

Master thesis on

Legal entry ways

as a possible answer to the migration crisis:

Improving access to Europe
for persons in need of international protection

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Abstract

Keywords: refugees, international protection, human rights, migration crisis, European Union

During the migration crisis European borders were overwhelmed by arriving people. People that made their way to the European Union after dangerous journeys. Many of them are displaced persons fleeing war and persecution in their place of origin. Because there are only few possibilities for them to arrive in Europe in a regular way, they often need to rely on smugglers in order to reach safety. In line with the obligations of international law, Europe should safeguard the rights of the people in need of protection. Strengthening legal ways to reach safe territory would decrease the dependency on smuggling networks and contribute to international responsibility sharing in dealing with humanitarian situations. In this thesis the different instruments for creating legal channels are explained and research is done on the implementation of these tools by the EU and its Member States. An analysis is made from a human rights point of view of the way in which the EU is safeguarding the rights and needs of persons in need of international protection against the background of the migration crisis.

Operational definitions

Refugee: someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country. (UN)

Asylum seeker: persons whose applications for asylum or refugee status are pending at any stage in the asylum procedure. (UN)

Internally Displaced Person (IDP): persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. (UN)

Migrant: generic term for anyone moving to another country with the intention to stay for a minimum period of time. (OECD)

Protected Entry Procedures (PEP): 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. (EU)

Introduction

“*The Syrian conflict has triggered the world’s largest humanitarian crisis since World War II.*”¹ Humanitarian needs continue to rise and population displacements are increasing. According to the United Nations High Commissioner for Refugees (UNHCR) over one million refugees and migrants made their way to Europe in 2015.² Still every day new people arrive at the borders of the European Union (EU) asking for asylum. Many people arrive after dangerous land or sea journeys and require basic humanitarian assistance, such as water and food, health care, emergency shelter and legal aid. The migration flow has a heavy impact on transit and destination countries, sometimes overwhelming national emergency response capacities.³

Migration is a hot topic for the European Union at the moment: borders are overwhelmed by arriving people and the existing policies on the matter have fallen short. In the current crisis safeguarding the rights of the people in need of international protection is a main priority for the EU. There is a clear need for the European Union to strengthen legal ways for people in need of international protection to reach its territory, because reinforcing legal channels to reach safe territory would contribute to decreasing the dependency of migrants on smuggling networks as well as reducing the number of lives lost at sea. Furthermore, it is a way of international responsibility sharing in dealing with humanitarian situations. The objective of this thesis is to map out the different possible legal ways and to look at what the EU has done in practice to implement this as an answer to the current migration crisis. An analysis will be made from a human rights point of view to examine the way in which the EU is safeguarding the rights and the protection of the persons in need of international protection. This thesis does not deal with asylum seekers that are already in the territory of the EU, nor with border security and rescue operations at sea. As the focus of this thesis is on the entry procedures, other aspects, such as the reception process or integration programmes are not taken into account.

¹ European Commission (2015), *Humanitarian and Civil Protection, Syria crisis*, September 2015, available at: http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf

² United Nations High Commissioner for Refugees (UNHCR) (2015), *Over one million sea arrivals reach Europe in 2015*, 30 December 2015, available at: www.unhcr.org/5683d0b56.html

³ Information available at: http://ec.europa.eu/echo/refugee-crisis_en

The main question of this thesis is in how far the (further) implementation of legal ways to enter the European Union can contribute to resolve the migration crisis. The answer to this main question will be developed in four different chapters. First of all, a description will be given of the development of the migration crisis. This first chapter will serve to give a clear overview of the current situation, including the actual circumstances regarding refugees arriving to Europe, and to explain what the main human rights challenges are in this crisis. Further, there will be an explanation of the general legal framework and the policy framework in order to show the formal context in which the EU is operating. This will show which responsibilities the EU has towards refugees arriving at its territory and which possibilities it has to develop an adequate answer to the current situation. It will also become clear why the formal framework has failed in the context of the migration crisis. In order to avoid that people in need of international protection need to rely on smugglers to enter the safe territory of the European Union there is an increased need to strengthen legal ways to enter Europe. In the next chapter the different instruments that are at disposal for creating the legal channels will be explained. After having studied these in a theoretical way, there will be looked at what the EU and its Member States have done to put this into practice in the next chapter. How did countries adapt their resettlement policies to the situation of the migration crisis and what other measures have been taken to create legal ways? In the conclusion the main question will be answered by analysing the legal avenues and how this can contribute to resolve the migration crisis from a human rights point of view. The current situation with people risking their lives in order to access protection has urged the EU as well as singular Member States to develop legal channels. The aim of this thesis is to describe the legal channels for entering the EU and to analyse these from a human rights point of view in the light of the current migration crisis.

Chapter 1: State of play

1.1 How has the migration situation developed into a crisis?

The current migration crisis has been dominating headlines and political debates and is has gained priority on the European agenda. But what is this migration crisis actually? Which processes are behind the current situation and why did this develop into a crisis? What recent developments are important and what are the challenges from the Human Rights point of view? In this part of the thesis we will take a closer look at the migration flow to Europe and its developments in the past few years. The growing numbers of the forcibly displaced, as well as the key challenges this encompasses, will be considered in this chapter.

1.1.1 What are the recent developments of irregular migration flows to Europe?

First we will look at the recent developments in irregular migration movements to Europe. In the past years, the growing number of arriving persons and the management of these flows has become a real challenge for the European Union. Thousands of people are risking their lives when, in absence of regular ways, they try to reach Europe in an irregular way. Irregular, because they are not in the possession of the right documents (passport, visa) to legally enter the country. The majority of those who cross the Mediterranean in unseaworthy boats, depending on smugglers, are persons in need of international protection.⁴ They come in search for safety and a better future. Since only a small percentage of the irregular arrivals is via land (about 3% in 2015)⁵, these are left out of consideration for the purpose of this thesis.

In figure 1 it is clear that the irregular arrivals by sea crossing to Europe have been rising in the last period.⁶ As can be seen in the figure, there was a slight increase in 2011, which was caused by the Arabic Spring. However, this peek almost fades compared to the enormous rise after 2014 that shows a significant increase compared

⁴ UNHCR, information available at: <http://data.unhcr.org/mediterranean/regional.php>

⁵ Data UNHCR and the International Organization for Migration (IOM).

⁶ UNHCR, information available at: <http://data.unhcr.org/mediterranean/regional.php>

with previous years, transcending the number of 1 million people that made their way to Europe in 2015.⁷

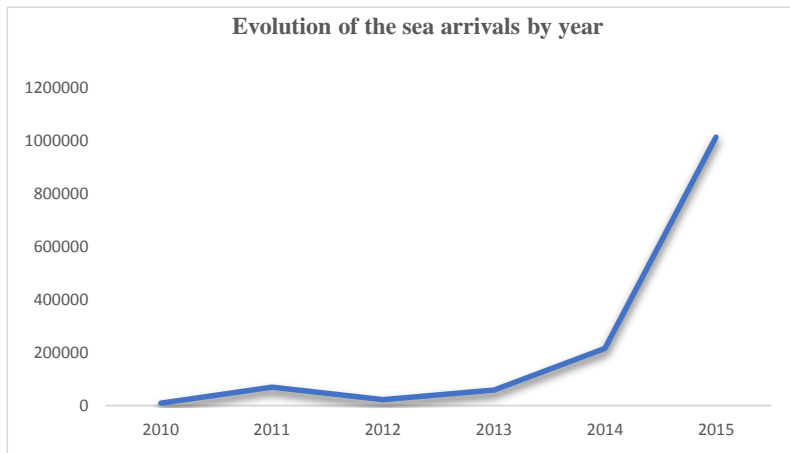


Figure 1 - Source: data UNHCR

The main route shifted from the central Mediterranean crossing to Italy, to the Eastern Mediterranean crossing from Turkey to Greece and the Western Balkan route. Until 2015, Italy has been the main country of arrival for persons seeking international protection that come to Europe by sea-crossing. Refugees and migrants departed from the North African coast (mainly Libya) and travelled by boat to Lampedusa or Sicily. However, this has changed in the first half of 2015 when Greece became the first country of arrival (see figure 2). This change of the main route was principally the consequence of an increase of Syrian refugees⁸ (see chapter 1.1.2). Given the danger of the sea crossing to Italy many Syrians use other channels to travel to Europe. Even so, the Central Mediterranean route leading to Italy continued to be heavily used, mainly by persons originating from Eritrea, Nigeria and Somalia. The Western Mediterranean route was traditionally used by sub-Saharan migrants, but due to tighter border controls and co-operation with the Moroccan authorities it has become less accessible.⁹ Figure 2 represents the annual sea arrivals divided by country. Again, the enormous rise in 2015 is evident.

⁷ Data UNHCR.

⁸ Data UNHCR and European Union Fundamental Rights Agency (FRA).

⁹ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

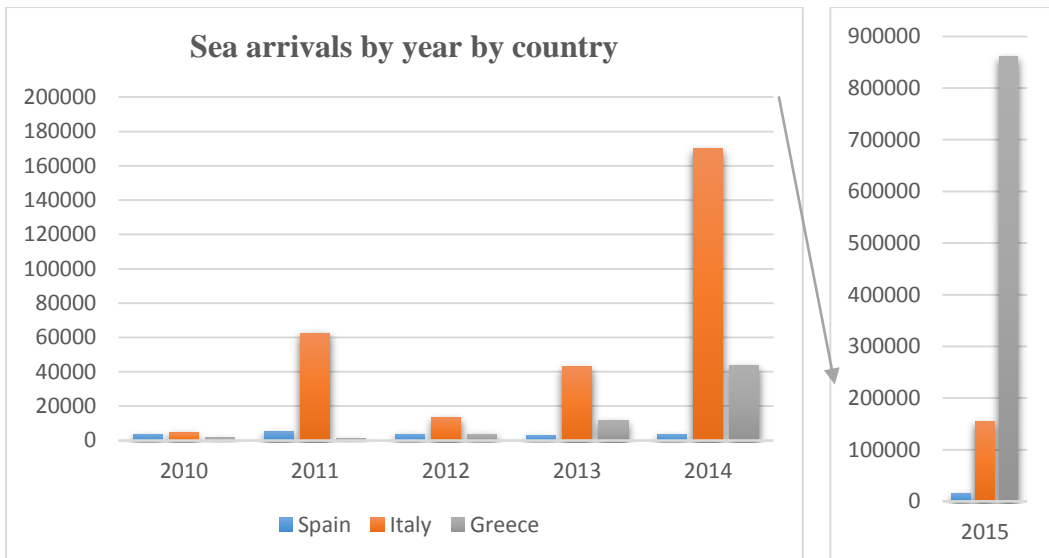


Figure 2 - Source data UNHCR

In 2015, of the total number of arrivals in Europe 83.5% arrived in Greece, 15% in Italy, and 1.5% in Spain. Most migrants travelled through Turkey and entered the EU by sea-crossing to Greece from where the majority continues their travel northwards, transiting the Western Balkans to destinations such as Germany and Sweden.¹⁰



Figure 3 - Source: UNHCR, 2016

¹⁰ REACH (2015), *Situation Overview: European Migration Crisis, Western Balkans*, December 2015, available at: <http://data.unhcr.org/mediterranean/regional.php>

In the first part of 2015, after having arrived in the EU in Greece migrants travelled across the Balkan countries, the Former Yugoslav Republic of Macedonia (FYROM) and Serbia, into Hungary where they crossed the border in an irregular way and re-entered the EU. From there they continue their travel towards western Europe and apply for asylum.¹¹ Most people who seek asylum in Europe have entered through illegal border crossings.¹² When the construction of a fence to avoid these crossings along Hungary's border with Serbia was completed mid-September 2015, the migration route shifted to Croatia. One month later, when also a fence along the Hungarian – Croatian border erected, the route shifted further to Slovenia, leaving Hungary out of the main route (see figure 3).¹³

The influx of arriving refugees and migrants has reached new levels in 2015. In figure 4, the total number of arrivals in that year is presented for each month. It can be seen that in the first months of the year the number of arriving persons was relatively low. The number increased towards the summer and arrives at a peak in October. This can be partly explained by good weather conditions and partly by the worsening situation in Syria which provoked a higher number of refugees coming to Europe in search for safety and protection (see chapter 1.1.2).¹⁴

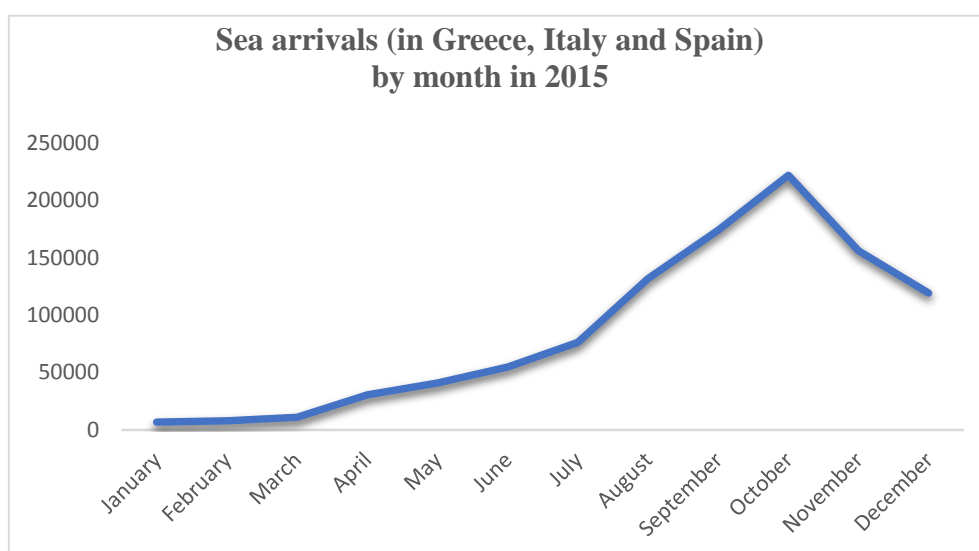


Figure 4 - Source: data UNHCR, Europe refugees and migrants emergency response, January – December 2015

¹¹ Frontex, FRA.

¹² OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

¹³ Frontex, FRA.

¹⁴ Data UNHCR and FRA.

1.1.2 Why is this a crisis?

This is not the first migration crisis Europe is facing: during the 1990's, for example, humanitarian crises, such as the Bosnian conflict between 1992 and 1995 and the Kosovo war of 1998-1999 created large-scale movements as well.¹⁵ However, this crisis is unprecedented in terms of the number of persons involved. But what is at the origin of these growing numbers? Why and how has this situation developed into a crisis?

Not all the persons who arrive at the borders of Europe are persons in need of international protection. Part of them are economic migrants, driven by poverty and unemployment, and in search of a better future.¹⁶ They make a rational choice to leave their country of origin based on economic motivations and not because of a direct threat of persecution. Unlike refugees, they can safely return home if they want or need to. The government of their country of origin continues to guarantee their protection, whether this is not the case for refugees, who, as a consequence of this, are in need of international protection. States choose how to deal with migrants based on their national law. The protection of refugees on the other hand, is based on national and international law, which implies specific responsibilities of countries towards refugees (see 1.2.1 on the legal framework).¹⁷ Since the recent migration flows to Europe consist of refugees as well as migrants, we speak of a 'migration crisis' and not of a 'refugee' crisis.

Still, the greater part of the arrivals are persons in need of international protection: fleeing war, widespread violence and persecution in their place of origin they come to Europe in search of safety and security.¹⁸ When we look at the roots of the current migration flow, we see that it originates mainly from Syria, Iraq and Afghanistan (see figure 5). But why do, right now, so many people leave their place of origin and go to different places in search for refuge? Research has shown that the decision to leave their home was primarily made at this particular time because of a deteriorated situation at home that has reached unbearable levels.¹⁹ According to Human Rights Watch, the civil war in Syria has led to an environment of widespread violence where the fear of

¹⁵ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

¹⁶ Idem.

¹⁷ UNHCR, *UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?*, 27 August 2015, available at: www.unhcr.org/55df0e556.html

¹⁸ REACH (2015), *Situation Overview: European Migration Crisis*, Western Balkans, December 2015, available at: <http://data.unhcr.org/mediterranean/regional.php>

¹⁹ Idem.

persecution, torture and death is the central reason for leaving.²⁰ After almost five years of war, a sense of hopelessness is prevailing among the Syrians.²¹ In Afghanistan, a new period of instability, political uncertainty and pressure from Taliban and other insurgents has led to large displacements of civilians.²² Moreover, conditions in countries of first asylum, as Lebanon and Jordan, have deteriorated. Also the lack of opportunities for refugees in these countries for a ‘normal life’, like work and access to school, are a major driver of onward movements. Many of these factors are not new, but they have intensified, and led to worsened situations over time.²³ In addition, the decreased costs of traveling to Europe was mentioned as a key reason by arriving persons during interviews on their motivations.²⁴ ‘Success stories’ of person who had previously successfully arrived in Europe are spread by social media, and may as well have functioned as a pull factor for their compatriots.

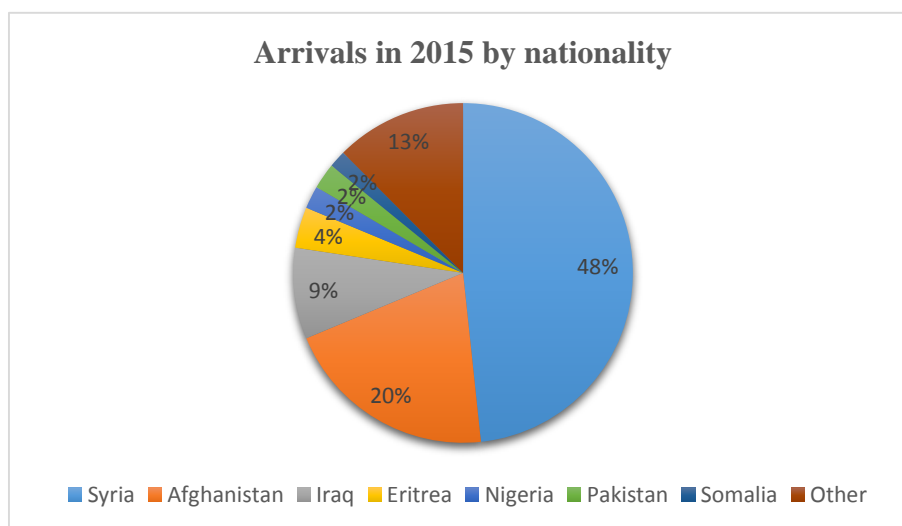


Figure 5 - Source: data UNHCR, *Europe refugees and migrants emergency response, January – December 2015*

²⁰ Human Rights Watch (2015), *The Mediterranean Migration Crisis; Why people flee, what the EU should do?*, 19 June 2015.

²¹ Lehne, S., Muasher, M., Pierini, M., Techau, J., Vimont, P., Maha, Y. (2015), *The roots of Europe's refugee crisis*, Carnegie Europe, October 2015, available at: <http://carnegieeurope.eu/2015/10/01/roots-of-europe-s-refugee-crisis/ie3>

²² Human Rights Watch (2015), *The Mediterranean Migration Crisis; Why people flee, what the EU should do?*, 19 June 2015.

²³ Banulescu-Bogdan, N. and Fratzke, S. (2015), *Europe's migration crisis in context: why now and what next?*, Migration Policy Institute, 24 September 2015.

²⁴ REACH (2015), *Situation Overview: European Migration Crisis, Western Balkans*, December 2015, available at: <http://data.unhcr.org/mediterranean/regional.php>

As can be seen in figure 5, almost half of the arrivals is from Syrian origin. For this reason we will take a closer look at the refugee situation of that country. The civil war in Syria (a country of little more than 20 million inhabitants²⁵) started after the Arab Spring protests of 2011 and has caused a large group of forcibly displaced persons since. In the first year after the Arab Spring the violence and the unstable situation in the country caused around 100,000 refugees. A year later this grew to 1.5 million, a number which doubled the year after. According to the UNHCR in March 2016, there were more or less 5 million Syrian refugees. The largest part of these refugees fled to neighbouring countries (see figure 6): almost 3 million are in Turkey and another 2 million in Egypt, Iraq, Jordan and Lebanon.

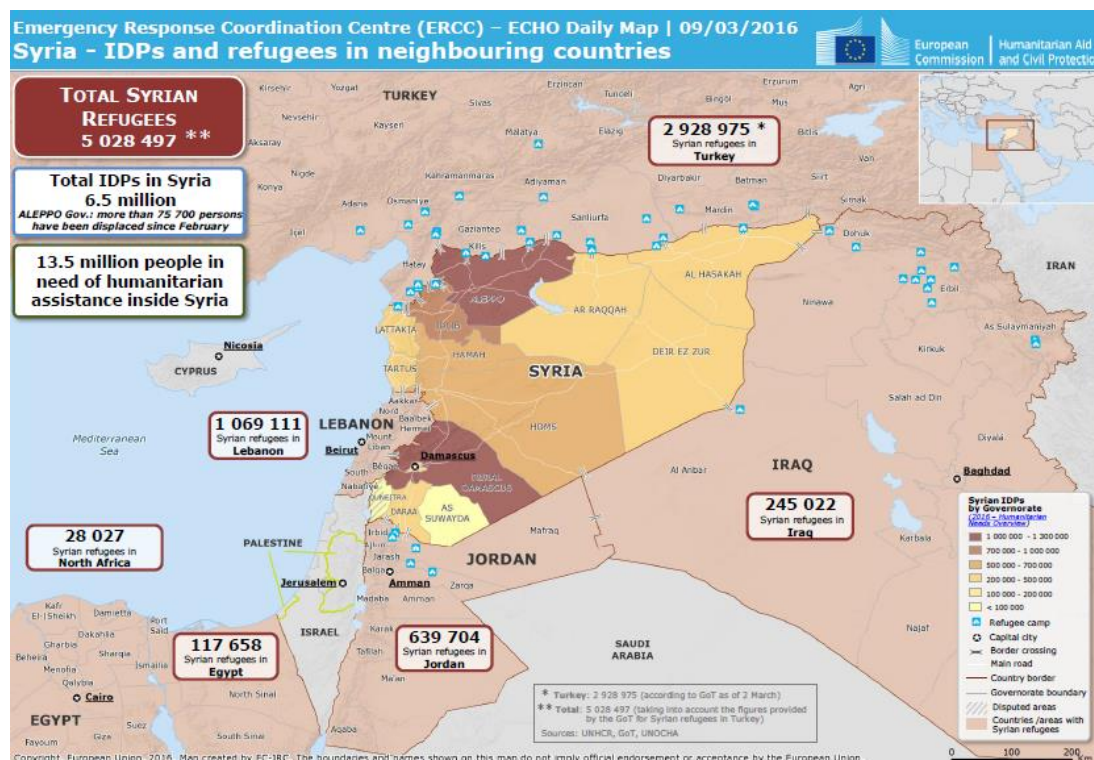


Figure 6 - Source: European Union, 2016

This often causes a heavy burden on these countries, particularly on a small country as Lebanon, which itself has a population of only little more than 4 million people²⁶ and at the moment hosts over 1 million Syrian refugees.²⁷ In addition to this, there are 6.5

²⁵ Data World Bank.

²⁶ Idem.

²⁷ Data UNHCR.

million internally displaced persons in Syria: people that had to flee their home, but did not cross an international border.²⁸ The number of Syrians in search of international protection that has come to Europe since the beginning of the war, is close to 1 million according to data of the European Commission.

Every day people are risking their lives when attempting the dangerous sea crossing to reach Europe. In 2015, 3771 people have been found dead or missing, whereas in the first quarter of 2016, this number is just over 500.²⁹ Europe has found itself unprepared to respond in an adequate way to the unusual high number of incoming persons. The “*crisis has been made worse by the failure to implement existing laws in areas like reception conditions, fingerprinting and return*” according to the European Commission.³⁰ Several countries along the main migration route struggle to receive, assist and process large numbers of people and especially local communities are overwhelmed.

