined the need for other legal and safe ways to Europe, in addition to increasing refugee resettlement from first countries of asylum.

We welcome the recent adoption of an EU wide **resettlement plan, allowing 22.504 Syrians refugees** to be resettled by EU Member States. However, complementary legal avenues must be made available, to prevent further tragedies of refugees perishing at sea in their attempts to seek protection. As we have explained in our 'toolbox' the humanitarian visas are one among many solutions which could help some of the most vulnerable asylum seekers.

The purpose of this letter is threefold. Firstly, to explain what humanitarian visas are; secondly, to explore the experience of states in issuing humanitarian visas; and thirdly, to demonstrate how humanitarian visa fit within the EU Visa Code.

1. What are humanitarian visas?

Humanitarian visas are issued by embassies and/or consulates to persons in vulnerable situations to access their territory legally. Several EU Member States, e.g. France, Ireland, Portugal and Germany as well as Switzerland issue humanitarian visas for certain groups of persons in need of protection (see annex 1). For example, Switzerland issues humanitarian visas to asylum seekers thus enabling them to access a proper status determination procedure upon arrival. Therefore humanitarian visas could reduce the number of asylum seekers that need to resort to unseaworthy vessels, lorries or other highly dangerous and illegal ways to cross the EU external borders. Moreover, they allow asylum seekers to determine the country where they want to ask for asylum thus reducing secondary movements currently occurring due to the Dublin regulation

Moreover there are some misconceptions about humanitarian visas we would like to debunk: humanitarian visas do not provide for a permanent residence permit, nor do they imply external processing of an asylum application: they allow for access to the territory, and if an asylum application is lodged, this will be determined by the state concerned subsequently.. It is not a *prima facie* evidence that the refugee status will be granted. When the need for protection is not recognised, **the applicant will be returned to his or her country of origin.**

A clear distinction needs to be drawn between humanitarian visas and resettlement. Resettlement always concerns refugees that have already been identified by UNHCR as in need of protection and a durable solution. UNHCR submits these cases to governments which select the persons to generally come as recognised refugees to their country. In the case of humanitarian visas, the applicant directs him- or herself to a country of his/her choice in order to be admitted to that country for humanitarian reasons, including for claiming asylum.

In cases of mass flights such as currently in the Middle East, numbers of visa applications may exceed the capacities of embassies and consulates. It is therefore important to recognise that humanitarian visa would not be the right tool for all situations, but complement existing instruments such as resettlement, family reunification and others included in the proposed toolbox. Meanwhile, for some groups of forced migrants, issuing of humanitarian visas constitutes the only way to reach protection through regular means.

2. Humanitarian visas and the EU law

The legal basis for the recast EU Visa Code is Article 77(2) (a) of the Treaty on the Functioning of the European Union (TFEU) which empowers the Union to develop measures concerning the ‘common policy on visas and other short stay residence permits. **Thus the EU has the competence to regulate short-term humanitarian visas.** Whereas the EU Visa Code already contains a provision on issuing visas on humanitarian grounds (Art. 19 and Art. 25) the Code is the right place to strengthen these visas, to align the provisions and to create a harmonised **European humanitarian visa**.

Article 25 clearly states that Member States can issue a visa with limited territorial validity “on humanitarian grounds, for reasons of national interest or **because of international obligations**”. In our view, among such “international obligations” are the rights enshrined in the 1951 Refugee Convention, including the principle of *non-refoulement*, as well as in other international human rights instruments which all EU Member States have ratified. This means that all EU Member States are obliged to provide access to protection to Europe.

Article 21 of the Visa Code stipulates that in the examination of an application for a uniform visa, it shall be ascertained whether the applicant **has sufficient means for the return to the country of origin** and whether he/she fulfils the entry conditions set out in the Schengen Borders Code, in particular whether **the applicant presents a risk of irregular immigration and whether s/he intends to leave the territory of the Member States** before the visa expires. Article 25, on the contrary, does not contain the same provision for the examination of applications for a visa with limited territorial validity, which is treated as derogation throughout the EU Visa Code. For example article 25(1)(a)(i) provides for the derogation from the condition that the applicant has sufficient means for the return to the country of origin. Moreover, it has to be underlined that an asylum seeker is never an “illegal immigrant”.

The current practice of some Schengen states shows that the **purpose of the visas is short-termed, i.e. the immediate lodging of a protection application with the responsible authorities in the country of destination upon arrival**. E.G. the Swiss humanitarian visa is valid for 90 days.

