

Legal Avenues to Access International Protection in the EU

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migration

Recommendations of the National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies⁽¹⁾

The Red Cross⁽²⁾ calls on the European Union (EU) and its Member States to respect their international obligations under the 1951 Convention relating to the status of refugees and its 1967 Protocol and to ensure asylum seekers have safe and effective legal avenues to the EU territory to exercise their right to international protection.

To this effect, the Red Cross makes the following nine recommendations to the EU and its Member States:

1. Respect European refugee and Human rights standards at European borders and beyond.
2. Do not penalise irregular entry of asylum seekers.
3. Ensure an effective right of appeal against denial of entry.
4. Set up independent border monitoring mechanisms.
5. Support a fundamental rights' culture within FRONTEX.
6. Allow for exemptions from EU visa regulations and promote the issuing of humanitarian and protection visas.
7. Assess the impact of carrier sanctions on international obligations.
8. Commit to resettling higher numbers of refugees.
9. Cooperate more closely with Civil Society in the elaboration, implementation and evaluation of policies.



The aim of the present position paper is to put forward recommendations to ensure that safe and effective legal avenues for persons in need of international protection are put in place. It is imperative that the measures put forward in this document are seen as complementary forms of seeking protection, that in no way constrain the right of asylum seekers to ask for international protection irrespective of the way they arrived in the EU. These recommendations do not intend to relieve the EU and its Member States from the responsibility of creating a fair and well functioning Common European Asylum System.

'A boat carrying North African migrants arriving at the Italian island of Lampedusa' 2011

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Italian Red Cross

1. Including the Norwegian Red Cross as members of the Red Cross/EU Office. This position paper has been developed on the basis of the PERCO position paper on the need to create legal avenues to access international protection within the European Union, adopted in Cyprus on 6th November 2012.
2. Thereafter, 'the Red Cross' refers to National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies

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Background

Resolution 3 adopted during the 31st International Conference of the Red Cross and Red Crescent calls upon States, within the framework of applicable international law, to ensure that their “national procedures at international borders, especially those that might result in denial of access to international protection, deportation or interdiction of persons, include adequate safeguards to guarantee the dignity and safety of all migrants” and to grant migrants appropriate international protection and ensure their access to relevant services⁽³⁾. This position paper identifies ways for EU Member States to meet the commitments they have made at the International Conference.

In 2013, the European Commission intends to publish a Communication on New Approaches Concerning Access to Asylum Procedures Targeting Main Transit Countries⁽⁴⁾ and one on the legal and practical consequences of the EU’s accession to the Geneva Convention. Given these developments, it is important to note how the absence of legal avenues to access international protection in the EU which when combined with the externalisation of migration control and priority given to preventing illegal entry will render the asylum system ineffective, thereby violating EU Member States’ obligations under the 1951 Refugee Convention.

National procedures at international borders [should] include adequate safeguards to guarantee the dignity and safety of all migrants

The Red Cross underlines that the roadmap ‘EU Action on Migratory Pressures – A Strategic Response⁽⁵⁾’ adopted by the Justice and Home Affairs Council, fails to consider the denial of access to international protection which automatically results from the EU’s current focus on collaboration with third states in preventing and controlling irregular immigration. The Red Cross also expresses concern about the development of the integrated management system for external borders, which includes an increased use of technology via the European Border Surveillance System (EUROSUR)⁽⁶⁾, without considering the implications for the rights of migrants and asylum seekers on their way to the EU.

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Resolution 3

The Red Cross Red Crescent requests States to ensure that relevant laws and procedures are in place to enable National Societies to enjoy effective and safe access to all migrants without discrimination and irrespective of their legal status.

Our Recommendations

In November 2011, the Red Cross adopted a position paper on the Right to access international protection, in which it recommended that all EU Member States, the EU and their agencies “consider establishing safe and effective ways to enter European territory legally in order to seek asylum within the EU to avoid human suffering and numerous deaths along EU borders⁽⁷⁾.” The aim of the present position paper is to put forward ideas and suggestions for setting up such safe and effective legal avenues for persons

3. See the Resolution 3 of the 31st International Conference of the Red Cross and Red Crescent: ‘Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion’.
4. See European Commission, Action Plan implementing the Stockholm Programme, COM(2010)171 final, 20 April 2010.
5. Justice and Home Affairs Council, EU Action on migratory pressures – a strategic response, 8714/1/12 REV 1, 23 April 2012.
6. European Commission, Proposal for a Regulation Establishing the European Border Surveillance System (EUROSUR), COM (2011) 873 final, 12 December 2011.
7. Red Cross EU, Position paper on the right to access to international protection, November 2011.

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Our call

The Red Cross urges all EU Member States, the EU and their agencies to effectively guarantee the right to seek asylum and to a fair asylum procedure⁽¹⁾

1. Position paper "Right to Access International Protection", November 2011

in need of international protection which could serve as a starting point for a more detailed discussion within appropriate fora between governments and civil society. The Red Cross makes the following nine recommendations to the EU and its Member States:

1. Respect European Refugee and Human rights standards at European borders and beyond.

Border control measures, even far away from the EU territory, must always be in line with the EU Charter of Fundamental Rights, the European Convention on Human Rights and the principle of Non-Refoulement, and must not lead to push-backs at external (land, air and sea) borders.