There is a lack of coordination between different levels of governance, and communication between countries is almost absent.³¹ The migration crisis has imposed an unequal burden on Member States. Transit and destination countries find difficulties in addressing the humanitarian needs of migrants: reception facilities are often overcrowded, people experience a lack of privacy, there is a frustrating and frightening atmosphere and they are exposed to the risk of violence. Further, there is a lack of medical assistance and often the sanitary conditions are poor. Due to high number of new arrivals, registration backlogs exist in overburdened reception centres. One of the consequences of this is that during the winter months, people are suffering the cold when queueing for a long time for registration, but also when waiting for busses or trains to continue their travel. Several people died of hypothermia in 2015, mainly when they try to cross international borders. Moreover, there are high risks for vulnerable groups, especially children, primarily because of insufficient facilities and the risk of trafficking. Children should be accommodated in specialised facilities to guarantee

²⁸ Idem.

²⁹ Data UNHCR (2016), *Refugees/Migrants Emergency Response - Mediterranean*, available at: <http://data.unhcr.org/mediterranean/regional.php>

³⁰ European Commission (2015), *Communication to the European Parliament, the European Council and the Council: Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, COM(2015) 490 final/2, Brussels, 29 September 2015.

³¹ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

their protection and necessary care. As established by European law, this should include an adequate standard of living, access to education and health care. Too often the conditions at first reception facilities are inadequate for families and unaccompanied children. Several incidents of child abuse and sexual assaults have been reported from reception centres where children need to live together with adults. There is a lack of information and only limited qualified staff working with children. A particular worrying characteristic of the current crisis is the large number of unaccompanied minors among the refugees.³² High rates of unaccompanied children going missing from first reception centres have been reported. Despite these high numbers, only few concrete measures are put in place to prevent disappearances. The increasing number of children arriving on their own or with their families (see figure 6) is highly concerning.³³

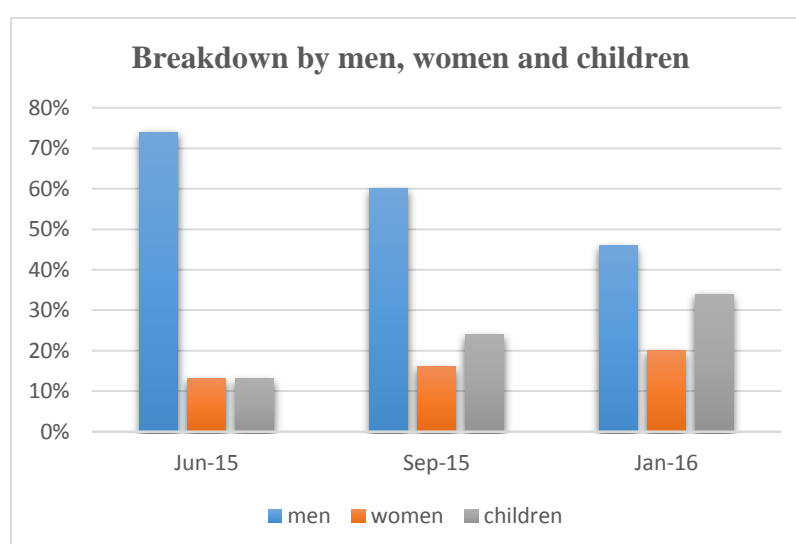


Figure 7 - Source: UNHCR

1.1.3 What is the role of Europe considering the larger context?

From the previous paragraphs, it has become clear that Europe is dealing with a migration crisis of unprecedented levels. However, the increase in the scale of asylum flows towards Europe only tells part of the story: the vast majority of refugees and

³² OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

³³ FRA, Regular overviews of migration-related fundamental rights concerns, available at: <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews>

asylum seekers flee to neighbouring countries or are internally displaced in their country of origin³⁴ (see 1.1.2 for the example of Syrian refugees). More than 80% of the refugees worldwide are hosted in developing countries; countries which face their own economic and political challenges.³⁵ There is a concerning growth in worldwide mass displacement from wars and conflict, which makes this a global issue. Around four-fifths of the refugees worldwide flee to neighboring countries.³⁶ Many refugees in countries of first asylum are vulnerable to exploitation and abuse, they are often confined to camps where they may be exposed to various risks concerning their safety and health.³⁷ Women and girls (especially when traveling alone) face a high risk of sexual exploitation and abuse. In exchange for essential resources, they can be forced to provide sexual favours³⁸ and also forced early marriages and human trafficking are a real risk.³⁹ The possibilities for persons in need of protection to enter the EU in a legal and safe way are very limited. They often need to rely on smugglers to cross the border which exposes them to risks and endangers their lives. When they reach the borders of the EU in an irregular way, they may be refused entry and instead be subjected to unlawful collective expulsions or pushed back in violation of the principle of *non-refoulement* (see 1.2.1 for explanation). If they make it into the EU they may be detained because of their irregular stay.⁴⁰ According to the Fundamental Rights Agency of the European Union, strengthening legal channels for people in need of international protection to reach the EU in a safe way, would reduce the number of migrant lives lost at sea and the need to rely on smuggling networks.

The UN refugee agency reports that the worldwide displacement is at the highest level ever recorded. According to its latest report, the number of forcibly displaced people at the end of 2014 had reached almost 60 million compared to 51.2 million a year earlier

³⁴ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

³⁵ Banulescu-Bogdan, N. and Fratzke, S. (2015), *Europe's migration crisis in context: why now and what next?*, Migration Policy Institute, 24 September 2015.

³⁶ UNHCR (2015), *Global trends*, June 2015.

³⁷ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

³⁸ UNHCR (2014), *Woman alone: the fight for survival by Syria's refugee women*, Geneva, UNHCR, July 2014.

³⁹ United Nations Office for the Coordination of Humanitarian Affairs (2015), *Statement by Kyung-Wha Kang, Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, Security Council Open Debate on the Protection of Civilians in Armed Conflict*, New York, 30 January 2015.

⁴⁰ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

and 37.5 million a decade ago. The war in Syria was a major cause for the global increase. The country became the world's largest source country of refugees during 2014. One of the most recent and highly visible consequences of the world's conflicts and the suffering they cause has been the dramatic growth in the numbers of refugees seeking safety through dangerous sea journeys, including on the Mediterranean.⁴¹

It is against this backdrop of rising numbers of forcibly displaced persons and increasing figures regarding the arrivals to Europe, that the responsibilities of the European Union and its Member States in safeguarding the rights of these persons have become more and more relevant. The function of the EU as a global protection actor is gaining importance. Therefore, its role and performances in providing protection to those in need should be assessed. Since there are only very few possibilities for people in need of international protection to legally enter and stay in one of the Member States of the European Union, they often resort to smuggling networks to reach safety. This explains the need to strengthen legal ways to protection and to reach European territory in a safe way. The migration crisis must be addressed as a common European challenge, consistent with the collective and individual Member State responsibilities to refugees. Therefore, the need for a European response to the refugee arrivals is urgent and needs to meet obligations of international law, as reaffirmed in the EU legal order, in the EU Charter of Fundamental Rights, the EU Treaties and legislation.⁴² In the next part of this chapter, the legal framework will be set out which will make clear what the rights and obligations are at international level and in which legal context the EU is acting.

1.2 On what basis can / should the EU act?

In this second part of the chapter the focus will be first on the legal context and next on the policy context. The legal framework will be set out by identifying the provisions of international and European law relevant for the role of the European Union as an external actor in the field of asylum. The second part of this paragraph deals with the most important policy documents on the basis of which the policy framework will be explained.

⁴¹ UNHCR (2015), Global trends, June 2015.

⁴² Guild, E., Costello, C., Garlick, M., and Moreno-Lax, V. (2015), The 2015 refugee crisis in the European Union, *CEPS Policy Brief*, No. 332, September 2015.

1.2.1 The legal framework

Prior to the Lisbon Treaty, the external competences in the area of migration and asylum were characterised by fragmentation due to the former structure of the EU that legally comprehended three pillars. Migration was located in the third pillar (originally called Justice and Home Affairs) that was characterised by intergovernmental cooperation among Member States. There were no specific rules provided to govern policies regarding migration. As a matter of fact, these were mostly kept outside of the Community legal order. Later, these areas were transferred to the first pillar (European Community), which is identified by supranational principles.⁴³ The fragmentation was reduced by the process of ‘communitarisation’ of EU migration policy, which began with the Treaty of Amsterdam in 1999 and was completed by the entry into force of the Lisbon Treaty in 2009.⁴⁴ Since then, the framework for the protection of human rights in the EU legal system is defined by article 6 of the Treaty on the European Union (TEU): it constitutes of the Charter of Fundamental Rights, the accession to the European Convention on Human Rights (ECHR) and the general principles of the Union’s law.⁴⁵

All migration issues fall under Title V, the “Area of Freedom, Security and Justice” of Part III (Union Policies and Internal Actions) of the Treaty of the Functioning of the European Union (TFUE). A general external competence for the EU to act on migration matters has not been established by the Treaty, yet it includes an explicit external provision in the field of asylum, which is a novelty. This new competence goes together with a broad set of provisions related to the establishment of a common asylum policy included in article 78 of the TFEU.⁴⁶ More precisely, paragraph 2 (g) specifies that the EU can enter into “*partnerships and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary*

⁴³ Koslowski, R. (2000), *Migrants and Citizens, Demographic change in the European State System*, Cornell University Press, 2000.

⁴⁴ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

⁴⁵ Peers, S. (2006), ‘Human Rights in the EU Legal Order: Practical Relevance for EC Immigration and Asylum Law’, in Peers, S. and Rogers N. (2006), *EU Immigration and Asylum Law – Text and Commentary*, 2006, p.115, 132.

⁴⁶ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

*protection.*⁴⁷ However, the competences of the EU in the field of asylum and migration remain shared competences: the EU can only act on the basis of the principle of subsidiarity. This means that Member States keep the right to act on these issues, while the EU can only act when it can provide a recognised added value compared to the policy of a single Member State.⁴⁸ Paragraph 1 of article 78 states that the Union shall develop a common policy on asylum “*with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.*”⁴⁹ It further stipulates that this policy must be in accordance with the Geneva Convention of 1951 and the Protocol of 1967.

In the past 20 years, the European Union has created an extensive set of policy instruments in the field of asylum and migration. These instruments have not been developed in a legal vacuum, but in the context of existing international law of which the 1951 Geneva Convention relating to the Status of Refugees and the subsequent 1967 Protocol, are the basis.⁵⁰ According to the 1951 Convention of Geneva, article 1(A) 2, a refugee is someone who “*owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.*”⁵¹ The principle of *non-refoulement* is explained by article 33 of the Convention: no State shall “*expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*”⁵² This principle is enshrined in article 19 of the Charter of Fundamental Rights of the European Union, which stipulates that collective expulsions are prohibited and that “*no one may be removed, expelled or extradited to a State where there is a serious risk that*

⁴⁷ Art. 2 (g) of the Treaty of the Functioning of the European Union, available at: www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-v-area-of-freedom-security-and-justice/chapter-2-policies-on-border-checks-asylum-and-immigration/346-article-78.html

⁴⁸ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

⁴⁹ Art. 78 of the TFEU.

⁵⁰ Lavrysen, L. (2012), European Asylum Law and the ECHR: An Uneasy Coexistence, *Goettingen Journal of International Law* 4 (2012) 1, p.197-242.

⁵¹ Art. 1 (A) 2 of the Convention Relating to the Status of Refugees, available at: www.unhcr.org/3b66c2aa10.html

⁵² Art. 33 para. 1 of the Convention Relating the Status of Refugees, available at: www.unhcr.org/3b66c2aa10.html

he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”⁵³ There is a link between the prohibition of non-refoulement and the prohibition of torture and inhumane treatment as described by article 3 of the ECHR. In fact, States may not expose individuals to a real risk of being tortured or to inhuman or degrading treatment or punishment, nor may individuals be sent directly to States where they might face such a risk, or to any other country where they might be at risk (including removal to the place where harm is feared).

Whereas the Geneva Convention only recognizes the principle of non-refoulement, the Charter also explicitly contains the right to seek asylum. Article 18 stipulates that “*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 on European Union and the Treaty on the Functioning of European Union.*”⁵⁴ Since the Universal Declaration of Human Rights, the Charter is the first document that contains the right to seek asylum.⁵⁵ The 1948 Universal Declaration of Human Rights provides that “*everyone has the right to seek and enjoy in other countries asylum from persecution.*”⁵⁶ The refugee protection system as described above, ensures protection only to persons already present in the territory of a State or at their borders. Existing European legislation does not provide the possibility to access protection in the EU from abroad.⁵⁷ In conclusion, refugees have the right to seek asylum, but States are not obliged to grant asylum to refugees, they do however, have the obligation of non-refoulement.

In addition, the EU has the responsibility to act against human trafficking. Article 79 (1) of the TFEU provides that the Union shall prevent and enhance measures to combat illegal immigration and trafficking in human beings. After the tragedy in the Mediterranean with migrants losing their lives at sea, one of the priority areas of action

⁵³ Art. 19 of the Charter of the Fundamental Rights of the European Union, available at: www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁴ Art. 18 of the Charter of the Fundamental Rights of the European Union, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

⁵⁵ D. McGoldrick, 'The Charter and United Nations Human Rights Treaties' in S. Peers & A. Ward (eds), *The EU Charter of Fundamental Rights (2004)* 83, 113-114, in Lavrysen, L. (2011), *European Asylum Law and the ECHR: An Uneasy Coexistence*, *Goettingen Journal of International Law* 4 (2011) 1, p.197-242.

⁵⁶ Art. 14 of the Universal Declaration of Human Rights, available at: www.un.org/en/universal-declaration-human-rights/

⁵⁷ The European Council on Refugees and Exiles (ECRE) (2012), *Exploring avenues for protected entry in Europe*, March 2012.

of the EU is to combat smuggling in human beings. The fight against smuggling could include increasing the number of legal avenues to reach the EU safely.⁵⁸

1.2.2 Policy framework

The competences of the EU in the field of asylum and immigration policy have been developed since the European Council first agreed to work towards the creation of a Common European Asylum System (CEAS) at the Tampere Summit in 1999.⁵⁹ These first steps of the EU as an external actor in the field of migration gave substance to the new migration competencies included in the Treaty of Amsterdam, which entered into force in the same year.⁶⁰ At first, actions were mainly focused on controlling migration flows and confronting irregular migration.⁶¹ Efforts were made for legal harmonization on the basis of shared minimum standards, and the end objective was a common asylum procedure and a uniform status valid throughout the EU. The approach was rather inward-looking and security-oriented. It became soon clear, however, that this approach was too limited due to the global character of the asylum issue and that the CEAS needed to be accompanied by a relevant external dimension in order to be coherent and effective. It was recognized that there were several advantages in joining forces in the asylum area, and so the development of other elements, like practical cooperation, was started. Collaboration with third countries in the management of migration flows got priority and action was coordinated in order to have a strategic impact externally. Also the possibilities for legal channels to access protection in the EU were promoted. Common efforts were made, in particular on resettlement, but also the debate on humanitarian visas and the external processing of asylum claims has been revived.⁶²

With the CEAS, a start was made to coordinate actions externally in an effort to manage migration flows. Nevertheless, some problems can be identified regarding the common

⁵⁸ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

⁵⁹ Lavrysen, L. (2011), *European Asylum Law and the ECHR: An uneasy coexistence*, Goettingen Journal of International Law 4 (2011) 1, p.197-242.

⁶⁰ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

⁶¹ Boswell, C. (2003), The external dimension of EU immigration and asylum policy, *International Affairs*, 79(3), 2003, p. 619-638; Lavenex, S. (2006), Shifting up and out: The foreign policy of European immigration control, *West European Politics*, 29(2), 2006, p. 329-350.

⁶² Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06; Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

asylum system. First of all, it has failed to share responsibility equally between Member States. Secondly, widely diverging recognition rates and reception conditions continue to exist. And finally, the external asylum dimension remains underdeveloped and opportunities for legal entry to protection are meagre. On the contrary, the severe external border control and visa policies of the EU have hardened the access to protection.⁶³

In 2005, the EU adopted its first strategic document regarding the external strategy in the field of migration: the Global Approach to Migration and Mobility (GAMM). Under pressure from the events of the Arab Spring, the document was revised in 2011. The central goal is “*to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries.*”⁶⁴ International protection and asylum policy is one of the four thematic priorities in the document. Resettlement is mentioned as a main priority and a call is made for “*enhanced resettlement in the EU in cooperation with partners*”.⁶⁵

Later, in the aftermath of the tragedy of Lampedusa, where over 350 people died, the European Commission established the Task Force Mediterranean in October 2013.⁶⁶ One of the lines of action developed by the Task Force is concentrated on the external dimension of asylum. The use of resettlement as an instrument to offer protection is encouraged, as well as offering alternative avenues for entry. Member States are invited to “*increase their current commitment on resettlement as a long-term solution that contributes to preventing and addressing protracted refugee situations.*”⁶⁷ The Task Force calls for a renewed focus on reinforced legal ways to Europe. The European Commission also committed to explore further possibilities for protected entry

⁶³ Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06.

⁶⁴ European Commission (2015), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Global Approach to Migration and Mobility, COM(2011) 743 final, Brussels, 18 November 2011.

⁶⁵ Idem.

⁶⁶ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

⁶⁷ European Commission (2013), *Communication from the Commission on the European Parliament and the Council on the work of the Task Force Mediterranean*, COM(2013) 869 final, Brussels, 4 December 2013.

procedures, which encompasses both policies in the field of humanitarian visas and external processing of asylum claims.⁶⁸

Another document relevant in this context is the “Strategic Guidelines on the Area of Freedom Security and Justice”, approved by the European Council in June 2014. One of the priorities mentioned in the Strategic Guidelines is the full implementation of the CEAS by the EU in the future. Further, emphasis is put on “*the importance of improving and strengthening regional protection programmes and increase the quantity and the quality of resettlement*”.⁶⁹

The recent high influx of persons in need of international protection that often use irregular channels to enter the European Union, where they depend on smugglers and traffickers, has increased the need to create legal ways to reach the EU. In response to the migration situation in the Mediterranean the European Commission adopted in May 2015 the Agenda on Migration, where a strong emphasis was put on asylum-related measures in order to address the crisis. With this document an ambitious step was made towards a resettlement programme in order to formulate a common approach to granting protection to displaced persons in need of protection.⁷⁰ A proposal was announced for an EU-wide scheme to resettle 20,000 refugees. The Agenda also encourages Member States to “*use to the full the other legal avenues available to persons in need of protection, including private/non-governmental sponsorships and humanitarian permits, and family reunification clauses.*”⁷¹

1.2.3 Why has the existing system failed in the context of the migration crisis?

The set of legislation created in the past years as described above, forms a solid basis for the EU common asylum policy. However, the crisis situation has revealed some of the weaknesses of the system in case of massive and sudden inflows. In this context, the existing instruments have shown their limits in ensuring fair responsibility sharing, but most of all, their limited effectiveness in preventing people from relying on

⁶⁸ European Commission (2014), *Implementation of the Communication on the Work of the Task Force Mediterranean*, Commission Staff Working Document, SWD (2014) 173 final, 22 May 2014.

⁶⁹ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

⁷⁰ Idem.

⁷¹ European Commission (2015), *European Agenda on Migration*, May 2015, p.5, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

smuggling routes.⁷² The migration crisis has put the policies and institutions of the European Union dealing with refugees and asylum seekers under heavy pressure to reform.⁷³

The Common European Asylum System has not been able to provide appropriate solutions to the new situation. The pressure to “do something” has in the past years resulted in policy experimentation and some short-lived initiatives. The CEAS has been struggling to coordinate policies across Member States for a long time, but the recent crisis situation made its problems more evident and their solutions more urging.⁷⁴ The historic levels of displacement that are the result of ongoing conflicts have made it more evident that current mechanisms are not offering effective and efficient access to protection for those in need. At the same time, responsibility for providing protection falls extremely unevenly on countries and communities.⁷⁵ More than in previous crises, the migration flows are very diverse, which increases the pressure on the systems in the destination countries.⁷⁶ The current flows are highly complex and driven by a complicated mix of factors. The greater part of those arriving are in need of international protection, but not all depart from their country of origin. Many come from places of first asylum that have become overwhelmed by protection responsibilities. The flows are diverse in terms of nationalities, as well as in terms of motivations of the individuals: this creates an added challenge for asylum authorities.⁷⁷ And while governments are struggling to keep up with larger and increasingly complex mixed flows of incoming refugees and migrants, smugglers profit from this situation and migrants pay the ultimate price.⁷⁸

⁷² OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

⁷³ Huertas Moraga, J. F., Rapoport, H. (2015), *Tradable Refugee-Admission Quotas (TRAQs), the Syrian Crisis and the New European Agenda on Migration*, Discussion Paper No. 9418, Bonn, Institute for the Study of Labor (IZA), October 2015.

⁷⁴ Idem.

⁷⁵ Papademetriou, D. G. (2015), *Beyond Asylum, Rethinking protection policies to meet sharply escalating needs*, The 13th plenary meeting of the Transatlantic Council on Migration, Council Statement, June 2015.

⁷⁶ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

⁷⁷ Banulescu-Bogdan, N. and Fratzke, S. (2015), *Europe's migration crisis in context: why now and what next?*, Migration Policy Institute, 24 September 2015.

⁷⁸ Papademetriou, D. G. (2015), *Beyond Asylum, Rethinking protection policies to meet sharply escalating needs*, The 13th plenary meeting of the Transatlantic Council on Migration, Council Statement, June 2015.

Receiving countries have the difficult task of disentangling these mixed flows and to adjudicate the claims in a fair and efficient way. Refugees often arrive as part of mixed flows of humanitarian and economic migrants and this can be difficult and expensive for authorities to disentangle.⁷⁹ Each arriving person must receive an individual assessment of their protection claim, which is often a long and resource-intensive process. As in some Member States authorities lack the means to keep up with the rising number of cases, backlogs of claims awaiting adjudication are growing.⁸⁰ The flows of asylum seekers and irregular migrants, in combination with rising numbers of migrants, have complicated the capacity of governments to determine who has a legitimate claim to protection based on humanitarian principles.⁸¹ Unfounded claims must be separated from genuine needs and this has led to overburdened asylum determination systems. Large and persistent flows of irregular arrivals undermine the public confidence in the ability of the government to effectively control external borders, to manage legal migration, and to uphold a credible asylum system. The government authority and the rule of law are undermined by flourishing smuggling routes. Consequently, persons trying to reach Europe using these routes are exposed to hardship, exploitation and danger.⁸²

Looking forward, it is not likely that the pressure from the countries of origin will ease in the near future. Even though it is difficult to predict migration flows, it is quite clear that none of the push factors that are driving refugees and migrants to Europe, is going to be resolved any time soon. As little progress has been made in resolving the political situation in Syria, the ending of the conflict is uncertain. The instability in Afghanistan and Iraq will probably persist in the close future. The stabilisation of Libya remains a challenge and also the situation in many first-asylum countries, with few opportunities to resume a normal life or economic self-sufficiency for refugees, could continue to be a motivation to move. With little hope that conditions will improve soon, many might search for other solutions, including irregular ways of migration.⁸³ Against this

⁷⁹ Idem.

⁸⁰ Banulescu-Bogndan, N. and Fratzke, S. (2015), *Europe's migration crisis in context: why now and what next?*, Migration Policy Institute, 24 September 2015.

⁸¹ Rabinovitch, Z. (2014), *Pushing out the boundaries of humanitarian screening with in-country and offshore processing*, Migration Policy Institute, 16 October 2014.