We are convinced that it is feasible to decide within three months whether an asylum application will be lodged and treated. Firstly, due to the pre-screening process of every visa application, the authorities would be aware of who is coming to the Member State. Secondly, the applicant would know what documents are needed for an application. This could therefore lead to a shorter asylum procedure. It is rather inconsistent that the European Commission supports the practice of issuing a visa for medical reasons whereas medical treatments may take much more time than three months, but argues that a short-term visa would not be feasible for persons seeking asylum. In addition, the “Handbook for the processing of visa applications and the modification of issued visas” states, in Article

33, that a visa holder who is already present on the territory of the Member States and who is unable to leave before the expiry of his visa because of humanitarian reasons, can request the extension of the visa. This means that the possibility is already foreseen in the EU Visa Code for a third country national to prolong their stay on European territory beyond the three months in exceptional circumstances.

3. The humanitarian visa means more security for Member States and less profit for criminal smuggling networks

The EU Agenda on Migration included plans to destroy ships and vessels used by smugglers to transport people to Europe. However, if the EU decides to destroy smugglers' vessels, this will not change the situation of asylum seekers who are in need of reaching safety. **Issuing humanitarian visas is a concrete measure to fight smuggling networks.** For most protection seekers, paying smugglers and being packed onto unseaworthy vessels remains the only way to get to Europe. If these people were able to choose a legal and safe route to Europe, they would not have to rely on criminal networks and more importantly for them, risk their lives.

Smugglers are making huge profits from the suffering of others. For protection seekers humanitarian visas would allow them to use their resources for legitimate transport (plane, ferry etc.) and subsistence costs on their arrival.

Humanitarian visas could be a useful tool in assisting the management of arrivals whilst responding to humanitarian needs. Based on the application for a humanitarian visa, during the pre-screening procedure, Member States would be better prepared to deliver, if necessary, interpretation services, shelters and medical treatment, etc.

4. Increasing solidarity among EU Member States

Finally, humanitarian visas could also be a means to increase solidarity between Member States. One could imagine that a fairer distribution of asylum applications in the EU would be possible, because potential asylum claims would not be examined only in few European countries as it is the case right now.

Humanitarian visas could soften the shortcomings of the current Dublin system. According to the current legislation, a first-entry Member State can become responsible for examining the asylum claim if no other criterion applies (article 13(1) of the Dublin regulations). This regulation puts a lot of pressure on countries with an EU external border, such as currently Italy or Greece. However, in the hierarchy provided by the Dublin system (article 7(1)), issuing a (humanitarian) visa prevails over the first-entry criterion (article 12(1)). Subsequently, this means that humanitarian visas could lower the pressure on Member States with an external EU border.

As we believe that **all Member States** should be able and willing to receive refugees in humane and secure conditions and share the responsibility for persons in need of protection. A European harmonised humanitarian visa could be a chance for those Member States, which do not have experience as refugee hosting countries, to make a contribution towards choosing and receiving small numbers of refugees in a legal manner, within a European framework. A harmonised policy would also provide chances to prepare reception conditions and less pressure on Southern and Eastern European countries, which are currently struggling with high numbers of arrivals of asylum seekers.

Consequently, we urge you to use the proposed revision of the EU Visa Code for establishing clear and meaningful rules that allow for the issuing of humanitarian visas to persons in need of protection.

We remain at your disposal for any clarifications or additional information.

With kind regards,

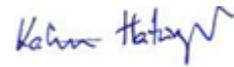
Yours sincerely,



Jorge Nuño Mayer
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Annex 1: Examples of national humanitarian visas already used by certain European countries

Several EU Member States as well as Switzerland do issue humanitarian visas for some groups of persons in need of protection. **Please allow us to give a few examples** in addition to and partly updating the information provided by the study for the LIBE committee on humanitarian visa:

- In **Switzerland**, article 2(4) of the Immigration and Visa Regulation (*Verordnung über die Einreise und die Visumerteilung* - VEV; SR 142.204) provides for the possibility that a Swiss consulate, upon approval by the State Secretariat for Migration (SEM), issues a **visa on humanitarian grounds for 90 days**. SEM Ordinance (*Weisung*) no. 322.123 of 25 February 2014 specifies that a humanitarian visa can be issued to a person who is in immediate and serious danger for life and limb in the country of origin. This might be the case in warlike situations or because of individual circumstances. According to SEM, Swiss consulates have passed 1,608 requests for such visas to the SEM between 2012 and early May 2015, and 191 visas have actually been granted. In addition to this, the Swiss Federal Government has decided in September 2013 to facilitate the access to visa for Syrian nationals who have relatives in Switzerland. Between September and November 2013 alone, Swiss consulates in Syria's neighbouring countries have issued such emergency visas to about 4,700 Syrian nationals; about 4,100 of these persons have, upon arrival in Switzerland, applied for international protection or were provided with a temporary residence status. In 2015, another 1,000 Syrians in need of protection shall receive such emergency visas.
- **France** issues asylum visas ('visas au titre de l'asile') to individuals in need of international protection who have lodged a request with French consulates in their country of origin or country of first asylum. The request is pre-assessed during an interview by the consulates based on the criteria laid down in the 1951 UN Refugee Convention and the EU subsidiary protection regime and taking into account the applicants' vulnerability and their risk of being subjected to *refoulement*. Additionally, the individual's connections with France and his/her integration perspectives are considered as positive elements. Please note that the asylum visa allows for staying in France over a period of six months (renewable) in order to lodge a formal asylum request with the competent French authorities. The number of asylum visas issued to Syrians, for instance, has risen significantly since 2013, with a total of around 1,300 over 2013-2014. In addition, 1,295 asylum visas (in 235 cases) have been issued in 2014 to Iraqi nationals who belonged to Christian minorities.
- In addition to the well-known Humanitarian Admission Programme, the relevant law in **Germany** (the Residence Act) provides, in its section 22, for an individual foreigner to be granted a residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. This provision has recently been used for the admission from Afghanistan of local employees of the German army or police (e.g., interpreters) who could demonstrate that they were in danger for life and limb because of their links to the German forces. As of mid-March 2015, in 577 cases such a residence permit has been granted and 353 former local employees have come to Germany with their families. The German Federal Minister for Defense and other politicians have called for more of them to be admitted to Germany.

- The Government of **Ireland** developed in 2014 a Syrian Humanitarian Admission Programme (SHAP) which allowed for naturalised Irish citizens of Syrian birth and Syrian nationals already lawfully resident in the State to make an application for vulnerable close family members to join them in Ireland on a temporary basis for up to two years. These are persons who are considered by their sponsoring family member present in Ireland to be most at risk. Persons admitted under the Programme are entitled to work, establish a business or invest in the State.
- In **Portugal**, article 54^o of the Immigration Law (Law no. 23/2007 of 4 July) provides for the issuing of a “Temporary Stay Visa” for the purpose of access to medical treatment at officially recognized health facilities. This visa can be also issued to persons who are accompanying relatives undertaking medical treatment. It is valid for four months and allows multiple entries into the Portuguese territory. Moreover, article 123^o establishes the exceptional regime which provides for authorization to stay on Portuguese territory for humanitarian reasons.

Annex 2: Personal stories

The need for a system which would effectively ensure that humanitarian visas are quickly issued to persons in danger of severe human rights violations is highlighted by many personal stories.

- Bangladeshi author and blogger **Ananta Bijoy Dash**

The Swedish PEN had invited Mr Bijoy Dash to Stockholm to speak on World Press Freedom Day about the deteriorating situation in Bangladesh for journalists and writers. Mr Bijoy Dash had been uniquely suited to talk about these issues because he had lived as an outspoken secular blogger in Bangladesh where religious and political extremism is increasingly on the rise. However, the Swedish Embassy in Dhaka had refused to issue a visa and is quoted as saying: “You belong to a category of applicants where there is always a risk involved when granting a visa that you will not leave Schengen area after the visit. Furthermore, the purpose of your trip is not urgent enough to grant you visa.” A few days later, Ananta Bijoy Dash was murdered by men armed with machetes when leaving his home for work in the town of Sylhet in northern Bangladesh.¹



- Somali Olympic athlete **Saamiya Yusuf Omar**

21 year-old Saamiya tried to reach Europe in 2012. During 2008 she trained in Mogadishu in difficult circumstances while being harassed by local militants who did not believe that a Muslim woman should participate in sports events. Saamiya was a very promising athlete. She represented Somalia at the 2008 Summer Olympics in Beijing and managed a personal record of 32.16 seconds in the 200 metre sprint event, with the crowd roaring in applause. She wished to find a coach in Italy and train in order to be able to participate in the Olympic Games in London. In 2011 she made her way to Libya, from where she boarded an overcrowded vessel. The ship sank in the Mediterranean.



- **Doaa al Zamel**

Nineteen-year-old Doaa al Zamel fled her home in Syria in the hope of finding safety and a better future; she ended up desperately fighting for her life in the Mediterranean Sea and losing her fiancé. The young woman showed tremendous courage in saving one baby and trying to keep another alive during the three days she spent in the water before being rescued by a Greek vessel and taken to Crete.²

¹ See further on: <http://www.pen-international.org/centresnews/swedish-pen-statement-on-the-death-of-bangladeshi-author-ananta-bijoy-dash/>

² See further on: <http://www.unhcr.org/5475d4626.html>