2. Do not penalise irregular entry of asylum seekers.

Illegal entry for the purpose of seeking international protection must not be penalised in accordance with Article 31 of the 1951 Convention relating to the status of refugees. The term 'illegal migrant' should be avoided, since it further stigmatizes and criminalises what are, often, vulnerable persons.

Detention of migrants and asylum seekers at the European borders is becoming more and more the norm instead of being an exceptional measure. People seeking protection should not be detained⁽⁸⁾.

3. Ensure an effective right of appeal against denial of entry.

It is vital to create an effective, uniform, fast and easily accessible legal remedy mechanism for migrants who claim to have been denied access to protection by the EU, its Member States or their border agents⁽⁹⁾. This mechanism should result in a timely decision on the right to enter the EU to ask for asylum.

4. Set up independent border monitoring mechanisms.

EU borders, all places where EU border control measures are implemented and all detention facilities for migrants should be monitored by independent and impartial actors. Monitoring reports should be made public and should be regularly submitted to the European Parliament.

5. Support a fundamental rights' culture within FRONTEX.

FRONTEX operations and activities should always be in line with fundamental rights standards and consistent with the right to leave any country including one's own⁽¹⁰⁾. External border controls should in particular guarantee a clear division of responsibilities between EU Member States and FRONTEX and accountability for all acts committed during the operations that FRONTEX coordinates. This should be complemented by independent and effective monitoring and complaint mechanisms, and ensure transparency on the border cooperation agreements reached with third countries through the mandatory consultation and approval of the European Parliament⁽¹¹⁾.

8. See the Conclusion n°44 (XXXVII) of the 37th session of the Executive Committee on "Detention of Refugees and Asylum-Seekers", 13 October 1986 and the Recommendation REC(2003)5 of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers, 16 April 2003, (2003) 5 and Council of Europe Parliamentary Assembly Resolution 1707 (2010) on the Detention of Asylum Seekers and Irregular Migrants in Europe and 166 NGO appeal, Not crossing Red Lines – a negotiators' checklist on minimum detention safeguards, May 2012.

9. In line with article 13(3) of the Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders, 15 March 2006, OJ L 105, 13.4.2006

10. As enshrined in article 12.2 International Covenant on Civil and Political Rights.

11. For more detailed proposals please refer to the Red Cross Comments on the enquiry concerning FRONTEX, 28 September 2012.

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6. Allow for exemptions from EU visa regulations and promote the issuing of Humanitarian and Protection Visa.

Visa obligations should be suspended for nationals and residents of countries in a significant humanitarian crisis and where there are no opportunities for issuing visas within the country of origin, as in the case of Syria at the moment.

The issuing of humanitarian visas should be promoted in line with the Schengen Borders Code⁽¹²⁾ and the Visa Code⁽¹³⁾.

The EU should consider exempting from EU visa regulations refugees who are formally recognised by UNHCR and whose protection needs cannot be fully covered in their country of residence or are in situation of protracted displacement. Their legal entry for the purpose of lodging an asylum application in a Member State should be facilitated. Third countries which lack an appropriate asylum system should be encouraged to enable UNHCR to perform the refugee status determination in their territories.

7. Assess the impact of carrier sanctions on international obligations.

The EU should review the impact on international obligations of carrier sanctions that impose financial penalties on private transport companies carrying persons who do not possess the necessary travel documents⁽¹⁴⁾. Should these be found to breach the requirements of Human Rights Law and particularly of the right to seek asylum, they should be abolished.

8. Commit to resettling higher numbers of refugees.

We welcome the joint EU Resettlement Programme⁽¹⁵⁾ and encourage the EU and its 27 Member States to commit to resettling a substantially higher number of refugees. The EU Resettlement Programme should include quotas, provision of support and common standards to ensure the resettlement of larger numbers of refugees in all Member States as well as to guarantee its quality and sustainability.

9. Cooperate more closely with Civil Society in the elaboration, implementation and evaluation of policies.

The EU, its Member States and their agencies should form partnerships and closely cooperate with Civil Society Organisations active in the field of international protection, from EU countries as well as from third countries. Better and more active use of their practical experience should be made in the elaboration, implementation and evaluation of policies⁽¹⁶⁾. This requires in particular transparency and meaningful inputs from Civil Society experts in fora such as the Consultative Forum of the European Asylum Support Office.

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12. Article 5 of the Regulation (EC) No 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, OJ L 105, 13.4.2006.

13. Article 25 of Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009.

14. Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L 187, 10.7.2001.

15. Decision No 281/2012/EU of the Parliament and Council of 29 March 2012 Amending Decision No 73/2007/EC Establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows, OJ L 92, 30.3.2012.

16. See the Resolution n°3 of the 31st International Conference of the Red Cross and Red Crescent: 'Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion' which recalls that States should "ensure that relevant laws and procedures are in place to enable National Societies to enjoy effective and safe access to all migrants", in order to deliver humanitarian assistance and protection services.