⁸² Papademetriou, D. G. (2015), *Beyond Asylum, Rethinking protection policies to meet sharply escalating needs*, The 13th plenary meeting of the Transatlantic Council on Migration, Council Statement, June 2015.

⁸³ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015; Banulescu-Bogndan, N. and Fratzke, S. (2015), *Europe's migration crisis in*

background, Europe needs to think about the approach to its protection responsibilities. Reinforcing border controls and building fences will not necessarily stop the migration movements.

Since this situation may not only be a short term emergency, but a more structural condition with continued flows, it is needed to focus on measures to welcome refugees and to speed up asylum application processing to avoid even larger backlogs and longer processing times.⁸⁴ The primary policy goal of the response to displacement situations should be widening existing legal channels to access protection and taking into account alternative ways for refugees to submit protection claims or to move onward from first-asylum countries.⁸⁵

In several resolutions the European Parliament calls for the creation of safe routes into the EU.⁸⁶ For instance, in the resolution of September 2015, the Parliament recalls that *“the possibilities for people in need of protection to legally enter the EU are very limited, and deplores the fact that they have no other option but to resort to criminal smugglers and dangerous routes to find protection in Europe, as a result of, among other factors, the building of fences and sealing-off of external borders; considers it therefore a high priority that the EU and its Member States create safe and legal avenues for refugees.”* As examples humanitarian corridors and humanitarian visas are named. The Parliament stresses that Member States should enhance family reunification, private sponsorship schemes and flexible visa arrangements in addition to a compulsory resettlement programme.⁸⁷ (See chapter 2 for the explanation of the different instruments.)

In a statement made by the UN High Commissioner for Refugees on the crisis in Europe, António Guterres said that the only ones who benefit from the lack of a

context: why now and what next?, Migration Policy Institute, 24 September 2015; Papademetriou, D. G. (2015), *Beyond Asylum, Rethinking protection policies to meet sharply escalating needs*, The 13th plenary meeting of the Transatlantic Council on Migration, Council Statement, June 2015.

⁸⁴ OECD, *Is this humanitarian migration crisis different?*, Migration Policy Debates, N° 7, September 2015.

⁸⁵ Papademetriou, D. G. (2015), *Beyond Asylum, Rethinking protection policies to meet sharply escalating needs*, The 13th plenary meeting of the Transatlantic Council on Migration, Council Statement, June 2015.

⁸⁶ European Parliament (2013), *Resolution on EU and Member State measures to tackle the flow of refugees as a result of the conflict in Syria*, 2013/2837(RSP), Brussels, 9 October 2013; and European Parliament (2014), *Resolution on the mid-term review of the Stockholm Programme*, 2014/2024(INI), Brussels, 2 April 2014.

⁸⁷ European Parliament (2015), *Resolution of 10 September 2015 on migration and refugees in Europe*, 2015/2833 (RSP), 10 September 2015.

common European response are the smugglers. More effective international cooperation is required to combat the smuggling, but “*none of these efforts will be effective without opening up more opportunities for people to come legally to Europe.*”⁸⁸ Several organisations have made calls for the development of legal alternatives to irregular and dangerous border crossings.

The Fundamental Rights Agency of the EU states that “*legal entry schemes could be used more proactively to better respond to the urgent needs of persons in need of protection.*” It further says that offering more opportunities to access the EU safely would contribute to “*the fight against smuggling, the protection of persons in need, security and integration.*”⁸⁹ During the Fundamental Rights Conference organised by FRA a call was launched to use the existing EU legal framework in a more innovative way to the benefit of third-country nationals in need of protection.⁹⁰

Europe is in urgent need of a migration paradigm shift according to a statement of the Council of Europe’s Commissioner for Human Rights. It states that Europe, except for contributing to find political solutions to conflicts in countries such as Syria, Afghanistan and Iraq, should increase resettlement of refugees from conflict areas. It also has to significantly expand legal venues for people to arrive in a safe and orderly way, for example family reunification and humanitarian visas.⁹¹

1.3 Conclusion

This first chapter served to set out the state of play; to see how the migration situation has developed into a crisis and on what formal basis the EU can and should react on this. First, we looked at the recent developments of migration flows to Europe. It is evident that there has been an enormous rise in the number of arriving refugees and migrants in 2015, transcending the number of 1 million people that made their way to Europe. The main route shifted during that year from the central Mediterranean crossing

⁸⁸ UNHCR, *Statement by UN High Commissioner for Refugees, António Guterres on refugee crisis in Europe*, Press release, 4 September 2015, available at: www.unhcr.org/55e9459f6.html

⁸⁹ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

⁹⁰ FRA (2014), *Fundamental rights and migration to the EU: conference conclusions, Fundamental Rights Conference 2014*.

⁹¹ Council of Europe’s Commissioner for Human Rights, *Europe has to change its approach to migration*, Statement, 26 February 2016, available at: www.coe.int/en/web/commissioner/-/europe-has-to-change-its-approach-to-migration

to Italy, to the Eastern Mediterranean crossing from Turkey to Greece and the Western Balkan route. Greece became first country of arrival, receiving more than 80% of all refugees and migrants that crossed the sea to Europe. The increase of arrivals that reached unprecedented levels and the shift of the route was principally the consequence of the increased number of Syrian refugees.

Subsequently, the chapter described what was at the origin of these growing numbers, as well as the question why this became a crisis. Irregular migration flows directed towards Europe are mixed flows of refugees and migrants with a great variety of origin, motivation and needs. The majority is fleeing war, widespread violence and persecution in their place of origin. These are persons in need of international protection, and they are more vulnerable than, for example, economic migrants. They come to Europe in search of safety and security. The significant increase of arriving persons in 2015, was principally caused by a deteriorated situation in the main countries of origin (Syria, Afghanistan and Iraq). The civil war in Syria has caused a huge group of forcibly displaced persons, and it became the largest source country of refugees in the world. There are 6.5 million persons internally displaced in Syria and of the refugees that crossed the border (5 million persons), the largest part fled to neighbouring countries. The EU is hosting a relatively small part of the Syrian refugees at the moment.

The worsened situation in the first countries of asylum has contributed to the migration movements towards Europe. People are risking their lives when trying to reach safety by crossing the sea in the hope of a better future. Europe has found itself unprepared to receive the unusual high number of arriving persons: countries along the main route were overwhelmed and they struggle to receive, assist and process the large numbers of people. Member States have been affected unevenly and the lack of communication and coordination between the countries obstructs a common approach for resolving the problem situation. National interests have priority and the 'not in my backyard' attitude prevails. While some countries reinforce border controls and build fences, they create major problems in other Member States, where large groups of people get stuck in border zones. Several Human Rights concerns have been raised relating to the conditions in the reception and transit camps. The situation of vulnerable groups, and particularly that of (unaccompanied) children is highly concerning. Guaranteeing their rights and safety should be a first priority.

But considering the larger context, what is the role of Europe in this situation? The migration crisis should be seen also in the larger context in order to get a complete picture. The UNHCR reports the highest number of forcibly displaced persons worldwide since the Second World War. With a record number of conflicts going on, mass displacements are a global issue. The majority of these persons is hosted in countries close to their country of origin. The pressure on these countries is very high because they often already face great economic and political challenges. The position of refugees in these countries is often very vulnerable.

There are only limited possibilities for persons in need of international protection to enter the European Union. Because they are desperate in their search of security they attempt dangerous travels and rely on smugglers to cross the sea in order to reach safety. Strengthening legal avenues to reach protection would reduce the loss of lives at sea and the need to rely on smugglers and traffickers. The European Union and its Member States have a responsibility in safeguarding the rights of people in need of protection in line with the obligations of international law. The legal and policy frameworks are set out in this chapter in order to understand the basis on which the EU can act. The framework for the protection of human rights in the EU legal system constitutes of the Charter of Fundamental Rights, the accession to the European Convention on Human Rights (ECHR) and the general principles of the Union's law.

The TFEU states that the EU shall develop a common policy on asylum which must be in accordance with the Geneva Convention relating to the Status of Refugees and the Protocol, where the definition of refugee is given and where the principle of non-refoulement is explained. The Charter confirms this principle and the ECHR adds that no State may expose individuals to the risk of torture or inhuman punishment, neither in a direct way, nor in an indirect way. Since the Universal Declaration of Human Rights, the Charter is the first document that contains the explicit right to seek asylum. This system of international and European laws ensures the protection of those who are already present in the territory of a State or at their borders. There is no possibility to access protection from abroad. So, refugees have the right to seek asylum, but States are not obliged to grant asylum to refugees, however, they do have the obligation of non-refoulement. Further, the EU has the responsibility to act against human trafficking, as is stipulated in the TFEU. The fight against smuggling could include increasing the number of legal avenues to reach the EU safely. Even though there is no

general external competence for the EU to act on migration matters established by the Treaties, the TFEU includes an explicit external provision in the field of asylum: the EU can enter into partnerships and cooperation with third countries for the purpose of managing the inflows of people in need of international protection.

In the past 20 years the European Union has created an extensive set of policy instruments in the field of asylum and migration. Since the European Council agreed to work towards the creation of a Common European Asylum System at the Tampere Summit, a start was made in developing the competences of the EU in the field of asylum and immigration policy. At first, the approach was rather inward-looking, but it soon became clear that this was not enough to create an effective policy. Then, the external dimension was developed: Member States started practical cooperation and began to coordinate actions externally. Still, some problems can be identified regarding the common asylum system: it fails to share responsibility equally between Member States; recognition rates and reception conditions remain diverse; and the external dimension remains underdeveloped. Under pressure of several events, like the Arab Spring and the tragedy of Lampedusa, other documents have been adopted to improve the basis for the common asylum policies. However, the recent crisis has revealed some of the weaknesses of the existing system and it has come under heavy pressure to reform. It has become evident that the current mechanisms are not offering access to protection to those in need in an effective way. The complexity of the current flows have further complicated the situation. Each claim to protection needs to be assessed individually, and the unfounded ones need to be separated from genuine needs. Countries have been affected by the crisis in an uneven way, and some states have come under high pressure. The authority of the government and the rule of law are undermined, while smuggling networks flourish.

It is unlikely that in the near future the situation in the main countries of origin will be stabilised, which implies that push factors will not be resolved soon. Since this situation might not only be a short-term emergency, but a more structural condition, it is important not only to concentrate on short-term policy responses and saving lives at sea, but to pay attention to solutions for speeding up asylum applications, to avoid backlogs in the processing, sharing responsibility between Member States, and most of all to avoid critical Human Rights situations for persons in need of international protection.

Chapter 2: Legal entry ways in theory

As said in the previous chapter, the Common European Asylum System was mainly based on rather inward focused motivations. Nevertheless, some more outward looking goals have also been developed. This external dimension has been composed of, principally, two types of initiatives: Regional Protection Programmes (RPPs) on one hand, and resettlement or humanitarian admission programmes on the other.⁹² RPPs are presented as a toolbox to be used flexibly, with the primary objective to improve refugee protection in targeted regions through the provision of durable solutions.⁹³ They have taken the form of projects implemented by the UNHCR, in cooperation with local NGOs.⁹⁴ Almost all RPPs include a resettlement component, which, however, is usually very modest. Because of the increasing number of refugees worldwide, and the overloaded capacity of countries close to conflict zones, there is a growing need for solutions that include resettlement and protected entry procedures in general. For that reason, we will focus here on legal entry channels for refugees to Europe. The reception capacity of neighbouring countries is often stretched to its limit. In these countries, in many cases already struggling with economic problems and political instability, refugees often find themselves in vulnerable positions. And for that, part of them is traveling onwards to western countries, looking for safety and hoping for a better future. People fleeing their country of origin because of conflict or personal threat may face difficulties in accessing official ways of migration. For example, for accessing legal labour migration routes some of the difficulties faced could include the lack of information, the lack of skills, but also the absence of documentation and the impossibility of waiting until paperwork is done.⁹⁵ For persons in need of protection it is also hard to visit a consulate to apply for a visa; they might have to travel long and dangerous routes to reach the city, and for a persecuted person it might be impossible

⁹² Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06; European Resettlement Network, available at: www.resettlement.eu/page/regional-protection-programmes

⁹³ European Commission (2004), *Communication from the Commission to the Council and the European Parliament 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"*, COM/2004/0410 final, 4 June 2004.

⁹⁴ Papadopoulou, A. (2015), *Regional Protection Programmes: an effective policy tool?*, ECRE Discussion Paper, 2015.

⁹⁵ OECD, *Can we put an end to human smuggling?*, Migration Policy Debates, N° 7, September 2015.

to visit a consulate because these are often located in areas that are under intensive surveillance of security forces. Furthermore, EU Member States are often required to close down their diplomatic representations in war zones for security or political reasons.⁹⁶

Because the possibilities for persons in need of protection to reach safe territory in a legal way are very limited, they often need to rely on smugglers to cross borders in an irregular way, which exposes them to risks and endangers their lives. One way of lowering the demand for smuggling is offering more legal avenues to protection for refugees.⁹⁷ There are several identified advantages of this option, based on a recent research of the Fundamental Rights Agency of the European Union on legal entry ways:

- Better chances for refugees to access protection;
- Enhanced international solidarity and contributing to addressing humanitarian crises in third countries;
- Avoid the need for people to undertake dangerous travels in order to reach safety;
- Combat smuggling and trafficking of human beings;
- Immigration is more controlled and the identity of admitted persons is known.

Legal channels implemented at the level of the European Union would also improve a harmonized approach to the determination of asylum claims. However, there is not only a positive side. Creating more legal ways to protection also implies some difficulties. From the same research, it can be learned that several challenges and risks can be identified:⁹⁸

- Difficulties related to selecting beneficiaries of legal entry programmes;
- Moving to Europe could be encouraged, also among persons who did not plan to do so in the first place;
- Legal channels of migration could be misused by criminals;
- Additional resources might be needed for managing applications.

⁹⁶ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

⁹⁷ OECD, *Can we put an end to human smuggling?*, Migration Policy Debates, N° 7, September 2015; FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

⁹⁸ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

Further on in this chapter, we will look more into detail at these risks and the consequences they may encompass. In this chapter, the different forms of legal ways will be explained. It will become clear that governments have a variety of instruments at their disposal to create different legal avenues. These instruments do not work in isolation, but are complementary. The first part of this chapter is about resettlement, the most important tool of providing access to protection for refugees and persons in need of protection. After an overview of the use of resettlement over time, there will be focused on the European level and the coordination of the EU in this, finally the focus will be on the difficulties and concerns regarding the selection of refugees for resettlement. After shortly discussing humanitarian admission, the next part of the chapter will be about humanitarian visas, and the legal and the policy basis of this instrument. Next, other forms of protected entry procedures will be considered: extraterritorial processing, temporary protection, humanitarian evacuation programmes, and finally the tool of family reunification will be considered.

2.1 Resettlement

Resettlement involves the transfer of refugees from the country where they have sought asylum to another country that has agreed to admit them as refugees. Identification of the refugees is done by the UNHCR who selects persons for whom other possibilities as voluntary repatriation or local integration in the country of first asylum are not possible and so for whom resettlement is the most durable solution. This instrument represents the most important measure for guaranteeing protection and international responsibility sharing. Resettlement aims at relieving isolation of third countries where the quality of protection is insufficient.⁹⁹

The use and importance of the resettlement instrument has evolved over time. Between the World Wars it was used in a number of refugee situations, for instance during the 1920s, when White Russians who had fled to China after the Russian Revolution were resettled elsewhere. Further, Jews who fled Nazi persecution during the 1930s, were resettled by different international refugee organisations. Resettlement changed in the context of the Cold War, when the experience of helping displaced people in the aftermath of the Second World War served governments that desired to promote the

⁹⁹ ECRE (2012), *Exploring avenues for protected entry in Europe*, March 2012.

movement of certain people for foreign and domestic policy reasons. An important example of resettlement during the Cold War is the one of the Hungarians in the 1950s. The Soviet invasion of Hungary in 1956 caused a flow of refugees to neighbouring countries, many of whom were later resettled in other countries. The largest resettlement project was in the 1980s after the Indo-Chinese conflict, when more than 700.000 people were resettled worldwide. A major protection crisis was caused by a mass exodus of “boat people” and certain asylum countries that refused to accept more refugees and prevented boats from landing. The international community agreed that the Vietnamese people would be allowed to land in first countries of asylum and would after be resettled to other countries. This policy safeguarded the concept of first asylum and avoided a massive loss of life. More recent examples include the resettlement of Iraqis from Saudi Arabia following the first Gulf War, refugees from former Yugoslavia resettled from Croatia, and in 1999 the resettlement programme that followed the Kosovo crisis.¹⁰⁰

In 2010, 1 in 130 refugees of the 10.4 million refugees worldwide was resettled. The ratio is about the same as in 1990, with a considerable fall in between (1 in 400 in 1993).¹⁰¹ In 2014, a total of 105,200 refugees were admitted for resettlement, out of 19.5 million refugees worldwide. This means a ratio of 1 in 185. These refugees have been resettled to 26 different countries, of which the United States of America resettled the highest number, namely 73,000. Other countries included Canada (12,300), Australia (11,600), Sweden (2000), Norway (1300) and Finland (1100).¹⁰² In total, around 6500 individuals were resettled in countries of the EU, which represents 6% of the persons resettled worldwide during that year.¹⁰³ The growth in the number of refugees in need of resettlement has not been met by an equal growth in the number of resettlement places offered.¹⁰⁴ Resettlement is not a right-based instrument it is subject to discretionary decisions of States.¹⁰⁵ And in the vacuum of legal obligations,

¹⁰⁰ UNHCR (2011), *Resettlement Handbook*, Geneva, UNHCR, 2011.

¹⁰¹ Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹⁰² UNHCR (2015), *Global trends*, June 2015.

¹⁰³ European Resettlement Network, Introduction to resettlement in Europe, available at: <http://www.resettlement.eu/page/introduction-resettlement-europe>

¹⁰⁴ UNHCR (2011), *UNHCR Project Global Resettlement Needs 2012*, July 2011, available at: www.unhcr.org/refworld/docid/4e8551bc2.html

¹⁰⁵ De Donato, M. (2014), *Access to protection: bridges not walls*, Rome, Italian Council for Refugees, October 2014; European Resettlement Network, available at: www.resettlement.eu/page/joint-eu-action-urgent-and-protracted-refugee-situations

resettlement often depends on the humanitarian as well as the political will of countries.¹⁰⁶

2.1.1 Resettlement at the European level

Until recently, resettlement was coordinated only by Member States on a bilateral level, and not on an EU level. This changed from the early 2000s onwards. The European Commission envisaged the establishment of an EU resettlement scheme in its 2004 Communication “Improving access to durable solutions”. The Commission delineated the main principles on which the scheme should be based, like voluntary targets for participating Member States. Despite these first steps, it was not until the Iraqi refugee crisis in 2008 that the EU came with its first common action. In the conclusions adopted by the Justice and Home Affairs Council of 27-28 November, it can be read that Member States were invited to take in Iraqi refugees on a voluntary basis and an objective of resettling in total 10,000 refugees was set. Under the joint effort, 5100 refugees were resettled in this period (plus 3300 on bilateral basis), 2500 persons were resettled by Germany alone. The number of Member States resettling refugees increased in this period from 6 to 12.¹⁰⁷

Soon after, more concrete policy actions were started. The experience of the common action during the Iraqi crisis prompted a more stable framework of cooperation at the EU level.¹⁰⁸ In 2009, the Commission presented a Communication on the Establishment of a Joint EU Resettlement Programme.¹⁰⁹ The aspiration of the Commission was for Europe to play a more substantial and strategically coordinated role in global resettlement. This was expressed in three different goals: increase the humanitarian impact of the EU; enhance the strategic use of resettlement; and better streamline the EU’s resettlement efforts. The proposal of the Commission mainly offered a political framework, but it did not include operational mechanisms to coordinate the efforts of

¹⁰⁶ Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹⁰⁷ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

¹⁰⁸ Idem.

¹⁰⁹ European Commission (2009), *Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme*, COM (2009) 447 final, 2 September 2009.

the Member States.¹¹⁰ Again, the guiding principle was voluntary participation of Member States, no proposals or set numerical targets for a European resettlement quota were mentioned.¹¹¹ Further, the number of the Member States involved in the process was to increase. Other important principles were the adaptability through the adoption of annual priorities and the enlargement of the scope of resettlement activity in the EU. Also the participation of relevant actors, such as the UNHCR and civil society was to be promoted.¹¹²

Difficult negotiations started after the Commission had presented its proposal. The process was characterised by inter-institutional struggles between the Commission and the European Parliament. The proposed mechanism for the setting of common annual priorities on resettlement linked to financial incentives was the first point of controversy. While the Commission had proposed to adopt the priorities through implementing acts, the Parliament argued that, due to the strategic nature, the priorities should be adopted through delegated acts. In this way, the Parliament would have a say in the decision making process. In the end, a compromise was found: the priorities for 2013 were included directly in the text of the amended European Refugee Fund Decision.¹¹³ The discussions on the subsequent programming years were included in the negotiations of the new multiannual financial framework (2014-2020).¹¹⁴

Another point of controversy between the European institutions was the legal basis. Initially, the Parliament insisted on using as a legal basis article 80 of the TFEU, which refers to the principle of solidarity and fair sharing of responsibilities between Member States that shall govern the policies of the Union in the field of migration and asylum. In the end, the Parliament stepped back, and satisfied itself with a reference to article 80 in the preamble of the amended European Refugee Fund Decision.¹¹⁵

¹¹⁰ European Resettlement Network, available at: www.resettlement.eu/page/joint-eu-action-urgent-and-protracted-refugee-situations

¹¹¹ De Donato, M. (2014), *Access to protection: bridges not walls*, Rome, Italian Council for Refugees, October 2014.

¹¹² Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06.

¹¹³ European Parliament and Council of Europe (2012), Decision No. 281/2012/EU of the European Parliament and of the Council of 29 March 2012 amending Decision No. 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme “Solidarity and management of migration flows”, 29 March 2012.

¹¹⁴ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

¹¹⁵ Idem.

Finally, the European Resettlement Programme was launched when the European Refugee Fund Decision was adopted in March 2012 by the European Parliament and entered into force on the first of January 2013.¹¹⁶

It should be mentioned that, since the beginning of the negotiations, the European Parliament had promoted a more ambitious programme. In a report of the Parliament¹¹⁷, issued in 2009, it can be read that it considered the funding of the European Refugee Fund not sufficient to create a real EU-wide resettlement programme. It recommended Member States to support the financing with private funding mechanisms and public-private initiatives.

The establishment of the Joint EU Resettlement Programme was consolidated under the Asylum, Migration and Integration Fund (2014-2020).¹¹⁸ Refugee resettlement was enhanced by renewing the mechanism of financial incentives already in place in the following way: targeted assistance is provided in the form of financial incentives for each resettled person and there is additional financial assistance when individuals are resettled under the common Union resettlement priorities. The Commission and the European Asylum Support Office (EASO) are in charge of monitoring the effective implementation of resettlement activities financed through the Fund. Even though more Member States have been involved in the programme, the overall numbers of resettled refugees remain very modest. With the Asylum, Migration and Integration Fund, the Member States showed their enduring willingness to continue and possibly strengthen the resettlement operations in the future. Nevertheless, the voluntary basis remains one of the most important characteristics of the current framework. This leaves Member States free to engage or not, and it has led to a low level of political cohesion.¹¹⁹ This is demonstrated by the varying level of commitment: while some Member States have had resettlement programmes for decades, others only recently introduced formal

¹¹⁶ European Commission (2009), *Communication from the Commission to the Parliament and the Council of 2 September 2009 on the establishment of a joint EU resettlement programme*, COM (2009) 447 final of 2 September 2009 of 29 March 2012.

¹¹⁷ European Parliament (2009), *Report on the establishment of a joint EU resettlement programme*, 2009/2240(INI), Committee on Civil Liberties, Justice and Home Affairs, 2009.

¹¹⁸ European Parliament and Council of Europe (2014), Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 2007/435/EC, OJ L 150/168, 20 May 2014.

¹¹⁹ Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06; Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

resettlement programmes and others again still do not regularly take part in any kind of resettlement activity.¹²⁰

Resettlement can be considered the most valid mechanism for providing durable protection.¹²¹ From that point of view, the annual resettlement quotas, which are established by the Member States, remain very low.¹²² The decision on whether to resettle, and how many people and from which groups, remains with the authorities of the receiving state.¹²³

2.1.2 Difficulties and concerns

In the period in which resettlement targeted mass numbers of refugees from specific geographical locations driven mostly by political interests, the UNHCR, in one of its reports in 1991, expressed the concern that there were individuals among the refugees who were resettled that did not deserve international protection status. It was noted that a mass automated resettlement was influenced by domestic pressure in resettlement countries and that there were individuals being resettled as refugees, but who actually did not face protection problems. According to the organisation this was a result of groups of people who were processed independently of the UNHCR.¹²⁴ Furthermore, the integration potential of refugees was used as a key criteria by resettlement countries.¹²⁵

In a report of 2001, the UNHCR underlined that some countries tended to control their total refugee intake by balancing between refugees who arrive through resettlement and those who are already on the territory and apply directly for asylum. In this way, resettlement is applied by some countries at the expense of asylum granted to domestic asylum seekers. According to the UNHCR, the ‘offshore’ processing for resettlement

¹²⁰ European Resettlement Network, Introduction to resettlement in Europe, available at: www.resettlement.eu/page/introduction-resettlement-europe

¹²¹ Hein, C. and De Donato, M. (2012), *Exploring avenues for protected entry in Europe*, Italian Council for Refugees, 2012.

¹²² De Donato, M. (2014), *Access to protection: bridges not walls*, Rome, Italian Council for Refugees, October 2014.

¹²³ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

¹²⁴ UNHCR (1991), *Resettlement as an instrument of protection: traditional problems in achieving this durable solution and new directions in the 1990s*, 9 July 1991.

¹²⁵ Troeller, G. G. (1991), UNHCR resettlement as an instrument of international protection: constraints and obstacles in the area of competition for scarce humanitarian resources, *International Journal of Refugee Law*, Vol. 3 , Issue 3, pp. 564-578.

should not be used to block the admission of refugees that want to seek asylum ‘onshore’, because this would undermine the right to seek asylum. Some countries use resettlement as a way to exercise control over the number and profile of refugees they admit. This is concerning because it weakens the protection principles of both asylum and resettlement. Resettlement is a complement, not a substitute to the right to seek asylum.¹²⁶

Recently, there has been an increase in asylum applications in the West. As a consequence, governments started to introduce or to reinforce restrictive policies regarding immigration and asylum, to avoid to be overwhelmed by new arrivals. Resettlement has, in some cases, become an instrument to justify the restrictions on asylum applications on the territory. Because of the growing number of applications, more and more countries have given preference to the UNHCR referrals.¹²⁷

The countries’ selection criteria and the factors in determining whether a refugee should benefit from resettlement diverge from the criteria that the UNHCR is applying. Countries mainly determine the admission decision on the basis of a well-founded fear of being persecuted in the country of nationality of the applicant, or in other words; on the basis of the applicant’s refugee status, and not on the specific situation in the first country of asylum of the applicant. On the other hand, the needs of the refugee in the country of asylum are the most important criteria for the UNHCR to promote a refugee for resettlement. The UNHCR is advocating to admit a wider category of refugees and to use a broader definition for recognising refugees, than the strict application of the 1951 Geneva Convention. It suggests to use more flexible resettlement admission criteria and to avoid immigration-oriented restrictive selection standards. Admission criteria remain a point of controversy between the UNHCR and the countries of resettlement, and the latter continue to apply a double-screening practice.¹²⁸

The UNHCR, usually in charge of identifying those most in need of resettlement in the first place, uses selection criteria as described in its Resettlement Handbook. These criteria are: refugees with legal or physical protection needs; survivors of violence and

¹²⁶ UNHCR (2001), *New directions for resettlement policy and practice*, 14 June 2001; Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹²⁷ Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹²⁸ Idem.

torture; refugees with medical needs; women and girls at risk; family reunification cases; children and adolescents at risk following a best interests determination; refugees for whom no other alternative durable solution is available.¹²⁹ Resettlement needs to reflect situations in which the need for protection and other specific needs of refugees are not being met in their countries of asylum.¹³⁰

Some of the resettlement countries apply restrictive or discriminatory selection criteria as family size, health status, educational or professional background and religion. The resettlement quota and selection standards applied by resettlement countries are subject to internal interests. These criteria focus on domestic considerations, such as the integration potential of the refugee, rather than on protection needs or vulnerabilities. Resettlement is in some cases being used as an immigration pathway, and a way to control the intake of refugees.¹³¹

To illustrate the differences in criteria for resettlement between the UNHCR and the Member States of the European Union, we will now compare and analyse the different definitions of resettlement that are used. It will be clear that the EU is applying a much more restrictive version with less binding effects. The definitions are the following:

The transfer of individual displaced persons in need of international protection, on submission of the United Nations High Commissioner for Refugees and in agreement with the country of resettlement, from a third country to a Member State, where they will be admitted and granted the right to stay and any other rights comparable to those granted to a beneficiary of international protection. (EU)

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country. (UNHCR)

¹²⁹ UNHCR (2011), *Resettlement Handbook*, Geneva, UNHCR, 2011.

¹³⁰ Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹³¹ UNHCR (2008), Progress report on resettlement, 8 June 2008.

The definition of the UNHCR involves the transfer of individuals to a third country “*which has agreed to admit them – as refugees – with permanent resident status*”. This definition therefore contains an asylum component to the countries of resettlement.¹³² On the other hand, the status and rights given to resettled individuals in one of the EU Member States vary from country to country: in some countries resettled persons receive a permanent residence permit right away, while in other countries they receive a temporary residence permit. Moreover, in some Member States the full refugee status is given immediately, while in others individuals must complete an asylum procedure after arrival into the country. In Germany, the resettled persons receive a humanitarian status. This does not provide the same legal benefits as refugees.¹³³ The definition of the UNHCR, on the contrary, provides the resettled refugees, as well as his or her family or dependants with access to rights similar to those enjoyed by nationals, and so this provides a much broader guarantee.

According to the UNHCR, resettlement serves three important functions: first of all, “*it is a tool to provide international protection and meet the specific needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge*”.¹³⁴ Second, it is a durable solution for larger number of refugees, and finally, it can be an expression of international solidarity and responsibility sharing among States.

Resettlement as a durable solution for refugees has become more important due to the increasing number of refugees worldwide. The European Union should guarantee its fair share of resettlement places based on transparent selection criteria to support global efforts in this direction. Additionally, in light of international solidarity and responsibility sharing, all of the EU Member States, rather than just some of them, should commit themselves to refugee resettlement, each according to their capacity and possibilities.¹³⁵

¹³² Nakashiba, H. (2013), *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, Research Paper No. 265, Geneva, UNHCR, November 2013.

¹³³ European Resettlement Network, *Resettlement, relocation or humanitarian admission?!*, available at: www.resettlement.eu/page/resettlement-relocation-or-humanitarian-admission-we-explain-terminology

¹³⁴ UNHCR (2011), *Resettlement Handbook*, Geneva, UNHCR, 2011.

¹³⁵ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

2.2 Humanitarian Admission

Humanitarian admission is a wide-ranging term that can have different definitions depending on the context. It can include resettlement, but in fact it is a much broader term. For the purpose of this thesis, this term is used to refer to resettlement-like programmes where beneficiaries are not selected by the UNHCR, but, in most cases, by other organisations. In it is also accessible to persons who might not qualify for resettlement under the UNHCR. Humanitarian admission programmes do not necessarily target only refugees, but also persons who are still in their home country. Internally displaced persons could be included in this type of programme. Usually, these kind of programmes are not focused on individuals, but on the admission of groups that are in need of urgent protection. They are granted temporary protection on humanitarian grounds. Traditional resettlement programmes can be complemented by humanitarian admission programmes.¹³⁶

2.3 Humanitarian Visas

A humanitarian visa is a visa issued on humanitarian grounds. The procedure for issuing this type of visa is different from the resettlement procedure in the sense that only an initial assessment is conducted on the territory of the third country. After this, a visa is issued to the applicant in order to reach the territory of the issuing state. A humanitarian visa does not provide a permanent residence permit, nor a guarantee that the refugee status will be granted. Instead the applicant will have access to the normal asylum procedure and the final status determination will be conducted in the country after arrival.¹³⁷

¹³⁶ European Resettlement Network, available at: www.resettlement.eu/page/resettlement-relocation-or-humanitarian-admission-we-explain-terminology; FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

¹³⁷ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015; Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

2.3.1 The legal basis

EU Member States that are part of the Schengen area can issue so called C visas, which are for visits up to three months. This is regulated at EU level by the Visa Code.¹³⁸ Additionally, Member States can issue so called D visas, which are national visas for long-term stay. There is no separate humanitarian visa procedure provided by EU law. Yet, there are possibilities for visa on humanitarian grounds provided by the Visa Code. For example, the duration of a visa can be extended on humanitarian grounds. Article 33 (1) states that “*the period of validity and/or the duration of stay of an issued visa shall be extended where the competent authority of a Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of or the duration of stay authorised by the visa.*” Also, Member States are allowed to derogate from the requirements of admissibility, based on humanitarian grounds or because of reasons of national interest, as is provided by article 19 (4). Furthermore, article 25 (1) specifies that “*a visa with limited territorial validity shall be issued exceptionally when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations.*” Therefore, this article gives the representation of a State the possibility to issue a ‘visa with limited territorial validity’, even though the conditions for issuing a ‘Schengen visa’ are not met. This is not a separate and independent kind of visa, but it is linked to types of visa provided by national law (tourism, invitation, etc.). This visa is (usually) only valid in the territory of the issuing State (exceptional cases possible, where other States are explicitly indicated in the visa, based on their previous consensus) for a period up to three months.¹³⁹ According to some analysts, this formulation includes an implicit obligation for Member States to issue a visa in the case where an applicant is found to have a well-founded protection need, which originates from refugee and human rights obligations of Member States.¹⁴⁰ However, these rules remain quite ambiguous, in the absence of a more clear legal framework and common European guidelines. The aim of a humanitarian visa is for the beneficiary to reach the

¹³⁸ European Parliament and Council of Europe (2009), Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), 13 July 2009.

¹³⁹ ECRE (2012), Exploring avenues for protected entry in Europe, March 2012.

¹⁴⁰ Iben Jensen, U. (2014), *Humanitarian visas: option or obligation?*, Study commissioned by the Directorate General for Internal Policies of the European Parliament, 2014.

territory of the issuing state in a regular way and start or continue the asylum procedure there. So, in order provide appropriate protection, a humanitarian visa should guarantee more than a short-term stay. For this reason it is questionable if the Visa Code is the most adequate legal basis for this instrument.

Article 22 of the Visa Code provides a consultation mechanism between EU Member States. This means that a State may request to be consulted when normal Schengen visas are issued to nationals of specific third countries or specific categories of such nationals. Such a mechanism, however, does not apply in cases of limited territorial validity visas issued in urgent cases, as described in article 25 (1). Consequently, a Member State does not have the option of alerting the visa-issuing Member State on possible security threats. According to the Fundamental Rights Agency of the European Union, defining clearly the concept of ‘humanitarian grounds’ and its usage within the EU legal framework “*would not only make it easier for persons in need of protection to reach safety, but could also enhance security.*”¹⁴¹

2.3.2 The policy basis

The instrument of humanitarian visas have benefited, until now, only a very small number of individuals.¹⁴² Generally, states have been reluctant to implement this instrument, and those that did so, usually do not publicise it. This is due to a fear of an uncontrolled increase in the number of applications, or because of logistical and financial problems related to the management of applications on the part of embassies.¹⁴³ Nevertheless, the European Commission, supported by NGOs and humanitarian organisations, started to promote the use of humanitarian visas as a component of the CEAS. Still, there is a lack of political cohesion on the part of the Member States, as they prefer to deal with this at the national level. Further, moving in

¹⁴¹ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

¹⁴² Hein, C. and De Donato, M. (2012), *Exploring avenues for protected entry in Europe*, Italian Council for Refugees, 2012.

¹⁴³ Noll, G. et al. (2002), *Study on the feasibility of processing asylum claims outside the UE against the background of the Common European Asylum System and the goal of a common procedure*, The Danish Centre for Human Rights, 2002.

this direction would necessarily implicate dealing with the related issue of internal redistribution of asylum seekers.¹⁴⁴

The Mediterranean Task Force proposes to explore possibilities of humanitarian visas and protected entry procedures. The European Commission stated in its March 2014 Communication that this “*could complement resettlement, starting with a coordinated approach to humanitarian visas and common guidelines.*”¹⁴⁵ In April 2014, a recast of the Visa Code was proposed by the European Commission.¹⁴⁶ This pending revision would be an opportunity to develop a more coordinated approach to visas issued on humanitarian grounds.¹⁴⁷ In the recent Agenda on Migration of May 2015, the Commission encourages to provide more humanitarian visas, but there are no concrete or binding proposals.¹⁴⁸ The Parliament in its resolution of 29 April 2015 calls on Member States “*to make full use of the existing possibilities for issuing humanitarian visas at their embassies and consular offices.*”¹⁴⁹ In general, the European Commission as well as the European Parliament have favoured the use of humanitarian visas. Yet, the Member States lack political cohesion and are reluctant in taking concrete steps in creating a common approach on humanitarian visas.¹⁵⁰ As a consequence of the absence of an EU-wide mechanism that monitors the issuing of humanitarian Schengen visas, no reliable data exists of the practice of this legal way. A study on humanitarian visas, carried out upon request of the LIBE Committee, shows that “*16 Member States have or have had some form of scheme for issuing humanitarian visas – be they national, uniform Schengen and/or LTV Schengen visas.*”¹⁵¹

¹⁴⁴ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

¹⁴⁵ European Commission (2014), *Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: An open and safe Europe: making it happen*, COM (2014), 154 final, Brussels, 2014.

¹⁴⁶ European Commission (2014), *Proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code)*, COM(2014) 164 final, Brussels, 1 April 2014.

¹⁴⁷ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

¹⁴⁸ Human Rights Watch (2015), *The Mediterranean Migration Crisis; why people flee, what the EU should do*, 19 June 2015.

¹⁴⁹ European Parliament (2015), *Resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies*, 2015/2660 (RSP), 29 April 2015.

¹⁵⁰ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

¹⁵¹ Iben Jensen, U. (2014), *Humanitarian visas: option or obligation?*, Study commissioned by the Directorate General for Internal Policies of the European Parliament, 2014.

2.4 Extraterritorial processing

There are several definitions of the term extraterritorial processing, but mostly used, is the one that indicates “*the processing of the merits of an application for international protection by and/or subject to the responsibility of the EU or one of its Member States which takes place at a location outside the borders of that state or of the EU.*”¹⁵² It would be a way to assist people closer to their countries of origin, and in this way prevent dangerous travels in order to reach protection.¹⁵³ External processing could be done either in regions close to the country of origin, or in transit countries just outside the European Union.¹⁵⁴ In any case, the place where the claimant and the destination country meet, is the diplomatic representation. By way of contrast, in the case of resettlement or humanitarian admission, this happens in processing or refugees camps.¹⁵⁵ In order to set up external processing centres, the cooperation of the host country would be needed, as well as partnerships with the UNHCR and other international organisations.¹⁵⁶ The aim of alleviating limbos in third countries where the quality of protection is insufficient, is a shared characteristic with resettlement. With the tool of humanitarian evacuation (see paragraph 2.6), it shares the wish to respond to a situation of mass movement. However, the primary goal of extraterritorial processing is to offer persons in need of protection legal alternatives to illegal migration channels and, therefore, preventing disorderly departures, as well as disorderly arrivals.¹⁵⁷

There have been discussions on implementation and several more concrete proposals for extraterritorial processing schemes at the EU level, but so far, this has remained only on paper. Various concerns were raised on the implementation, for instance regarding the procedural rules that would govern the process (EU or national), as well

¹⁵² Dutch Advisory Committee on Migration Affairs (2010), *External processing: conditions applying to the processing of asylum applications outside the European Union*, 2010.

¹⁵³ McAdam, J. (2015), *Extraterritorial processing in Europe: is regional protection the answer, and if not, what is?*, Policy Brief 1, Andrew and Renata Kaldor Centre for International Refugee Law, May 2015.

¹⁵⁴ Rabinovitch, Z. (2014), *Pushing out the boundaries of humanitarian screening with in-country and offshore processing*, Migration Policy Institute, 16 October 2014.

¹⁵⁵ Noll, G. et al. (2002), *Study on the feasibility of processing asylum claims outside the UE against the background of the Common European Asylum System and the goal of a common procedure*, The Danish Centre for Human Rights, 2002.

¹⁵⁶ Rabinovitch, Z. (2014), *Pushing out the boundaries of humanitarian screening with in-country and offshore processing*, Migration Policy Institute, 16 October 2014.

¹⁵⁷ ECRE (2012), *Exploring avenues for protected entry in Europe*, March 2012.

as concerns about how individuals would be identified for resettlement.¹⁵⁸ In order to create an external processing scheme, also a distribution mechanism among Member States would be needed. Putting in place such a quota system for allocating accepted refugees, is a major difficulty.¹⁵⁹ Similar to the case of humanitarian visas, States have also been reluctant to implement this kind of instrument, because of a fear for an uncontrolled rise in application numbers. The 2013 Communication of the Task Force Mediterranean proposed a possible joint project of processing protection claims outside the EU. The European institutions are promoting the use of extraterritorial processing, especially in the context of the recent migration crisis, but, so far, political cohesion among the Member States is lacking.¹⁶⁰ Human Rights organisations, on the other hand, have expressed concern that asylum seekers already on EU territory could be removed to these centres outside the EU where the processing would take place. Critics warned against the possibility of external processing schemes replacing existing asylum mechanisms. According to the European Council on Refugees and Exiles (ECRE), this would undermine the right to seek asylum enshrined in article 18 of the EU Charter of Fundamental Rights. Further, some organisations warned for situations of poor Human Rights standards in some of the possible host countries, where refugees could find themselves at the mercy of those governments. Destination countries should secure the cooperation of the host country, in order to guarantee basic rights of applicants. In conclusion, external processing programmes should be carefully constructed and monitored, and attention must be paid to the fact that operating procedures must be in line with existing EU and international law.¹⁶¹ And exactly this seems to be the problem regarding the practical implementation of this instrument, because fundamental questions regarding responsibility, guarantees and remedies, remain open.

¹⁵⁸ McAdam, J. (2015), *Extraterritorial processing in Europe: is regional protection the answer, and if not, what is?*, Policy Brief 1, Andrew and Renata Kaldor Centre for International Refugee Law, May 2015.

¹⁵⁹ Rabinovitch, Z. (2014), *Pushing out the boundaries of humanitarian screening with in-country and offshore processing*, Migration Policy Institute, 16 October 2014.

¹⁶⁰ Cortinovis, R. (2015), *The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?*, ISMU Paper, May 2015.

¹⁶¹ Rabinovitch, Z. (2014), *Pushing out the boundaries of humanitarian screening with in-country and offshore processing*, Migration Policy Institute, 16 October 2014.

2.5 Temporary protection

Temporary protection is generally used to describe a short-term emergency response to a significant influx of refugees. It is a basis for States to provide protection from return as an alternative to refugee recognition under the 1951 Convention and the 1967 Protocol.¹⁶² In the European Union temporary protection is organised by the Temporary Protection Directive. This is the only facilitated entry referred to in European legislation.¹⁶³ “*In the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin*”,¹⁶⁴ lifting visa requirements altogether could be considered as a solution of dealing with an exceptional situation and allow for protection on a temporary basis.¹⁶⁵ A ‘mass influx’ is described by article 2 as the arrival 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.*” To activate this protection mechanism, a Council Decision on a proposal of the European Commission is required to recognise the existence of such a mass influx. It is important to highlight that this Directive offers a negotiation procedure and not a fixed legal obligation to deal with a mass influx.¹⁶⁶ In 2011, the UNHCR considered temporary protection as an option to deal with displacements from Libya¹⁶⁷ and in 2013, the European Parliament indicated it as a possible way to address the Syrian crisis.¹⁶⁸ Despite these suggestions, the European Commission has not considered the Temporary Protection Directive as the right tool to deal with these movements. Since its entry into force in 2001, this directive has never been activated yet.¹⁶⁹

¹⁶² UNHCR (2011), *Resettlement Handbook*, Geneva, UNHCR, 2011.

¹⁶³ ECRE (2012), *Exploring avenues for protected entry in Europe*, March 2012.

¹⁶⁴ Article 1 of the Temporary Protection Directive (2001/55/EC).

¹⁶⁵ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

¹⁶⁶ ECRE (2012), *Exploring avenues for protected entry in Europe*, March 2012.

¹⁶⁷ UNHCR (2011), *As the Libya Crisis continues, UNHCR calls on states to share the burden and uphold principles of rescue-at-sea*, News item, Geneva, 2011.

¹⁶⁸ European Parliament (2013), *Resolution of 9 October 2013 on EU and Member States measures to tackle the flow of refugees as a result of the conflict in Syria*, 2013/2837 (RSP), 9 October 2013.

¹⁶⁹ FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015.

2.6 Humanitarian evacuation programmes

Humanitarian evacuation can be adopted in cases of acute protection crises. This is often done in the context of temporary protection, with the aim of alleviating the burden of countries affected by situations of mass flight. Third countries temporarily share the responsibility for refugees and other persons in need of international protection, as a form of international solidarity. In contrast with resettlement programmes, it does not focus on individual protection needs, but rather on the requirements of whole groups in need of international protection, and can be described as a collective instrument. This measure involves the transfer of persons residing in camps in third countries or in their country of origin, in accordance with the host State, usually on the basis of quotas. Since humanitarian evacuation is an exceptional practice, it is not based on a system of rigid legal rules, but rather characterised by ad hoc responses. An important example of this tool is represented by the evacuation programme of around 90,000 Kosovo-Albanians from the Former Yugoslavian Republic of Macedonia in 1999, launched by the UNHCR and the International Organization for Migration. The largest part of these persons were evacuated to European countries.¹⁷⁰

2.7 Family reunification

Even though, in this case there is no direct claim for asylum or another form of international protection by the applicant, family reunification is an instrument that could help persons in need of protection that find themselves outside the European Union, to reunite with their family members that already are in the EU.¹⁷¹ At the international level, the unity of the family is considered as an essential right of the refugee by the Convention of Geneva. The Convention recommends States to ensure that the unity of the refugee's family is maintained. In the European Union family reunification is regulated by the Family Reunification Directive. On one hand the directive creates more favourable conditions for refugees compared with other third country nationals, while on the other hand it leaves space for various restrictions. The

¹⁷⁰ ECRE (2012), *Exploring avenues for protected entry in Europe, March 2012*; *Parliamentary assembly of the Council of Europe*, Conclusions of an extraordinary meeting of CAHAR on Kosovo, *Communication from the committee of Ministers, Doc. 8436*, 14 June 1999; UNHCR, *Global report*, 1999.

¹⁷¹ Human Rights Watch (2015), *The Mediterranean Migration Crisis; why people flee, what the EU should do*, 19 June 2015.

European Commission, in its guidelines for the application of the Directive, calls on Member States for more leniency and to increase, rather than to limit, the access to family reunification for refugees.¹⁷² Rules on family reunification are based on a narrow concept of the family unit, which includes only spouse and minor children.¹⁷³ According to the UNHCR, this narrow definition of the family unit, is one of the obstacles refugees face in family reunification in Europe.¹⁷⁴ Article 10 (2) of the Directive on the Right to Family Reunification allows Member States to authorise family reunification of other family members if they are dependent on the refugee. The Commission encourages Member States to use the margin of appreciation “*in the most humanitarian way*” when applying the definition of the family unit.¹⁷⁵ Research of various organisations (FRA,¹⁷⁶ UNHCR,¹⁷⁷ the Red Cross and ECRE¹⁷⁸) has shown that there are various obstacles in the process of family reunification for refugees. These include insufficient information about the process, long procedures, high costs, inability to meet requirements, and no realistic possibility of success. There are no reliable figures for family reunification to the EU for beneficiaries of international protection, but the numbers are estimated to be low.¹⁷⁹

2.8 Alternative solutions: private sponsorship

Since the migration crisis is a global issue, rather than just from the national point of view, it should be addressed as a common European challenge. There is a need for a European response to the current situation of forced displacements. But in order to

¹⁷² European Commission (2014), *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM (2014), 210 final, 3 April 2014.

¹⁷³ Article 4 of the Directive on the Right to Family Reunification, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0086>

¹⁷⁴ UNHCR, *Refugee Family Reunification*, February 2012, available at: www.unhcr.org/4f54e3fb13.pdf

¹⁷⁵ European Commission (2014), *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM (2014), 210 final, 3 April 2014.

¹⁷⁶ FRA (2011), *Fundamental rights of migrants in an irregular situation in the European Union*, 2011.

¹⁷⁷ UNHCR (2012), *UNHCR's response to the European Commission Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86/EC)*, 2012.

¹⁷⁸ Red Cross EU Office and ECRE (2014), *Disrupted flight: the realities of separated refugee families in the EU*, November 2014.

¹⁷⁹ UNHCR, *Refugee Family Reunification*, February 2012, available at: www.unhcr.org/4f54e3fb13.pdf

implement a European migration policy it is essential that all Member States fully apply the common rules agreed on at the EU level in the area of asylum and migration. As can be seen in this chapter, diverging interests and a lack of political will and cohesion among the Member States stands in the way of such a common approach. On one hand Member States want to preserve as much autonomy as possible in the area of immigration and asylum, while on the other hand it is exactly the absence of a harmonised approach in this area that has become evident during the crisis, and that prevented from taking steps to overcome the crisis. The uneven exposure of the different Member States to the problem, the diversity in societal attitudes towards migration and the political sensitivity of the issue have complicated the discussions at the European level. In the absence of a collective response, some Member States resorted to individual actions of reimposing border controls and building fences to avoid refugees and migrants to enter the country. In conclusion, the migration challenge could either result in a revival of European integration in this field, or a renationalisation of migration policies.¹⁸⁰

Despite the differences in approaching the problem and disagreements about how to respond, there is a large consensus on enhancing safe and legal ways for refugees to reach the territory of the EU. The implementation of instruments as described above require human and economic resources: this can form a practical obstacle to extending existing schemes or setting up new ones for the benefit of a higher number of persons. In order to boost numbers and to overcome limitations, Member States could explore different ways apart from the traditional way of setting up protection programmes. To create solid legal entry ways for individuals to access protection in Europe supported by a broad social consensus it can be considered to involve other stakeholders, such as NGOs, religious organisations or individual persons. Apart from state sponsored refugees, alternative schemes could be explored based on private sponsorship by family members, private individuals, churches or other organisations. Private sponsors can choose a refugee they want to sponsor and accept financial responsibility for a specified period of time. They can also provide other forms of support and facilitate integration. This formula is already used in a successful way in the US and in Canada.¹⁸¹

¹⁸⁰ Lehne, S. (2016), *How the refugee crisis will reshape the EU*, Carnegie Europe, 4 February 2016.

¹⁸¹ Kumin, J. (2015), *Welcoming engagement, how private sponsorship can strengthen refugee resettlement in the European Union*, Migration Policy Institute, December 2015; FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February

Canada started its Private Sponsorship of Refugees Program in 1978 and for a long time it remained the only country with a private sponsorship programme. Sponsors can choose the refugee applicant they wish to sponsor. The applicant is granted with a permanent residence permit. The sponsor is responsible for all costs regarding the integration of the refugee (including rent, food, transportation, etc.) for one year or until the refugee becomes financially independent. Sponsors are also responsible for other support as assisting in finding medical services, apply for necessary documents, etc. In 2013, the government-assisted refugees were 5661, while there were 6269 private sponsored refugees.¹⁸²

Private sponsorships is a flexible tool and can take different forms, depending on the circumstances and the kind of programme. It can be part of existing resettlement programmes, or it can be a new separate program, parallel to government-led efforts. There is an overlap with refugee family reunion: private sponsorship programmes can expand family reunion, making it possible also for relatives beyond the nuclear family to be resettled. In any case, the state will remain responsible for carrying out the necessary screening and entry formalities. Private sponsorship is a way of creating additional resources, and multiplying possibilities. Involving civil society can also contribute to raise public awareness and support.¹⁸³

2.9 Conclusion

In this chapter the different instruments to create legal ways to protection were explained. Resettlement can be considered the most important measure for guaranteeing protection and international responsibility sharing. It is a tool for protection and a durable solution for refugees, which has already a long history. It is the most widely used form of legal way to protection. The scale of use is increasing, however, the growth in the number of refugees in need of resettlement has not been met by an equal growth

2015; Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06.

¹⁸² (Canada) “Refugees welcome”, available at: www.refugeeswelcome.ca/refugee_sponsorship; Kumin, J. (2015), *Welcoming engagement, how private sponsorship can strengthen refugee resettlement in the European Union*, Migration Policy Institute, December 2015;

¹⁸³ Kumin, J. (2015), *Welcoming engagement, how private sponsorship can strengthen refugee resettlement in the European Union*, Migration Policy Institute, December 2015; FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, February 2015; Tsourdi, E. and De Bruycker, P. (2015), *EU Asylum Policy: In search of solidarity and access to protection*, Migration Policy Centre, 2015/06.

in the number of resettlement places offered. Since the early 2000s a start was made to coordinate resettlement on the EU level, instead of only by Member States on a bilateral level. Currently, the European Resettlement Programme is based on voluntary participation and it is linked to a mechanism of financial incentives. Humanitarian admission programmes are similar to resettlement programmes, with the difference that individuals are not selected by the UNHCR. The target group of this kind of programme is very broad and can also include for example internally displaced persons.

The largest difference with the previous two instruments and humanitarian visas is that for issuing this kind of visas only an initial assessment is conducted in the third country. In the territory of the issuing state, the applicant will have access to the normal asylum procedure. Member States that are part of the Schengen area can issue C visas for short-term stay, which is regulated by the Visa Code. Additionally, States can issue D visas (national visas) for long-term stay. The Visa Code does not provide a separate humanitarian visa procedure, but there are some possibilities for visa on humanitarian grounds. Nevertheless, it remains questionable if the Visa Code can provide an adequate legal basis for humanitarian visas, since this regards only short-term stays up to three months.

While the processing of resettlement and humanitarian admission usually takes place in refugee camps and is done by international organisations, for humanitarian visas and external processing it is the diplomatic representation that is responsible. A shared characteristic of extraterritorial processing, resettlement and humanitarian admission is the aim of alleviating limbos in third countries. External processing has been discussed many times at the EU level, but until now has never been put in place. From the Human Rights point of view there are many concerns on the implementation of such an instrument.

Temporary protection in the EU this is organised by the Temporary Protection Directive and it is the only facilitated entry referred to in European legislation. Since its entry into force, this directive has never been activated. Humanitarian evacuation programmes are often adopted in the context of temporary protection in cases of acute protection crises. This instrument targets whole groups of persons in need of protection, rather than individuals. A shared characteristic of extraterritorial processing and humanitarian evacuation is the wish to respond to a situation of mass movement.

In the case of family reunification there is no direct claim for asylum, but it is a tool to help persons in need of protection that find themselves outside the EU, to reunite with their family members that already are in the EU. This instrument is regulated by the Family Reunification Directive. The narrow concept of the family unit is one of the main obstacles in applying this measure.

The implementation or extension of one of these schemes has additional costs in terms of economic and human resources. To overcome these obstacles alternative solutions could be experimented. Private sponsorship is a tool that has already been used with success for quite some years in Canada. It can be used as part of an existing programme or it can be a separate new project, next to others. As a matter of fact, the flexibility of this measure and the fact that it can easily be combined with other instruments, is one of the main advantages. Private sponsorship creates new resources and possibilities, and additionally, it is a way of involving civil society, which can have positive effects for example on awareness raising, but also on the integration process of the resettled individuals.

As set out in the introduction of this chapter there are several advantages regarding the implementation of legal avenues to protection. After the explanation of the different instruments, this can be placed more into context: first of all, it can be stated that all instruments contribute to avoiding the need for people to undertake dangerous travels and to combatting smuggling and trafficking. Considering the advantage of better chances to access protection for refugees, it should be kept in mind that the instruments as described above should work complementary to national asylum procedures, they should not substitute them. Immigration-oriented restrictive selection standards, based on internal interests are to be avoided. Regarding the enhanced international solidarity, it can be seen that in some cases the determination of the admission decision is principally based on the refugee status of the applicant. A larger number of persons could benefit from legal entry ways, if also the specific situation in the country of first-asylum of the applicant is taken into consideration. This would also contribute to the sharing of international responsibility for persons in need of protection. Further, the use of a broader definition than the strict application of the 1951 Geneva Convention would benefit a wider category of persons in need of protection. Another advantage could be that immigration is more controlled. However, this is not necessarily a positive effect in every case, as it can be observed that in some countries legal ways are used to

exercise control over the number and the profile of refugees they admit. This is concerning because it could weaken the protection principles of asylum.

Considering the risks linked to the putting into place of protection tools, it can be seen that in the past it has happened that there were individuals among refugees who were resettled that did not deserve the international protection status as a result of mass automated resettlement. This can be avoided by applying objective and transparent selection criteria. Another risk is connected to the fact that some countries tended to control their total refugee intake by balancing between refugees who arrive through resettlement and those who are already on the territory and apply directly for asylum: this would undermine the right to seek asylum. It is important to consider that national asylum procedures cannot be replaced by protected entry procedures, instead, they function as a complement.

It is true for every single instrument that it should be carefully constructed and monitored and attention must be paid to the fact that operating procedures must be in line with existing EU and international law.

Chapter 3: Legal entry ways in practice

In the first chapter, the background situation with high numbers of refugees and migrants arriving at European borders was set out, as well as the legal and the policy framework. The next chapter was about the toolbox that is at disposal to create safe and legal ways to protection. Now that the context is clear, and the different instruments have been explained, the focus will be on the European response to the migration crisis. Which measures have been taken at the EU and the national level to enhance international responsibility sharing and to avoid that persons in need of protection need to rely on smugglers in order to reach safety? And what has recently been done to improve legal avenues to protection in Europe? As it can be seen in this chapter, the Member States have responded in very different ways to the situation. It will also become clear that the various instruments are not always separately used, in net distinction one from the other. Often, rather a combination of different tools is used for the creation of protected entry procedures, which has been adapted to the situation. In the last part of the chapter the different responses will be analysed in detail.

3.1 Efforts at the European level

The first part of this chapter will focus on the efforts made at the EU level. First, general information will be provided on the resettlement efforts made by the European countries. Next, attention is paid to the policy initiatives that have been taken as a response to the migration crisis. In the last paragraph of this chapter, the focus will be on the reporting the EU has done on these initiatives. An analysis of the steps taken by the EU to respond to the crisis situation can be found in the concluding paragraph of this chapter.

3.1.1 General information on the European resettlement efforts

Resettlement efforts in Europe have been increasing in the last years (see figure 8). In 2015, in total 7705 persons were resettled in the EU.¹⁸⁴ According to the UNHCR, of

¹⁸⁴ Data Eurostat, available at:
<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00195&plugin=1>

the 19.5 million refugees in that year, the number of persons in need of resettlement was 960,000 worldwide.¹⁸⁵ Only around 1 in 10 of these persons were effectively resettled. More than 80% of the resettled individuals were resettled to the United States, Canada or Australia.¹⁸⁶ The share of the resettlement places offered by the Member States of the EU all together is around 9%. This is more or less the same as previous years (8% in 2007 and 9% in 2013), even though more Member States are participating in resettlement programmes.¹⁸⁷ From this it can be concluded that the growth in resettlement places in Europe has not kept pace with that of other resettlement countries.

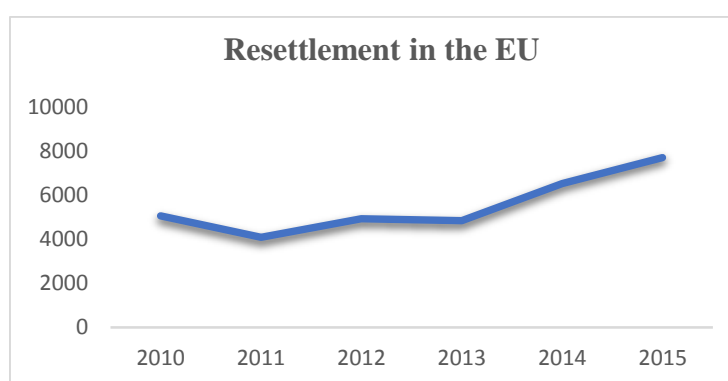


Figure 8 - data Eurostat

Some European countries already established resettlement programmes in partnership with the UNHCR in the 1970s, others just recently implemented annual programmes, or only work on an ad hoc basis. Currently, there are 14 Member States implementing annual resettlement programmes. In 2015, the UK and Sweden, followed by Finland, offered the most places for resettlement either within the framework of a national or a Community resettlement scheme (see figure 9).¹⁸⁸ In table 1, the resettlement efforts by country per year can be seen (more detailed information on this will follow in the second part of this chapter, see 3.4 on the efforts at the Member State level).

¹⁸⁵ UNHCR (2014), *UNHCR Projected Global Resettlement Needs 2015*, June 2014.

¹⁸⁶ UNHCR (2016), *Resettlement fact sheet 2015*, 14 April 2016.

¹⁸⁷ European Resettlement Network, available at: www.resettlement.eu/page/introduction-resettlement-europe

¹⁸⁸ European Resettlement Network, available at: www.resettlement.eu/page/introduction-resettlement-europe

Resettlement in the EU by country per year

Member State	2010	2011	2012	2013	2014	2015
Austria	0	0	0	0	390	760
Belgium	-	25	0	100	35	275
Bulgaria	-	-	0	0	0	0
Croatia	-	-	-	0	0	0
Cyprus	0	-	-	0	0	0
Czech Republic	40	0	25	0	0	0
Denmark	495	515	470	515	345	450
Estonia	0	0	0	0	0	0
Finland	545	585	730	675	1090	1005
France	360	130	100	90	450	620
Germany	525	145	305	280	280	510
Greece	-	0	0	0	0	0
Hungary	-	0	0	0	10	5
Ireland	20	45	50	85	95	175
Italy	55	0	0	0	0	95
Latvia	0	0	0	0	0	0
Lithuania	-	0	5	0	0	5
Luxembourg	5	0	0	0	30	45
Malta	0	0	0	0	0	0
Netherlands	430	540	430	310	790	450
Poland	-	-	0	0	0	0
Portugal	35	30	15	0	15	40
Romania	40	0	0	0	40	0
Slovakia	0	0	0	0	0	0
Slovenia	0	0	0	0	0	0
Spain	-	-	80	0	125	0
Sweden	1790	1620	1680	1820	2045	1850
United Kingdom	720	455	1040	965	785	1865
Total	5060	4090	4930	4840	6525	8155

Table 1 - data Eurostat

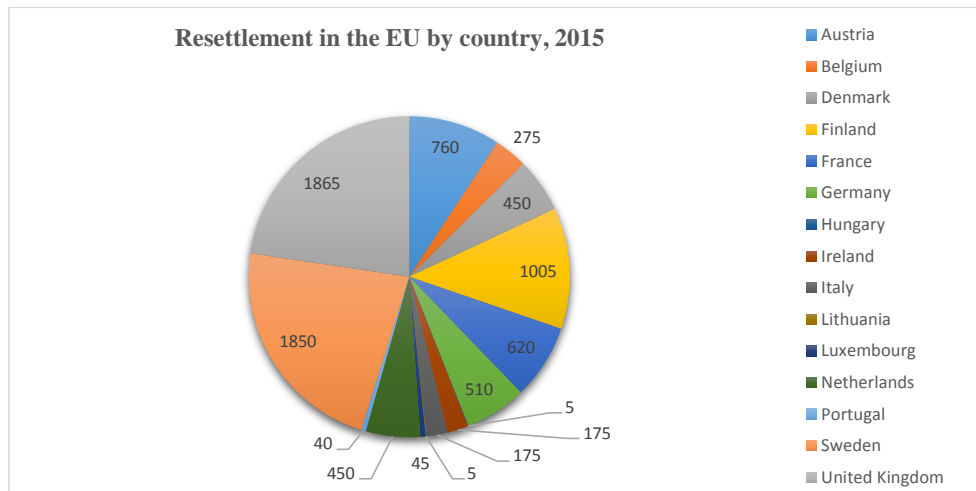


Figure 9 - data Eurostat

3.1.2 The EU responds to the migration crisis

As mentioned before (see paragraph 1.2.2 on the policy framework), a first response from the EU to the migration situation in the Mediterranean was the European Agenda on Migration, adopted by the European Commission on 13 May 2015. In the Agenda, the Commission states that it is the duty of the European Union to contribute its share in helping displaced persons in need of international protection. A common approach to granting protection to displaced persons was proposed, and the suggestion was made to create an EU-wide scheme to offer 20,000 places for resettlement. The distribution key for the scheme is based on different elements to reflect the capacity of the Member State to absorb and integrate refugees. These elements include the size of the population, the total GDP, the unemployment rate, the average number of spontaneous asylum applications and the number of resettled refugees per one million inhabitants over the last four years.¹⁸⁹ A next step was made on 8 June 2015, when the Commission adopted a concrete proposal on a European Resettlement Scheme to resettle 20,000 people over a two-year period.¹⁹⁰ The resettlement scheme was confirmed on 20 July, when the Member States agreed on resettling a total number of 22,504 persons in clear need of international protection through multilateral and national schemes. Also Iceland, Liechtenstein, Norway and Switzerland participate in this resettling effort. Pledges for

¹⁸⁹ European Commission (2015), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration*, COM(2015) 240 final, Brussels, 13 May 2015.

¹⁹⁰ European Commission (2015), *Commission Recommendation of 8.6.2015 on a European resettlement scheme*, C(2015) 3560 final, Brussels, 6 June 2015.

the number of resettlement places made under this scheme reflect the specific situations of Member states (see table 2).¹⁹¹

Another important response to the migration crisis came on 18 March 2016, when a statement was published by the EU Heads of State or Government and Turkey on an agreement to take steps to end the irregular migration from Turkey to the EU. A 1:1 mechanism was established: for every Syrian readmitted by Turkey after arriving irregularly in the Greek islands, the EU would resettle one Syrian from Turkey. Irregular migrants arriving to Greece via Turkey after 20 March, are all to be returned to Turkey. Migrants arriving in the Greek islands will be registered and the applications for asylum will be processed individually in accordance with EU and international law, excluding collective expulsion. Those persons not applying for asylum or whose application has been found unfounded or inadmissible will be returned to Turkey. For every returned Syrian, another Syrian will be resettled from Turkey to the EU. Selection of the Syrians to be resettled is based on the Vulnerability Criteria of the UN. The UNHCR is a central actor in the process. Priority will be given to individuals who have not previously entered or tried to enter the EU irregularly. Resettlement will take place based on the commitments taken by the Member States under the 20 July scheme. This mechanism started to be applied on 4 April 2016. The aim is to substitute irregular and dangerous migrant crossing with a legal resettlement process.¹⁹²

On 6 April 2016, the Commission presented several options for reforming the Common European Asylum System and developing safe and legal pathways to Europe. In this document it can be read that there are “*significant structural weaknesses and shortcomings in the design and implementation of European asylum and migration policy, which the crisis has exposed.*”¹⁹³ Jean-Claude Juncker, president of the European Commission, launched a “*call for Europe to show more political determination when it comes to legal migration.*” The document states that on one hand persons in need of international protection should be allowed to arrive in the European Union “*in an orderly, managed, safe and dignified manner*”. On the other hand it urges

¹⁹¹ Council of the European Union (2015), *Outcome of the Council Meeting, 3405th Council Meeting, Justice and Home Affairs*, Brussels, 20 July 2015.

¹⁹² EU-Turkey statement, 18 March 2016, information available at: www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/

¹⁹³ European Commission (2016), *Communication from the Commission to the European Parliament and the Council: towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, COM(2016) 197 final, Brussels, 6 April 2016.

to use a proactive labour migration policy “to better position the EU to fill talent and skills gaps and address demographic challenges.”¹⁹⁴ In this document, the Commission also proposes a single common asylum procedure, which would provide uniform rules on the procedures and the rights to be offered to the beneficiaries of international protection.¹⁹⁵

3.1.3 Reporting on the European response

In a first report on relocation and resettlement of the Commission, in March 2016, it urges Member States to “step up the ongoing resettlement efforts to ensure an orderly, well managed safe arrival and admission of persons in need of international protection to Europe from third countries.” The Commission reported that, as of 15 March 2015, in total 4555 persons were resettled to 11 countries, based on information provided by Member States and Dublin Associated States (Norway, Iceland, Switzerland and Liechtenstein). Most resettled persons are Syrians that stayed in Jordan, Lebanon or Turkey. As a result of previous international commitments, some countries also run separate resettlement schemes, in parallel to this framework. The main challenges regarding resettlement efforts, identified by the Commission, are linked to the “differences in selection criteria, length of procedures, integration tools or number of places available between Member States. Problems also arise from the lack of reception capacity and from the delays caused by exit clearances in third countries.”¹⁹⁶

In the second report on relocation and resettlement of April 2016, the Commission reported that, until 12 April 2016, a total of 5677 persons were resettled to 15 countries, within the framework of the resettlement scheme of 20 July 2015. As a result of the EU-Turkey agreement, the speeding up and increase of resettlement efforts have become even more a priority according to the Commission. Since the start of the mechanism of 4 April, 79 persons had been resettled. While under the scheme of 20 July there was quite a broad spectrum of priority regions for resettlement, it is probable

¹⁹⁴ European Commission (2016), *Commission presents options for reforming the Common European Asylum System and developing safe and legal pathways to Europe*, Press release, 6 April 2016.

¹⁹⁵ European Commission (2016), *Communication from the Commission to the European Parliament and the Council: towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, COM(2016) 197 final, Brussels, 6 April 2016.

¹⁹⁶ European Commission (2016), *Communication from the Commission to the European Parliament, the European Council and the Council, first report on relocation and resettlement*, COM(2016) 165 final, 16 March 2016.

that as a consequence of the EU-Turkey agreement, the remaining resettlement places will take place from Turkey.¹⁹⁷

With still 16,800 places for resettlement remaining to fill under the scheme of 20 July 2015, the Commission made a new proposal on 21 March 2016, for creating 54,000 places for resettlement, humanitarian admission, or other forms of legal pathways, such as humanitarian visas or family reunification schemes. This number would be in addition to the previous commitments. The proposal of the Commission is to amend the Council Decision (EU) 2015/1601 of 22 September, which foresees the relocation of applicants for international protection from Italy and Greece to other Member States. With the amendment, it is proposed to make these 54,000 places initially foreseen for relocation, available for resettlement from Turkey.¹⁹⁸

In a report on the implementation of the EU-Turkey agreement, the European Commission states that the “*new approach has started to deliver results, with sharp decrease seen in the number of people irregularly crossing the Aegean from Turkey into Greece*” (see figure 10). The document also states that “*there has been good progress since 18 March*” in operationalising the Statement. To support return operations Frontex (the European Agency for the management of operational cooperation at the external borders) has deployed 318 escort officers and 21 readmission experts to the Greek islands. Further, in order to support the processing of asylum applications EASO (European Asylum Support Office) has deployed 60 asylum officers and 67 interpreters to the Greek islands.¹⁹⁹

¹⁹⁷ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, second report on relocation and resettlement*, COM(2016) 222 final, 12 April 2016.

¹⁹⁸ European Commission (2016), *Proposal for a Council Decision: amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, COM(2016) 171 final, 21 March 2016.

¹⁹⁹ European Commission (2016), *Managing the Refugee Crisis: Commission reports on Implementation of EU-Turkey Statement*, Press release, 20 April 2016.

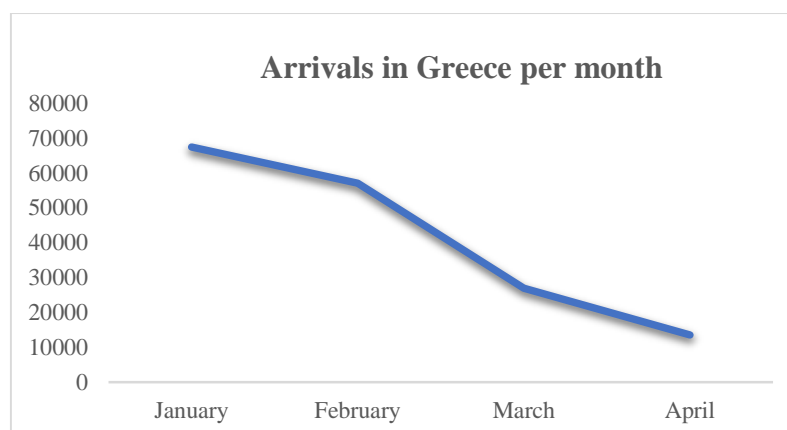


Figure 10 - data UNHCR

When the agreement between the EU and Turkey was made, it was estimated that Greece would need in total around 4000 staff. This would include staff from Greece, from other Member States, and from Frontex and EASO. For the asylum process, except for 200 Greek asylum service case workers, 400 asylum experts from other Member States deployed by EASO and 400 interpreters would be needed. Further, for the appeals process 30 member from Greece would be needed for the appeals committees, as well as 30 judges from other Member States and 30 interpreters. For the return process would be needed 25 Greek readmission officers, 250 Greek police officers, 50 return experts deployed by Frontex, and 1500 police officers. Furthermore, 1000 security staff would be needed.²⁰⁰

On the 29 of April, the Commission reported that there are deployed 68 asylum experts, 63 interpreters, 21 readmission experts, 271 escort officers and no judicial officials. In April, 386 persons were returned from Greece to Turkey.²⁰¹

3.2 Efforts at Member State level

This paragraph is on the efforts that have been made by the single Member States in the area of resettlement and legal avenues to protection in general. Table 2 gives an overview of the efforts by each European country in response to the migration crisis. In this table the pledges made under the 20 July scheme can be seen, as well as the

²⁰⁰ European Commission (2016), *EU-Turkey agreement: questions and answers*, Fact sheet, 19 March 2016.

²⁰¹ European Commission (2016), *Operational implementation of the EU-Turkey Agreement*, 29 April 2016.

effectively resettled number of individuals under that scheme. In some cases, this number includes also persons admitted under humanitarian admission programmes or family reunification schemes: this depends on the policy of the country. Next to that, the number of persons resettled under the scheme of the EU-Turkey agreement (as reported by the Commission in its second report on relocation and resettlement) can be found. In order to give a broad perspective on the resettlement efforts of each country, also numbers from other sources are taken into consideration. In the next column, the number of resettled persons in 2015 according to Eurostat is represented. The definition of resettled persons used by Eurostat is as follows: “*Resettled refugees means persons who have been granted an authorisation to reside in a Member State within the framework of a national or Community resettlement scheme.*”²⁰² The last column represents the number of confirmed pledges for Syrians since 2013 according to the UNHCR. This includes not only resettlement places, but also places under other forms of legal admission.

²⁰² Eurostat, information available at:
<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00195&plugin=1>

Resettlement in Europe as a response to the migration crisis

Member State/ Associate State	Pledges made under the 20 July scheme	Resettled under the 20 July scheme	Resettled under 1:1 mechanism with Turkey	Resettled in 2015, (Eurostat)	Confirmed pledges for resettlement and other forms of legal admission for Syrians, since 2013 (UNHCR)
Austria	1900	1395	0	760	1900
Belgium	1100	212	0	275	475
Bulgaria	50	0	0	0	0
Croatia	150	0	0	0	0
Cyprus	69	0	0	0	0
Czech Republic	400	52	0	0	70
Denmark	1000	481	0	0	390
Estonia	20	0	0	0	0
Finland	293	74	11	1005	1900
France	2375	72	0	620	1000
Germany	1600	0	37	510	41,899
Greece	354	0	0	0	0
Hungary	0	0	0	5	30
<i>Iceland</i>	50	48	0	15	75
Ireland	520	258	0	175	610
Italy	1989	96	0	95	1400
Latvia	50	0	0	0	0
<i>Liechtenstein</i>	20	20	0	20	25
Lithuania	70	0	0	5	0
Luxembourg	30	0	0	45	60
Malta	14	0	0	0	0
Netherlands	1000	301	31	450	500
<i>Norway</i>	3500	323	0	2375	9000
Poland	900	0	0	0	900
Portugal	191	0	0	40	118
Romania	80	0	0	0	40
Slovakia	100	0	0	0	0
Slovenia	20	0	0	0	0
Spain	1449	0	0	0	984
Sweden	491	0	0	1850	2700
<i>Switzerland</i>	519	413	0	610	2000
United Kingdom	2200	1864	0	1865	20,000

Table 2 – data: Second report on relocation and resettlement of the European Commission, 12 April 2016; Eurostat; UNHCR, Resettlement and other forms of legal admission for Syrian refugees, 18 March 2016.

Country specific information

Below, information can be found on the implementation of legal ways to access protection by the different Member States. First, a short overview is given of the history and tradition of the country in this area. Subsequently, attention is paid to the response of the individual Member State to the current migration crisis and the consequent changes (if any) in policy regarding the implementation of legal avenues. Since resettlement is the most important and the most frequently used instrument for guaranteeing protection, the focus is principally on this tool. Further, the different policies on family reunification are described, as well as the various instruments that have been implemented as a way to respond to the recent influx.

Austria

Austria has a history of providing protection to persons in need during crises since the Second World War. Examples include the reception of Hungarian refugees in the 1950s, refugees from Indochina in the 1970s and 1980s and Iraqi refugees from Turkey in the beginning of the 1990s. Even though Austria has a history of helping refugees that are fleeing war and persecution, there is no permanent resettlement programme implemented. In 2013, Austria started a Humanitarian Admission Programme (HAP) for Syrian refugees, which is organised by the relevant Austrian ministries, in cooperation with the UNHCR and the International Organization for Migration (IOM). The aim of the programme is to support Syria's neighbouring States and to show solidarity in the international community and it is designed to assist Syrian refugees directly from the crisis region. The programme is organised separately from the ongoing national asylum procedure. The initial quota under the HAP was 500 Syrian refugees, with a focus on vulnerable cases, especially women, children and persecuted minorities, such as Christians. In April 2014, the programme was expanded by another 1000 Syrian refugees to be resettled in Austria. HAP follows a two-fold approach: on one hand a programme in cooperation with the UNHCR, and on the other hand a family reunification programme implemented by the Ministry of the Interior. The first focuses on particularly vulnerable Syrian refugees that are admitted based on selection of the UNHCR. The latter is designed for vulnerable refugees and that have family members in Austria. Next to HAP, the Austrian Asylum Act provides for the family reunion of

recognised refugees with their core family who will be granted refugee status as well. The definition of family includes parents/legal representatives of minor children, minor children, and spouse/registered partners. Within the HAP, family members are selected based on suggestions of various religious groups or are chosen directly by the Federal Ministry of the Interior. Resettled persons undergo a shortened asylum procedure to be granted refugee status upon arrival.²⁰³

The number of resettled persons under the 20 July scheme, as in table 2, includes also family reunification and resettlement cases under the Austrian Humanitarian Admission Programme.²⁰⁴

Belgium

Belgium has been involved in ad hoc resettlement operations since the Second World War. Examples include the resettlement of Hungarian refugees in 1956, boat people from Vietnam and Cambodia in 1975, Bosnians in 1992 and the resettlement of Kosovars in 1999 as part of the European framework to coordinate the reception efforts by Member States. More recently, the country was engaged in two ad hoc resettlement operations, one in 2009 and one in 2011. A new phenomena in Belgium was the partnership with the UNHCR and NGOs, which was part of a new approach to resettlement with the involvement of new actors. The first operation was a response to the call of the EU for Member States to resettle Iraqi refugees. Belgium received 47 displaced persons, mainly single women with children, from Syria and Jordan. In 2011, during the conflict in Libya Belgium received 25 refugees of various nationalities from Shousha refugee camp in Tunisia as a response to the UNHCR Global Solidarity Initiative.²⁰⁵ Based on the experiences of the operations in 2009 and 2011 and the development of the Joint European Resettlement Scheme, the Belgian government decided to develop a more structural resettlement programme in December 2011. The initial annual quota was set at 100 and was supposed to increase gradually to 250 by 2020. Due to the Syrian refugee crisis however, the government announced in

²⁰³ European Resettlement Network, available at: www.resettlement.eu/country/austria; International Organization for Migration (IOM) Austria, available at: www.iomvienna.at/en/ongoing-projects-5

²⁰⁴ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

²⁰⁵ (Belgium) Commissioner General for Refugees and Stateless Persons (CGRS), available at: www.resettlement.be/

November 2014 that the quota for 2015 would be increased to 300. The selection of the refugees is managed by the Commissioner General for Refugees and Stateless Persons (CGRS) who carries out selection missions. Belgian legislation does not permit asylum to be granted outside the national territory. Hence, resettled refugees are granted refugees status, on the basis of the 1951 Convention, immediately after arrival in the country. Belgian legislation does not provide specific provisions on resettlement and there is no difference between refugee status criteria for asylum seekers and that for resettled refugees. On grant of the refugee status, resettled refugees receive a permanent residence permit, just as other refugees in the country. As a rule, resettlement is offered to all core family members: spouse or registered partner (including same sex partners), minor children, disabled adult children, and father or mother if the refugee is an unaccompanied minor. Family reunification is outside the annual quota. Other family members can apply for a residence permit as well, but this is not a right.²⁰⁶

Bulgaria

After EU accession in 2007, Bulgaria started to consider resettlement opportunities. In 2009, it announced the intention to become a resettlement country and the year after it set up a working group on the matter. Together with the UNHCR, plans were made for creating a pilot programme. The first 20 resettled refugees were supposed to be received in the pilot period 2013-2014. However, there were no further signs of implementation of the project.²⁰⁷ In the context of the 20 July scheme, Bulgaria should resettle 50 refugees. In September 2015, the Bulgarian government presented an official position according to which it is prepared to accept voluntarily a higher number of refugees.²⁰⁸

²⁰⁶ European Resettlement Network, available at: www.resettlement.eu/country/belgium; UNHCR Resettlement Handbook, Country Chapter Belgium, November 2014.

²⁰⁷ Papadopoulou, A., Treviranus, B., Moritz, T., Fandrich, C.M., (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013; UNHCR regional representation for Central Europe, available at: www.unhcr-centraleurope.org/en/where-we-work/operations-in-central-europe/bulgaria.html

²⁰⁸ (Bulgaria) Council of Ministers of the Republic of Bulgaria (Министерски Съвет на Република България) (2015), *Общи принципи на позицията на България относно миграционните процеси в Европа*, 8 September 2015, available at: www.government.bg/fce/001/0213/files/Obshti_principi_na_poziciata_na_BG.pdf

In April 2016, the Bulgarian government approved a measure to resettle 110 persons in need of international protection each year.²⁰⁹

Croatia

Croatia has not implemented a regular refugee resettlement programme.

Cyprus

Cyprus has not implemented a regular refugee resettlement programme.

Czech Republic

The Czech Republic has been involved in several humanitarian operations since 2005, before it started its annual resettlement programme. Emergency resettlement programmes were organised in a few occasions where refugees were resettled for humanitarian reasons or from emergency situations. In 2008, the Czech Republic officially started its first annual resettlement programme, with the adoption of the government of the ‘National Resettlement Programme Strategy’. Around 100 Burmese refugees from Malaysia were resettled between 2008 and 2012. By now, resettlement is considered by the government as a regular and ongoing activity. The annual quota are based on the current situation and on a needs analyses. The programme is organised in close cooperation with UNHCR, IOM and several civil society actors. In 2010, an agreement was signed between the Czech Republic and UNHCR on the cooperation in the area of resettlement of refugees. Persons accepted for resettlement following submission of the UNHCR are all granted refugee status in the Czech Republic. As authorities cannot grant asylum to persons outside the national territory, the resettled individual has to request for international protection upon arrival in the country. They are then granted permanent residence in the Czech Republic (just as those recognised as refugees via the national asylum system).²¹⁰

²⁰⁹ (Bulgaria) Council of Ministers of the Republic of Bulgaria (Министерски Съвет на Република България) (2016), през тази и следващите години България трябва да презасели 110 чужденци, нуждаещи се от международна закрила, April 2016, available at: <http://government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0228&n=8060&g=&vis=000168>

²¹⁰ European Resettlement Network, available at: www.resettlement.eu/country/czech-republic-0; UNHCR Resettlement Handbook, Country Chapter Czech Republic, August 2014; Papadopoulou,

Eligibility criteria for resettlement correspond with the criteria for refugee status, based on the 1951 Convention. If a person does not meet the criteria asylum can be granted for humanitarian reasons or for the purpose of family reunification.²¹¹ In addition, the integration aspect, as well as the willingness to be resettled and to integrate in the Czech society are taken into consideration as well. Usually, during the selection procedure representatives from the Ministry of the Interior and Refugee Facilities Administration carry out selection missions to conduct interviews with refugees.²¹²

Under the National Resettlement Programme Strategy, there are no specific mechanisms for family reunification. The same provisions of regular family reunification are applicable to resettled refugees, as to refugees who have been granted refugee status via the national asylum procedure. Several options are available for family reunification. First, foreigners may apply through the local embassy either for temporary or permanent residence permit. Another option is that family members can arrive to the Czech Republic and apply for asylum on the basis of family reunification. If neither of these options is available, the Ministry can consider to reunite the family through resettlement channels with the assistance of the UNHCR. Under national legislation, only close relatives can apply for family reunification, these include spouse (also same-sex persons in registered partnerships), parents and minor children, also elderly parents could be considered as close relatives.²¹³

In response to the refugee crisis, the Czech Government has implemented some small-scale programmes to show their solidarity with refugees.²¹⁴ An emergency resettlement of 14 refugees from Syria, Somalia, Sri Lanka, China and Myanmar was organised in

A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²¹¹ European Resettlement Network, available at: www.resettlement.eu/country/czech-republic-0; UNHCR Resettlement Handbook, Country Chapter Czech Republic, August 2014; Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²¹² European Resettlement Network, available at: www.resettlement.eu/country/czech-republic-0; UNHCR Resettlement Handbook, Country Chapter Czech Republic, August 2014.

²¹³ UNHCR Resettlement Handbook, Country Chapter Czech Republic, August 2014.

²¹⁴ (Czech Republic) Government of the Czech Republic, *Prime Minister Sobotka: The Czech Republic will help 152 Christians from Erbil, Iraq*, 27 October 2015, available at: www.vlada.cz/en/media-centrum/aktualne/prime-minister-sobotka-the-czech-republic-will-help-152-christian-refugees-from-erbil--iraq-136502/; and *Speech on the migration situation delivered by the Prime Minister to the Chamber of Deputies on 21 January 2016*, available at: www.vlada.cz/en/clenove-vlady/premier/speeches/speech-on-the-migration-situation-delivered-by-the-prime-minister-to-the-chamber-of-deputies-on-21-january-2016-139768/

2014. In that same year, 36 Syrian and Jordanian vulnerable persons, as well as 39 Ukrainian citizens were provided medical treatment within the framework of the MEDEVAC programme.²¹⁵ MEDEVAC is a humanitarian evacuations programme implemented by the Czech Ministry of the Interior. It focuses mainly on seriously ill children from war-affected or otherwise needy areas, who cannot be provided with treatment in local conditions. The programme was born in response to the war in Bosnia and Herzegovina, and was subsequently implemented during the conflict in Kosovo and the war in Iraq. More recently, as a consequence of the growing number of armed conflicts around the world (Libya, Syria, Ukraine), the MEDEVAC Programme has been active since 2011.²¹⁶

In the beginning of 2015, the Czech government announced that it was going to resettle a group of 70 Syrians from Jordan, mainly consisting of families with sick children, who would go to Czech hospitals for medical treatment. Candidates were to be checked by the Czech intelligence services.²¹⁷ In 2016, this programme, devised to assist seriously ill children in Syrian families, will continue to be implemented in conjunction with the UNHCR.²¹⁸ Furthermore, a university programme, called ‘New Elites for Syria’ was created, which should provide scholarships for 20 Syrian students residing in Jordan.²¹⁹ In the beginning of 2016, the Prime Minister announced that the Czech

²¹⁵ European Commission, Country Factsheet: Czech Republic 2014, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/06.czech_republic_emn_cf_2014.pdf

²¹⁶ (Czech Republic) Ministry of the Interior (Ministerstvo vnitra), MEDEVAC Programme, available at: www.mvcr.cz/mvcren/article/medevac-programme.aspx

²¹⁷ (Czech Republic) Government of the Czech Republic, *Speech on the migration situation delivered by the Prime Minister to the Chamber of Deputies on 21 January 2016*, available at: www.vlada.cz/en/clenove-vlady/premier/speeches/speech-on-the-migration-situation-delivered-by-the-prime-minister-to-the-chamber-of-deputies-on-21-january-2016-139768/; ECRE, *Czech Republic to resettle 70 Syrian refugees*, 30 January 2015, available at: www.ecre.org/component/content/article/70-weekly-bulletin-articles/955-czech-republic-to-resettle-70-syrian-refugees-in-2015-.html

²¹⁸ (Czech Republic) Government of the Czech Republic, *Speech on the migration situation delivered by the Prime Minister to the Chamber of Deputies on 21 January 2016*, available at: www.vlada.cz/en/clenove-vlady/premier/speeches/speech-on-the-migration-situation-delivered-by-the-prime-minister-to-the-chamber-of-deputies-on-21-january-2016-139768/

²¹⁹ The Jordan Times, *Czech Republic to offer scholarship, resettlement for Syrians in Jordan*, 4 June 2015, available at: www.jordantimes.com/news/local/czech-republic-offer-scholarships-resettlement-syrians-jordan; (Czech Republic) Permanent Representation of the Czech Republic to the European Union, *6 mil Euro – Czech contribution at the Donor Conference Supporting Syria*, speech by the Prime Minister of the Czech Republic, 4 February 2016, available at: www.mzv.cz/representation_brussels/en/news_and_media/czech_republic_offered_6_mil_euro_and.html

Republic is considering expanding this programme to other countries.²²⁰ Moreover, in the end of 2015, the Czech government announced that, on request of the Generace 21 Foundation, it would resettle 153 internally displaced persons of Christian faith who fled Islamic State in Iraq. The Generace 21 Foundation contributes to the organisation and the funding of the programme.²²¹ However, the programme stopped in April 2016, because some of the refugees, after having arrived in the Czech Republic, tried to move to Germany, while others returned home in Iraq.²²²

Denmark

Denmark offers resettlement to refugees since 1956, but the official programme, in cooperation with the UNHCR, was established in 1979. For many years 500 refugees have been allocated annually. Flexible quota programmes, covering a period of three years and consisting of 1500 places, have been in place since 2005. The present period started in 2014 and will run until the end of 2016. In order to qualify for resettlement, a person must be recognised as a refugee according to the 1951 Convention and associated criteria set out in national law. Denmark was the first European country to include integration related criteria in the resettlement selection process. Criteria regarding age, language and literacy, education and employment, families with children, family unity, social networks and the motivation to integrate are taken into account. The majority of the refugees are selected during in-country selection missions, where the Danish Immigration Service and the Danish Refugee Council hold interviews with refugees. Denmark is the only EU Member State where NGOs participate directly in selection missions.²²³ More generally, there is a long tradition of cooperation with

²²⁰ (Czech Republic) Permanent Representation of the Czech Republic to the European Union, *6 mil Euro – Czech contribution at the Donor Conference Supporting Syria*, speech by the Prime Minister of the Czech Republic, 4 February 2016, available at: www.mzv.cz/representation_brussels/en/news_and_media/czech_republic_offered_6_mil_euro_and.html

²²¹ (Czech Republic) Government of the Czech Republic, Prime Minister Sobotka: The Czech Republic will help 152 Christians from Erbil, Iraq, 27 October 2015, available at: www.vlada.cz/en/media-centrum/aktualne/prime-minister-sobotka-the-czech-republic-will-help-152-christian-refugees-from-erbil--iraq-136502/; and Speech on the migration situation delivered by the Prime Minister to the Chamber of Deputies on 21 January 2016, available at: www.vlada.cz/en/clenove-vlady/premier/speeches/speech-on-the-migration-situation-delivered-by-the-prime-minister-to-the-chamber-of-deputies-on-21-january-2016-139768/

²²² Reuters, *Czech government ends program to take in Iraqi Christians*, 7 April 2016, available at: www.reuters.com/article/us-eu-migrants-czech-iraqi-idUSKCN0X41ST

²²³ European Resettlement Network, available at: www.resettlement.eu/country/denmark; UNHCR Resettlement Handbook, Country Chapter Denmark, October 2014.

stakeholders in the resettlement process and there is a good cooperation with civil society and municipalities.²²⁴ Resettled individuals will receive refugee status or other protection status. On arrival in the country they are given a temporary residence permit for six months, which is automatically extended for another six months, up to five years. They are also given a work permit upon arrival, which gives them the right to take up employment immediately upon their arrival. After five years, the resettled individual may apply for a permanent residence permit.²²⁵

Within the resettlement programme it is considered highly important to maintain the family unit. In general, family reunification cases are not included in the resettlement quota. Refugees may, under certain circumstances, be granted family reunification with their spouse or cohabiting partner (including same-sex partners) and unmarried children. As a general rule, reunification with children requires that the child is under 15 years of age, however, this can be extended to 18 in cases of high risk. Generally, family reunification cannot be granted to children over 18 and to parents or siblings.²²⁶

Estonia

Estonia has not implemented a regular refugee resettlement programme.

Finland

The pledge Finland made under the 20 July scheme is a part of the Finnish national quota for 2016 of 750 persons to be resettled. The total figure of 74 resettled persons does not include 11 Syrians resettled from Turkey under the 1:1 mechanism, which was done through the Finnish national scheme.²²⁷

²²⁴ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²²⁵ European Resettlement Network, available at: www.resettlement.eu/country/denmark; UNHCR Resettlement Handbook, Country Chapter Denmark, October 2014.

²²⁶ (Denmark) Danish Immigration Service, information available at: www.newtodenmark.dk; European Resettlement Network, available at: www.resettlement.eu/country/denmark; UNHCR Resettlement Handbook, Country Chapter Denmark, October 2014.

²²⁷ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

Finland has received refugees proposed by the UNHCR already since 1979. In 1985, an annual resettlement programme was established. Since 2001, the number of annual quota accepted has been 750 refugees.²²⁸ In 2014 and 2015, the quota was increased to 1050 quota refugees that were admitted, due to the severe situation in Syria. Persons that the UNCHR has designated as refugees, as well as other foreigners who are in need of international protection are accepted for resettlement under the refugee quota. The UNHCR determines who is most in need of resettlement and sends their proposals to the Finnish Immigration Service.²²⁹ The selection of refugees is done by officials of the Ministry of Labour, the Directorate of Immigration and, if necessary, officials of the Security Police. The authorities travel to the country where the refugees proposed by the UNHCR are staying to conduct interviews. Apart from basic criteria, such as the need of international protection and the need of resettlement, also criteria related to the integration potential of the individual are applied. The educational background of all family members, employment experience and health status are taken into account. The aim is to select a ‘balanced’ group, with in each group persons who will function as a resource person for their community, and who accepted this role at the selection interview. Individuals admitted under the refugee quota based on the proposals of the UNHCR are granted refugee status and receive a residence permit on arrival in Finland. These residence permits are for four years, after which resettled refugees can apply for Finnish citizenship. Persons admitted under the resettlement quota other than those proposed by the UNHCR, can be granted a residence permit based on an individual assessment of their protection needs.²³⁰

Family reunification is done outside the annual quota. Except for minor children, parents of minor children, and married partners, also unmarried partners (including same-sex partners) are eligible for reunification if they have cohabited for at least two years or have a child together, or are in a ‘marriage-like partnership’. There is no requirement regarding income to support joining family members.²³¹

²²⁸ UNHCR Resettlement Handbook, Country Chapter Finland, September 2014.

²²⁹ (Finland) The Finnish Immigration Service (Maahanmuuttovirasto), information available at: www.migri.fi/asylum_in_finland/quota_refugees

²³⁰ European Resettlement Network, available at: www.resettlement.eu/country/finland; UNHCR Resettlement Handbook, Country Chapter Finland, September 2014.

²³¹ European Resettlement Network, available at: www.resettlement.eu/country/finland

France

The number of the pledge made under the 20 July scheme is in addition to the national quota and previous commitments. France already selected 477 people for resettlement from Jordan and Lebanon, of which 72 have been transferred to date.²³²

Since 1957, France has been involved in resettlement on an ad hoc basis. It was involved in the major operations: it received refugees from Hungary, ‘boat people’ from Vietnam, and refugees from Kosovo.²³³ The national resettlement programme of France, signed in 2008 and automatically renewed every year, is based on a Framework Agreement between the UNHCR and the French Ministry of Foreign and European Affairs. The agreement states that each year the UNHCR will submit 100 dossier cases for consideration by the French government. Refugees are only selected on dossier basis and no resettlement selection missions are carried out. This allows the UNHCR to submit varied cases on dossier basis, from a wide range of countries of first asylum around the world. The fact that France does not impose any strict criteria regarding the integration potential of the individual, strengthens the accessibility for vulnerable refugees. Upon arrival resettled refugees have to complete administrative procedures to obtain a first temporary residence permit. Usually, they quickly obtain the transfer of their refugee status by the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*, OFPRA). They are then issued a ten-year residence permit, which is renewed by right.

In 2013, a new programme was created in close cooperation with the UNCHR to welcome 500 particularly vulnerable refugees from Syria. This programme was implemented partly through the annual quota and partly through an ad hoc humanitarian admission programme. The first resettled Syrians arrived at the beginning of 2014.²³⁴ The programme was renewed the year after.²³⁵

²³² European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

²³³ European Resettlement Network, available at: www.resettlement.eu/country/france;

²³⁴ UNHCR Resettlement Handbook, Country Chapter France, March 2014; European Resettlement Network, available at: www.resettlement.eu/country/france

²³⁵ (France) Permanent representation of France to the United Nations in Geneva (Représentation permanente de la France auprès de Nations Unies à Genève), *Conférence ministérielle sur la réinstallation des réfugiés syriens*, available at: www.franceonugeneve.org/Conference-ministerielle-sur-la

Family reunification is done outside the resettlement programme. Unmarried partners are eligible family members if they have the same nationality as the applicant and if the partnership was mentioned during the asylum procedure. There are no requirements related to the proof of financial resources to meet the needs of incoming family members.²³⁶

According to the UNHCR, France has provided 2,622 asylum visas for Syrians since 2012, which enable them to travel to France for the purpose of applying for asylum.²³⁷ France has national type D visas at their disposal for humanitarian reasons that can be issued in emergency situations. “*In the case of specific events, instructions are given to the consulates concerned to facilitate the issue of visas to some categories of applicants.*”²³⁸ Third country nationals have the possibility to apply for asylum visa (*visa au titre de l’asile*) at a French diplomatic representation in the country of origin or the country of first asylum. This type of visa is issued on the basis of the principles of the 1951 Convention. An assessment takes place of the vulnerability of the applicant, but also the connections with France and the integration potential of the individual are taken into consideration. To assess this, associations, NGOs and French local authorities have an important role in the determination process. The visa is valid for a period of six months and allows the third country national to go to France in a regular way and continue the asylum procedure there. In contrast with those who apply for asylum when already present in the territory, the third country national who arrives in France with a humanitarian visa is allowed to work for the duration of the asylum procedure.²³⁹ In July 2014, the Foreign Minister and Minister of the Interior announced that France would issue humanitarian visas to persons that fear persecution because of their belonging to a religious or ethnic minority. This is mainly to help Iraqi and Syrian Christians in the territory under control of the Islamic State. According to the consul

²³⁶ European Resettlement Network, available at: www.resettlement.eu/country/france; UNHCR Resettlement Handbook, Country Chapter France, March 2014.

²³⁷ UNHCR (2016), *Resettlement and other forms of legal admission for Syrian refugees*, 18 March 2016.

²³⁸ FR EMN NCP (2011), *Visa policy as migration channel*, French National Contact Point of the European Migration Network, p.10. Lepola, O. (2010), *Counterbalancing externalized border control for international protection needs: humanitarian visa as a model for safe access to asylum procedures*, University of Birmingham, part. 5.1, in Iben Jensen, U. (2014), *Humanitarian visas: option or obligation?*, Study commissioned by the Directorate General for Internal Policies of the European Parliament, 2014.

²³⁹ (France) French Office for Protection of Refugees and Expatriates (Office français de protection des réfugiés et apatrides, OFPRA), available at: <https://ofpra.gouv.fr/>; Consulate General of France in Erbil (Consulat Général de France à Erbil), *Accueil au titre de l’asile en France*, January 2016, available at: www.ambafrance-iq.org/ACCUEIL-AU-TITRE-DE-L-ASILE-EN-FRANCE

general of France in Erbil (Kurdistan in Iraq), in Iraq around 3000 visa have been issued for asylum procedures since that date, as he said in an interview in January 2016.²⁴⁰ In addition, since 2013, France has issued almost 1200 humanitarian visas to Syrians in need of international protection. Further, more than 31,000 visas have been issued to Syrian citizens on the basis of student exchanges, family reunification programmes or other.²⁴¹

Germany

Germany has only recently become involved in resettlement. As a response to the European Council's conclusions in 2008 that encouraged Member States to resettle refugees from Iraq, Germany decided in December of that year, to resettle 2500 Iraqi refugees. In December 2011, an annual resettlement programme was established for the period 2012-2014, resettling 300 persons per year.²⁴² In the first year, priority was given to refugees of Sub-Saharan origin (mainly Somalis) who had fled to Tunisia or Libya and refugees of Iraqi origin who had fled to Turkey.²⁴³ The second year the focus was mainly on Iraqis, Iranians and Syrians from Turkey. The last year of the pilot project, 2014, included various nationalities as well as stateless persons from Syria and Indonesia. Starting in 2015, the resettlement programme became permanent, admitting 500 persons per year.²⁴⁴

²⁴⁰ (France) Consulate General of France in Erbil (Consulat Général de France à Erbil), *Accueil au titre de l'asile en France*, January 2016, available at: www.ambafrance-iq.org/ACCUEIL-AU-TITRE-DE-L-ASILE-EN-FRANCE

²⁴¹ (France) Permanent representation of France to the United Nations in Geneva, (Représentation permanente de la France auprès de Nations Unies à Genève) *Conférence ministérielle sur la réinstallation des réfugiés syriens*, 4 February 2016, available at: www.franceonugeneve.org/Conference-ministerielle-sur-la

²⁴² Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁴³ (Germany) Federal Ministry of the Interior (Bundesministerium des Innern), Humanitarian admission programmes at federal level, available at: www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes_node.html; Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁴⁴ (Germany) Federal Ministry of the Interior (Bundesministerium des Innern), Humanitarian admission programmes at federal level, available at: www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes_node.html

There is no specific legal basis in Germany for the resettlement programme. The admission of resettled persons is currently based on the Residence act, which stipulates that the Federal government in consultation with the governments of the individual states (*Länder*) can admit certain groups of foreigners who are granted a residence permit on arrival. This permit is granted on humanitarian grounds. So, resettled individuals are not admitted as refugees and they are not granted refugee status upon arrival in Germany. As a consequence, the legal status of resettled persons is in sharp contrast with that of those recognised as refugees via the domestic asylum procedure. NGOs have been advocating for legislation to ensure that resettled individuals obtain refugee status.²⁴⁵

Admission of resettled persons is based on the recommendation of the UNHCR. The submissions made by the UNHCR are examined by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) who then organises selection missions to interview pre-selected refugees. During the selection missions, also security check procedures take place and biometric data is collected. Criteria linked to the ability to integrate, such as cultural and educational background, language skills, religious affiliation and family or other ties to Germany, are taken into account during the selection procedure. Also the need to preserve family unity is considered in the selection process. Upon arrival in Germany resettled refugees are granted temporary residence permit. Just as refugees recognised in the national asylum procedure, resettled refugees are entitled to pursue paid employment. The length of the temporary permit varies in the different *Länder*, ranging from one to three years. After several years a permanent residence permit can be granted.²⁴⁶

Unlike for recognised refugees, family reunification for resettled persons is based on the general provisions governing family reunification with foreigners living in Germany according to the Residence Act. There are no special provisions for resettled

²⁴⁵ European Resettlement Network, available at: www.resettlement.eu/country/germany; UNHCR Resettlement Handbook, Country Chapter Germany, August 2014; Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁴⁶ European Resettlement Network, available at: www.resettlement.eu/country/germany; UNHCR Resettlement Handbook, Country Chapter Germany, August 2014; Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

refugees. Foreigners with a residence permit can reunify with their nuclear family, which includes spouse or same sex partner, minor children and a parent with custody over a minor. Also other family members are included in case there is an extraordinary vulnerability. It must be demonstrated that sufficient financial support and accommodation to meet the needs of family members can be provided independently. Recognised refugees are exempted from these requirements.²⁴⁷

In addition to the regular resettlement programme, in March 2013 Germany agreed to grant humanitarian admission to 5000 Syrian refugees needing special protection. A second humanitarian admission programme has been set up in December 2013 for another 5000 persons.²⁴⁸ The focus of the second programme was on refugees and displaced Syrians with family members who were already in Germany. These family members could lodge an application on behalf of their relatives until February 2014.²⁴⁹ The programme grants those arriving in Germany, a temporary residence status, valid for two years, with the expectation that they will return to Syria when the conflict ends.²⁵⁰ After having provided in total 10,000 places for Syrian refugees under the Humanitarian Admission Programme in the period 2013-2014, in July 2014 the Minister of the Interior agreed to offer an additional 10,000 places for Syrians in need of protection.²⁵¹ The programme is focusing on Syrians that had to flee their place of origin and currently find themselves in Syria or in close-by countries, for example Egypt or Libya. Selection of the individuals to be resettled is based on proposals of the UNHCR, the Bundesländer or the BAMF. Priority is given to persons with family ties in Germany, and especially to those who have declared their willingness to contribute to their housing and livelihood. Also other criteria regarding ties with Germany, such

²⁴⁷ European Resettlement Network, available at: www.resettlement.eu/country/germany; UNHCR Resettlement Handbook, Country Chapter Germany, August 2014.

²⁴⁸ European Resettlement Network, available at: www.resettlement.eu/country/germany; (Germany) Federal Ministry of the Interior (Bundesministerium des Innern), Humanitarian admission programmes at federal level, available at: www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes_node.html

²⁴⁹ Kumin, J. (2015), *Welcoming engagement, how private sponsorship can strengthen refugee resettlement in the European Union*, Migration Policy Institute, December 2015.

²⁵⁰ (Germany) Federal Ministry of the Interior (Bundesministerium des Innern), Humanitarian admission programmes at federal level, available at: www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Humanitarian-admission-programmes/Humanitarian-admission-programmes_node.html

²⁵¹ UNHCR (2014), *UNHCR welcomes Germany's decision to extend Humanitarian Admission Programme to an additional 10,000 Syrian refugees*, 13 June 2014, available at: www.unhcr.org/539afe256.html

as language skills, and humanitarian criteria, for example families with children in need of protection, medical needs or religious minorities, can be taken into consideration for selection.²⁵²

Furthermore, 15 of the 16 Länder in Germany have, or have had implemented their own private sponsorship programmes for Syrian nationals who have family members living in Germany. These programmes admit sponsored Syrians, who receive a temporary residence permit, with the possibility of renewal if the conflict in Syria persists, to live with their relatives in Germany. The family in Germany should cover the cost of the transport and living costs for their relatives for the entire duration of their stay. The sponsor must be able to demonstrate the availability of sufficient resources to provide for support for the refugee.²⁵³ Almost 22,000 persons have been admitted through these programmes since the start mid-2013, until the beginning of 2016.²⁵⁴

The German Federal Academic Exchange Service (*Deutscher Akademischer Austauschdienst*) set up a scholarship programme for refugees from Syria in October 2014. The programme is funded by the Federal Foreign Office. In total, 100 Syrian students are given the opportunity of studying in Germany. The target group is young people who had to interrupt their studies or who could not start their studies due to the war.²⁵⁵

Greece

Greece has not implemented a regular refugee resettlement programme.

²⁵² (Germany) Federal Ministry of the Interior (Bundesministerium des Innern), *Anordnung des Bundesministeriums des Innern gemäß §23 Absatz 2, Absatz 3 i. V. m. §24 Aufenthaltsgesetz zur vorübergehenden Aufnahme von Schutzbedürftigen aus Syrien und Anrainerstaaten Syriens sowie Ägypten und Libyen*, 18 July 2014, available at: <http://resettlement.eu/sites/icmc.ttp.eu/files/2014-07-20-BMI-Anordnung-HAP-10.000-3-Syrien-mit-Anlagen.pdf>

²⁵³ Kumin, J. (2015), *Welcoming engagement, how private sponsorship can strengthen refugee resettlement in the European Union*, Migration Policy Institute, December 2015.

²⁵⁴ UNHCR (2016), *Resettlement and other forms of legal admission for Syrian refugees*, 18 March 2016.

²⁵⁵ (Germany) German Academic Exchange Service (Deutscher Akademischer Austauschdienst, DAAD), *Scholarships Programme for Syrian Students Launched*, available at: www.daad.de/presse/pressemitteilungen/en/31298-scholarships-programme-for-syrian-students-launched/

Hungary

In October 2010, the government of Hungary announced its decision to become a resettlement country. This was confirmed during the Ministerial Conference organized by UNHCR in December 2011.²⁵⁶ However, for a long time there were no concrete efforts of implementing a comprehensive resettlement framework.

In 2011, in response to the Arab Spring a governmental decree was adopted, regarding the launch of a refugee solidarity programme. The focus was on refugees from northern Africa and the intention was to show solidarity with the countries of first-asylum as well as with those EU Member States that were affected most.²⁵⁷ The programme was delayed because of, amongst others, the effects of the economic crisis that hit the country. In December 2012, an annual resettlement programme was announced by the government. An amendment to the Asylum Act made a pledge for a quota of 100 refugees annually. However, this number seems rather unrealistic.²⁵⁸ Hungary planned a pilot project for the period of 2012-2013. Given the economic situation and the limited capacities of the country, the goal was to resettle one family of five to eight persons. No criteria for admission or procedural rules were included in the decree.²⁵⁹ In 2012, the asylum authority made its first resettlement programme from Ukraine. The year after, a second resettlement exercise started, targeting Syrian refugees. For 2014, the government decided to increase the quota, focusing to resettle Syrian refugees. Still, only 20 persons were actually resettled that year and two selection missions took place to Beirut (Lebanon) and to Amman (Jordan).²⁶⁰

²⁵⁶ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁵⁷ (Hungary) 1139/2011. (V. 12) Kormányhatározat, *az észak-afrikai helyzettel kapcsolatos menekültügyi szolidaritási program indításáról*, available at: www.opten.hu/dijtalan-szolgáltatások/optijus-light/nyomtat/162502

²⁵⁸ Know Reset – country profile Hungary, July 2013, available at: www.know-reset.eu/files/texts/00155_20130729172455_knowresetcountryprofilehungary.pdf

²⁵⁹ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁶⁰ European Commission, Country Factsheet: Hungary 2012, 2013, 2014, European Migration Network, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/country_factsheet_hungary_2012_\(en\)-_400017_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/country_factsheet_hungary_2012_(en)-_400017_en.pdf); http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/13.hungary_emn_country_factsheet_2013.pdf; http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/13.hungary_emn_country_factsheet_2014.pdf

Ireland

Ireland has been involved in resettlement since the Hungarian refugee crisis in 1956, when it carried out its first resettlement operation. Since 1998, an annual resettlement programme is in place. The annual quota is determined by the government. The 2015 quota was 100, which was 10 more than the year before. Refugees are accepted upon selection of the UNHCR. In exceptional circumstances the government can enter into bilateral agreements for resettlement purposes. The integration potential is not a primary consideration for selection.²⁶¹ Resettled individuals are not granted refugee status (with the meaning of the 1951 Convention), but the status of ‘programme refugee’. As defined by national law, this is “*a person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government and whose name is entered in a register established and maintained by the Minister of Foreign Affairs, whether or not such a person is a refugee within the meaning of the definition of ‘refugee’ in Section 2.*”²⁶² This status carries the same rights and entitlements as asylum seekers granted refugee status. An important difference is that programme refugees are allowed to apply for citizenship after three years of residency in Ireland, while other migrant groups are required five years of residency.

For resettlement, the nuclear family is defined as the spouse, dependent children under 18 years of age, dependent unmarried children over 18 years of age and dependent parents / grandparents providing they have been residing with the applicant. Effort is made to accept complete nuclear families, including parents and children. When this is not possible, applicants of family reunification are not counted under the quota.

In March 2014, the Irish government announced the launch of the ‘Syrian Humanitarian Admission Programme’ (SHAP). The programme offers temporary residence in Ireland (up to two years) to vulnerable persons who are present in Syria, or who have fled to surrounding countries and who have close family members residing in Ireland. The family member in Ireland (a naturalised Irish citizen of Syrian birth or a Syrian national lawfully resident in the State), who will function as a sponsor, can make an application for up to two family members which are considered most at risk. The sponsor must undertake to support and maintain family members admitted under the programme for

²⁶¹ UNHCR Resettlement Handbook, Country Chapter Ireland, August 2014.

²⁶² (Ireland) Section 24 of the Refugee Act 1996.

the duration of their stay in Ireland. Persons admitted under the SHAP are entitled to work in Ireland. This programme is an additional initiative in response to the Syrian crisis, which functions in parallel to other programmes of resettlement and family reunification. SHAP came into operation on 14 March. The final date for the submission of applications was six weeks later, on 30 April.²⁶³ Ireland has accepted 114 Syrian refugees under this programme.²⁶⁴

Italy

In addition to the 96 persons resettled under the 20 July scheme as mentioned in table 2, there are 181 Syrians from Lebanon that were scheduled to arrive in April.²⁶⁵

In November 2007, the Ministry of the Interior agreed to start the first resettlement project in Italy. Since then, it has implemented various resettlement project in recent years. The first phase of the experimental operation, called *Oltremare*, was conducted in cooperation with the UNHCR in the period 2007-2008. It included a group of 39 vulnerable refugees, mainly single women, of Eritrean origin from Misrata camp in Libya, who were in need of immediate protection.²⁶⁶ In the second phase of the same project, 30 refugees were resettled from Libya in the period 2008-2009.²⁶⁷ In 2009, a project called *Piccoli Comuni Grande Solidarietà* was implemented. In this project 67 Eritreans and two Somalis were resettled from Libya.²⁶⁸ An ad hoc resettlement programme, called *Reinsediamento a Sud* was implemented between 2009 and 2011 and focused on Palestinian refugees recognised under the UNHCR mandate and living

²⁶³ (Ireland) Irish Department of Justice and Equality, *Minister Shatter announces Humanitarian Admission Programme to assist vulnerable persons suffering in Syria and surrounding countries*, 14 March 2014, available at: www.justice.ie/en/JELR/Pages/PR14000073; Irish Naturalisation and Immigration Service, *Syrian Humanitarian Admission Programme*, available at: www.inis.gov.ie/en/INIS/Pages/SYRIAN%20HUMANITARIAN%20ADMISSION%20PROGRAMME

²⁶⁴ UNHCR (2016), *Resettlement and other forms of legal admission for Syrian refugees*, 18 March 2016.

²⁶⁵ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

²⁶⁶ (Italy) The Italian Council for Refugees (Consiglio Italiano per Rifugiati, CIR), *Al via in Italia progetto di reinsediamento 'Oltremare' per un gruppo di rifugiati*, CIR Notizie, December 2007.

²⁶⁷ (Italy) The Italian Council for Refugees (Consiglio Italiano per Rifugiati, CIR), *Programmi di reinsediamento ('resettlement'): 'Oltremare', progetto pilota di 'reinsediamento' in Italia*, CIR Notizie, May 2009.

²⁶⁸ De Donato Cordeil, M. and Hein, C. (2015), *Ponti non muri: garantire l'accesso alla protezione nell'Unione europea*, The Italian Council for Refugees (Consiglio Italiano per Rifugiati, CIR), October 2015.

at the Syrian-Iraqi border. In total, 197 Palestinian refugees were resettled in this programme.²⁶⁹ In these three projects, the UNHCR conducted the selection based on the criteria established by the Ministry of the Interior. Refugees were selected based on their vulnerability, and in the case of the second phase of the Oltremare project, on their family ties with those previously resettled to Italy in the first phase of the project and had no possibility to meet the requirements of legal family reunification. Italian law has no specific provision on resettlement or resettlement procedures. The different projects were based on various legal and policy frameworks. Since national law does not allow procedures for requesting international protection from abroad, resettled refugees had access to this procedure upon their arrival in Italy. All refugees and beneficiaries of subsidiary protection were issued a renewable temporary residence permit, valid for respectively five or three years.²⁷⁰ Differently from the previous projects, in 2011 two ‘humanitarian-resettlement operations’ from Libya took place without involvement of the UNHCR. An agreement was made to urgently evacuate 108 Eritrean and Ethiopian persons from Tripoli through an operation conducted by the Italian Air Force. No visa were issued to these persons, however, upon their arrival in Italy they were admitted to the ordinary asylum procedure.²⁷¹

Family reunification may be applied for by foreign nationals in Italy holding a residence permit which is valid for at least one year. Refugees and asylum seekers do not need to meet requirements regarding housing and income. Foreign nationals in Italy may apply for reunification with: spouse, children under 18, adult children that depend on the foreign national living in Italy in case they are not able to meet their basic needs for serious health problems, parents who depend on the foreign national living in Italy, and the natural parent of minors regularly residing in Italy with the other parent.²⁷²

²⁶⁹ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁷⁰ De Donato Cordeil, M. and Hein, C. (2015), *Ponti non muri: garantire l’accesso alla protezione nell’Unione europea*, The Italian Council for Refugees (Consiglio Italiano per Rifugiati, CIR), October 2015; Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁷¹ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁷² Information available at: www.integrazionemigranti.gov.it/en/legal-framework/domestic-law/Pages/Family-reunification.aspx

On 15 December 2015, an agreement was signed between the Ministry of Foreign Affairs, the Ministry of the Interior, and three organisations: the Community of Sant'Egidio, the Federation of Evangelical Churches in Italy (*Federazione delle Chiese Evangeliche in Italia, FCEI*) and the Waldensian Table (*Tavola Valdese*). The intention of the agreement is to establish a pilot project that guarantees a humanitarian corridor for up to 1000 Syrians that live in camps in Morocco, Lebanon and Ethiopia.²⁷³ In these countries regional offices have been created that will identify beneficiaries. The function of the regional offices is also to assist refugees in the bureaucratic process and with practical problems: they mediate between the refugee and the Italian embassy. Individuals are selected based on their particular vulnerable situation because of their medical situation, their age or because they belong to large families. The first group arrived from Lebanon on 29 February 2016 with a regular flight: 97 Syrians came to Italy and were welcomed in private homes, parishes or reception structures of the churches.²⁷⁴ They are issued a visa with limited territorial validity based on humanitarian grounds, released by the Italian embassy in Beirut, a possibility provided by article 25 of the Visa Code (see paragraph 2.3.1). Italian national law does not provide the possibility to issue visas on humanitarian grounds. The financing of the project is done by the Waldensian and Methodist churches and comes from the 8x1000 funds as well as from private funds. The religious communities have also been assigned the responsibility of the integration process of the refugees that arrive in Italy through the humanitarian corridor.²⁷⁵

Latvia

Latvia has not implemented a regular refugee resettlement programme.

Lithuania

Lithuania has not implemented a regular refugee resettlement programme.

²⁷³ FRA, Regular overviews of migration-related fundamental rights concerns, available at: <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews>

²⁷⁴ Mediterranean Hope, *Corridoi Umanitari modello per Europa*, 5 April 2016, available at: www.mediterraneanhope.com/corridoi-umanitari/corridoi-umanitari-modello-per-leuropa-1021

²⁷⁵ (Italy) Federazione delle Chiese Evangeliche in Italia, *Corridoi umanitari*, comunicato di stampa, available at: www.fedevangelica.it/index.php/it/comunicati/280-cs10-corridoi-umanitari

Luxembourg

Even though Luxembourg does not have a regular resettlement programme in place, it has carried out several hoc resettlement operations: for instance, it resettled Vietnamese boat people from the Philippines and Thailand in 1979-1981, Polish refugees from Austria in 1982, Vietnamese and Cambodian refugees in the 1980s, and Cristian Iraqi refugees from Turkey in 1998.²⁷⁶ As a response to the November 2008 Council Conclusions, the Luxembourg government decided to resettle seven Sunni Muslim and 20 Christian Iraqi refugees. Selection of the resettled persons was based on reference by the UNHCR, no specific criteria were established by the country. Upon arrival, the resettled refugees had to apply for refugee status through a fast-track procedure. Refugee status allows to receive a permanent residence permit.²⁷⁷

In response to the UNHCR's call to resettle Syrian refugees, the government of Luxembourg pledged for 60 places for Syrian refugees coming from Jordan in 2014. During a selection mission, in collaboration with the Dutch government and supported by IOM, 28 refugees were selected, who were welcomed in Luxembourg in April 2014.²⁷⁸ Another mission was carried out in December that year, this time to Turkey, where another 46 Syrian refugees were selected for resettlement.²⁷⁹

Malta

Malta has not implemented a regular refugee resettlement programme.

Netherlands

Even though the Netherlands has been involved in resettlement since 1977, there are no specific provisions concerning resettlement included in the Aliens Act. So resettlement is not formally regulated by law, the policy regarding this activity, including quota, selection procedure, arrival and status given to resettled refugees are laid out in the

²⁷⁶ Know Reset - Country Profile Luxembourg, July 2013, available at: www.know-reset.eu/files/texts/00159_20130902162104_knowresetcountryprofileluxembourg.pdf

²⁷⁷ European Resettlement Network, available at: www.resettlement.eu/country/luxembourg

²⁷⁸ European Resettlement Network, *Syrian refugees resettled to the Grand Duchy of Luxembourg*, available at: www.resettlement.eu/news/syrian-refugees-resettled-grand-duchy-luxembourg

²⁷⁹ European Commission, Country Factsheet: Spain 2014, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/26.spain_emn_country_factsheet_2014.pdf

Minister of Justice's Decree. The policy framework sets out priorities for the quota, and is renewed for each four-year flexible quota period. Since 1986, the country has handled an annual quota of 500 resettled persons. This number has remained unchanged to date, and is unlikely to be changed in the near future.²⁸⁰ Also for 2016 the quota is 500, priority is given to refugees with medical concerns and women at risk.²⁸¹

Based on the 2000 Aliens Act, asylum can be granted on the basis of the 1951 Convention, the European Convention on Human Rights, or (extended) family reunification.²⁸² The application for asylum can only be lodged upon arrival in the Netherlands. Every asylum seeker who meets the criteria as described in the 2000 Aliens Act can receive a temporary residence permit for asylum. After five years, the asylum seeker can apply for a permanent residence permit. Since there are no specific arrangements in law for resettled persons, the eligibility criteria for resettlement correspond to the criteria for asylum as described in the Aliens Act. Further, the prospect of integration into the Dutch society is taken into account in the selection procedure. Submissions for persons to be resettled are done by the UNHCR. If there are indications that a person evidently will not integrate into Dutch society, this can be a reason to reject the submission.²⁸³ The majority of cases are selected through missions, while 20% is selected on dossier basis. This includes medical cases and emergency cases, for example from the ETF in Romania (see paragraph on Romania).²⁸⁴ Per year, four in-country selection missions are conducted. The missions are carried out by representatives of the Ministry of Foreign Affairs, the Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*, IND) and of the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers*, COA). Destinations are decided in consultation with the UNHCR and the countries supporting the programme.²⁸⁵

²⁸⁰ European Resettlement Network, available at: www.resettlement.eu/country/netherlands; UNHCR Resettlement Handbook, Country Chapter Netherlands, July 2014.

²⁸¹ (the Netherlands) IOM, information available at: www.iom-nederland.nl/nl/overkomst-naar-nederland/hervestiging

²⁸² (the Netherlands) article 29, 2000 Aliens Act (Vreemdelingenwet), available at: <http://wetten.overheid.nl/BWBR0011823/2015-07-20#Hoofdstuk3>

²⁸³ UNHCR Resettlement Handbook, Country Chapter Netherlands, July 2014.

²⁸⁴ European Resettlement Network, available at: www.resettlement.eu/country/netherlands

²⁸⁵ (the Netherlands) Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, COA), information available at: <https://www.coa.nl/nl/asielopvang/hervestiging-vluchtelingen>

Family reunification that takes place within three months of arrival or upon the date the residence permit is granted will be accepted under the annual quota. Family members must belong to the same family unit: this applies only to spouses and minor children. Family reunification with non-marital partners (including same-sex partners), parents or adult children is possible in case they depend on the person granted asylum. Family reunification is also possible after three months, but then the regular criteria apply. This means, for example, that certain income criteria have to be met.²⁸⁶

Poland

Poland does not have a regular refugee resettlement programme, but in the end of 2014, at the Ministerial Conference in Geneva Poland expressed its willingness to be involved in the resettlement of refugees from Syria. As part of a pilot project, Poland will accept 100 refugees from Syria in 2016.²⁸⁷

Portugal

Portugal has already accepted 12 people from Turkey for resettlement, but they have not been transferred yet, and so those are not included in table 2.²⁸⁸

After an ad hoc resettlement operation in 2006, when 17 refugees from Morocco were resettled following the events at the border of Ceuta and Melilla, the government of Portugal implemented a resettlement programme in 2007, for a minimum of 30 refugees each year.²⁸⁹ No selection missions are conducted, instead, selection is only based on the dossier submission presented by the UNHCR. According to the Portuguese resettlement policy, voluntary repatriation and local integration are preferred as durable solutions. Only when this is not possible within a reasonable time frame, UNHCR may submit refugees for resettlement consideration. Priority is given to persons in need of

²⁸⁶ UNHCR Resettlement Handbook, Country Chapter Netherlands, July 2014.

²⁸⁷ European Commission, Country Factsheet: Poland 2014, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/21.poland_emn_country_factsheet__2014.pdf

²⁸⁸ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

²⁸⁹ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

serious legal and physical protection, women at risk, survivors of violence and / or torture and unaccompanied minors. Resettled refugees are granted refugee status and a renewable temporary residence permit, valid for five years. Upon arrival, a refugee may apply for the admission into the State of a member of the family, this includes a spouse, unmarried minor children, and in case of refugees under 18, admission can be asked for parents. In exceptional cases, permission can be granted for other dependent family members.²⁹⁰ Convention refugees are exempted from the requirements to prove sufficient income or accommodation when applying for family reunification.²⁹¹

Romania

In 2008, based on an agreement between Romania, UNHCR and IOM an Emergency Transit Facility (ETF) was established in Timisoara. This was the first European evacuation centre.²⁹² Refugees who for security reasons urgently need to be removed from a country of asylum, but who have not yet been accepted for resettlement to a third country are accommodated in the ETF, which provides them temporary protection. These refugees do not stay in Romania: as soon as a definite resettlement place has been organized they are transferred to a third country.²⁹³

The first resettlement programme in Romania was organised by a government decision, which contained specific information on criteria, quota and procedures and which covered the period between 2008 and 2010.²⁹⁴ The Resettlement Committee, a consultative body composed of representatives of the Ministry of the Interior and the Ministry of Foreign Affairs, was established to determine each year the States from where resettlement operations would take place and the specific groups of refugees that would be focused on. In theory, per year 40 persons could be accepted and in total 120 during the entire timeframe. The decision expired in 2010 and was extended by another government decision in 2012.²⁹⁵ In practice, two resettlement operations have took

²⁹⁰ UNHCR Resettlement Handbook, Country Chapter Portugal, July 2011.

²⁹¹ European Resettlement Network, available at: www.resettlement.eu/country/portugal

²⁹² UNHCR, ETC Timisoara, available at: www.unhcr-centraleurope.org/en/what-we-do/resettlement/etc-timisoara.html

²⁹³ European Resettlement Network, available at: www.resettlement.eu/country/romania-0

²⁹⁴ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

²⁹⁵ European Resettlement Network, available at: www.resettlement.eu/country/romania-0; UNHCR Resettlement Handbook, Country Chapter Romania, July 2011.

place, one in 2010, and one in 2014, which was a group of 40 Iraqi refugees resettled from Turkey.²⁹⁶ In 2014, the government decision of 2008 was amended, in order to establish the resettlement quotas for the years 2014-2015. As a result the quotas were set to receive 20 persons per year.²⁹⁷

In order to be considered for resettlement, individuals must be recognized as a refugee in accordance with the 1951 Convention. The integration potential of refugees and a minimum health status are also used as selection criteria. Submissions for resettlement are made by the UNHCR. During in-country missions in the country of first-asylum all pre-selected individuals are interviewed for selection. Also individual medical evaluations are done by a doctor who is traveling with the Romanian delegation.²⁹⁸

The status of refugees is the same as those of refugees recognized in the national asylum procedure. Upon arrival in Romania, resettled refugees are granted refugee status and have the same rights as refugees recognized by the Romanian state. They are issued a residence permit which is valid for three years. After five years of continuous residency, refugees can apply for a permanent residence permit.²⁹⁹

A person who is granted a form of protection may lodge an asylum application for family members if they are outside the territory of Romania. Family reunification may be asked for married partners (as Romania does not recognise same-sex marriages there are no such provisions in refugee related laws) minor children and parents of minor children, children over 18 years old if they are single and unable to support themselves due to medical reasons and parents and parents-in-law of adult legal residents if they are not able to support themselves and they do not have family support in their country of origin. The family member legally resident in Romania should function as a sponsor

²⁹⁶ (Romania) Ministry of the Interior (Ministerul Afacerilor Interne), *40 de refugiați irakieni evacuați din Turcia în cadrul programului de relocare*, 29 May 2014, available at: <http://igi.mai.gov.ro/api/media/userfiles/comunicat%20relocare%2040%20irakieni%20sosire%20Romania.pdf>

²⁹⁷ European Commission, Country Factsheet: Romania 2014, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/23.romania_emn_country_factsheet_2014.pdf

²⁹⁸ European Resettlement Network, available at: www.resettlement.eu/country/romania-0; UNHCR Resettlement Handbook, Country Chapter Romania, July 2011.

²⁹⁹ European Resettlement Network, available at: www.resettlement.eu/country/romania-0; UNHCR Resettlement Handbook, Country Chapter Romania, July 2011.

and needs to prove sufficient income to support the relatives(s) as well as appropriate accommodation.³⁰⁰

Slovakia

In December 2009, an agreement was signed between the Slovak government, UNHCR and IOM, on the transfer of refugees in need of protection and the temporary accommodation in the Emergency Transit Centre (ETC) in Slovakia until further resettlement. After Romania, this is the second ETC in Europe. The specific focus group was a group of Palestinian refugees from Iraq. Temporary placement in the centre is provided for up to six months. In 2010, Slovakia reviewed the possibility of resettlement, but due to the socio-economic situation of the country concrete proposals were delayed. Despite interest shown in resettlement instruments, there is no regular programme at the moment.³⁰¹

The pledge under the 20 July scheme is in addition to 149 Assyrians resettled from northern Iraq under a national programme.³⁰² The fact that these Iraqi Christians were internally displaced persons, and as a consequence not recognised as refugees under the 1951 Convention, excluded resettlement possibilities in many countries. Slovakia formally approved resettlement for this group, which had fled Islamic State (IS) that controls territories in their place of origin. Funds for the resettlement operation were raised through fundraising projects organised by charity organisations in the United States. The transfer to Slovakia was done by a privately-chartered plane.³⁰³

³⁰⁰ European Resettlement Network, available at: www.resettlement.eu/country/romania-0; UNHCR Resettlement Handbook, Country Chapter Romania, July 2011.

³⁰¹ Know Reset - Country Profile Slovakia, July 2013, available at: www.know-reset.eu/files/texts/00166_20130919160632_knowresetcountryprofileslovakia.pdf

³⁰² European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

³⁰³ Information available at: <http://abcnews.go.com/International/americans-helped-100-iraqi-christian-refugees-escape-isis/story?id=35783650>; www.ncregister.com/daily-news/u.s.-led-resettlement-of-iraqi-christians-offers-model/

Slovenia

Since its independence in 1991, legislation on international protection has been evolving steadily in Slovenia. Current legislation provides a legal basis for resettlement. Nevertheless, commitment lacked practical implementation so far.³⁰⁴

Spain

Spain has been involved in ad hoc resettlement operations since 1979. For instance, it has resettled refugees from Vietnam and Laos in 1977-1980, Cuban refugees in 1980, Iraqi refugees in 1987, and in the early 1990s refugees from former Yugoslavia.³⁰⁵ These operations were not part of an official resettlement programme and there were no strict selection criteria, nor did fixed quotas exist. The government responded to requests of the UNHCR and resettled individuals from various nationalities.³⁰⁶

In 2009, a new asylum law came into force. This law makes reference to the European framework of governing refugee and asylum issues³⁰⁷ and it mentions the adoption of a national resettlement programme, including annual quotas and priorities. However, the carrying out of resettlement was delayed due to the economic situation of the country. Despite the official willingness to resettle, the financial constraints influenced the political climate.³⁰⁸ The first programme was established in October 2011 and authorised the resettlement of a maximum of 100 refugees in response to the UNHCR calling for states to resettle refugees from Shousha refugee camp in Tunisia. Under this programme, 80 refugees were selected that arrived in Spain in July 2012. In December 2012, a second resettlement programme was approved, authorising the resettlement for up to 30 refugees per year, during the period 2013-2014.³⁰⁹ In October 2014, a selection mission to Jordan was carried out and it was agreed to resettle 127 Syrian nationals

³⁰⁴ Know Reset - Country Profile Slovenia, July 2013, available at: www.know-reset.eu/files/texts/00167_20130919160551_knowresetcountryprofileslovenia.pdf

³⁰⁵ Know Reset - Country Profile Spain, May 2013, available at: www.know-reset.eu/files/texts/00168_20130705130432_knowresetcountryprofilespain.pdf

³⁰⁶ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

³⁰⁷ Papadopoulou, A., et al (2013) *Comparative study on the best practices for the integration of resettled refugees in the EU Member States*, on request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 2013.

³⁰⁸ Know Reset - Country Profile Spain, May 2013, available at: www.know-reset.eu/files/texts/00168_20130705130432_knowresetcountryprofilespain.pdf

³⁰⁹ European Resettlement Network, available at: www.resettlement.eu/country/spain-0

residing in Jordan. In the end of that year a new national resettlement programme was adopted, which aimed to receive 130 Syrian refugees.³¹⁰

In order to be resettled, refugees must be recognised as such based on criteria set out in the 1951 Convention. They can also be resettled for reasons of vulnerability. Broad selection criteria regarding the integration potential are applied. The needs of the resettled individual are compared with assessments of resources available within the resettlement programme, as well as in other programmes or services. The UNHCR submits cases for screening and the pre-selected persons are then interviewed during selection missions carried out by the Ministry of the Interior. The Ministry of Employment and Social Security is responsible for assessing the integration potential of the individuals during the selection missions.³¹¹

Upon arrival, resettled persons immediately receive refugee status or subsidiary protection. Just as other beneficiaries of international protection in Spain, resettled refugees are granted a five-year residence permit. All refugees in Spain can apply for family reunification, this is not included in the resettlement quota. International protection is extended to family members, even if they do not individually meet protection criteria. Family reunification may be applied, besides for married partners, minor children and parents of minor children, also for unmarried partners, parents and other family members who depend on the sponsor upon proof that they were already living together in the country of origin.³¹²

Sweden

Within the framework of the national resettlement programme the Swedish government has accepted organised resettlement already since 1950. The general guidelines are established annually by the government in close cooperation with the UNHCR. Following a written agreement IOM is responsible for transportation and other practical matters. Since 2008, Sweden accepts 1900 quota refugees per year.³¹³ The 1900

³¹⁰ European Commission, Country Factsheet: Spain 2014, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/26.spain_emn_country_factsheet_2014.pdf

³¹¹ European Resettlement Network, available at: www.resettlement.eu/country/spain-0

³¹² European Resettlement Network, available at: www.resettlement.eu/country/spain-0

³¹³ UNHCR Resettlement Handbook, Country Chapter Sweden, September 2014; (Sweden) The Swedish Migration Agency (Migrationsverket), The Swedish refugee quota, available at:

resettled persons in 2015 under the national programme, are not included in the 20 July scheme (see table 2).³¹⁴

In order to be selected, an individual must be considered as a refugee or a person otherwise in need of protection as described to the Aliens Act. According to this act, a person has the right to asylum as a Convention refugee (1951 Convention) or under subsidiary protection (EU law) or as a person otherwise in need of protection. In this last category there are persons in need of protection because of an external or an internal armed conflict, because of other severe tension in the home country, because of a well-grounded fear of being subject to serious abuse, or because he or she cannot return to his or her home country due to a natural disaster. Resettlement cases are submitted by the UNHCR, and in exceptional cases by a Swedish diplomatic mission. Most of the quota (over 50%) is filled through dossier selection, for the rest selection missions are carried out. The Swedish Migration Board is the operational authority and the main actor for resettlement in Sweden. It undertakes three to five in-country selection missions per year. When the resettled persons arrive in Sweden they have already been granted a permanent residence permit. Convention refugees are entitled to apply for an official recognition of their refugee status after their arrival in Sweden. Generally, resettlement is offered to all members of the core family (married or unmarried spouses and their minor children), even if the need for protection only applies to one or a few. Furthermore, a residence permit can be given to an alien who is a parent of an unmarried minor alien who is a refugee or a person otherwise in need of protection. Also a close relative outside the nuclear family can be given a residence permit if he or she has a relationship of dependence with the relative in Sweden and was already a member of the same household. Only exceptionally a distinction between Convention refugees and aliens otherwise in need of international protection is made, as Convention refugees may be granted contributions to cover family members' expenses for traveling to Sweden.³¹⁵

www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/The-refugee-quota.html

³¹⁴ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

³¹⁵ UNHCR Resettlement Handbook, Country Chapter Sweden, September 2014; (Sweden) The Swedish Migration Agency (Migrationsverket), The Swedish refugee quota, available at: www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/The-refugee-quota.html

United Kingdom

The UK has been involved in ad hoc resettlement operations since the end of the Second World War. In 2004, a more structural approach was introduced. Today, the UK has two formalised resettlement programmes, the Gateway Protection Programme (GPP) and the Mandate Refugee Scheme (MRS). Both programmes are operated by the United Kingdom Home Office in partnership with the UNHCR. The GPP offers a specific number of resettlement places to particularly vulnerable refugees each year (currently 750). The MRS on the other hand, has no quota, and allows refugees from over the world with close ties with the UK to be resettled. Close ties usually include spouse, minor children, and parents / grandparents over the age of 65 of someone settled in the UK. A parent / grandparent under 65 and family members aged 18 or over, may be considered in exceptional cases. The relative in the UK must confirm the willingness to provide accommodation and help with the integration of the resettled person(s). Most submissions under this scheme are accepted as long as they meet the resettlement criteria by having close family ties with the UK.³¹⁶

The UNHCR presents the individual case submissions to the UK Home office for both programmes. In order to be selected for resettlement in the UK an individual must be recognised as a refugee by the UNHCR within the framework of the 1951 Convention. While selection for the MRS is only based on dossier-basis, for the GPP selection missions are conducted. A health screening is conducted for all proposed GPP cases. IOM is contracted to conduct the screening and prepare a report. This report is taken into consideration in the selection process.³¹⁷

Resettled persons are granted refugee status with indefinite leave to remain. This in contrast with other refugees who are granted refugee status with five years limited leave. Once a resettled person has arrived in the UK, he or she may apply for family reunification. Besides family members belonging to the nuclear family (married partners, minor children and parents of minor children) also unmarried partners (including same-sex partners), and, in exceptional compelling and compassionate circumstances, also other family members are eligible for family reunification. Unlike other migrants, refugees do not need to provide evidence of sufficient income or

³¹⁶ UNHCR Resettlement Handbook, Country Chapter United Kingdom, September 2014.

³¹⁷ UNHCR Resettlement Handbook, Country Chapter United Kingdom, September 2014.

accommodation to meet the needs of family members. Recently, this policy has been incorporated into the UK's Immigration Rules.³¹⁸

The number of 1864 resettled persons in table 2, are persons resettled under the existing national resettlement schemes in 2015.³¹⁹ In addition, the government of the UK announced in January 2015 to launch a third resettlement programme in partnership with the UNHCR, the Vulnerable Persons Relocation Scheme (VPRS).³²⁰ Beneficiaries will be granted five years' humanitarian protection, which provides them with the same key rights and benefits as refugees.³²¹ While this scheme is run in parallel with the UNHCR's Syria Humanitarian Admission Programme, it is nevertheless, operating in conjunction with it, helping the UK to identify individuals who are most vulnerable and cannot be adequately protected in the region.³²² The first group of refugees accepted under this scheme arrived in the UK on 25 March. The VPRS aims to offer the most vulnerable refugees fleeing the crisis protection in the UK. Rather than on quota, this scheme is based on need. Survivors of torture and violence and women and children at risk or in need of medical care are prioritised. 216 Syrian refugees were initially accepted under the Vulnerable Persons Relocation scheme.³²³ Initially, the aim was to resettle around 500 Syrians to the UK by 2017.³²⁴ However, on 7 September 2015, the Prime Minister announced that the programme would be expanded and that the UK would accept up to 20,000 Syrian refugees over the next five years.³²⁵

³¹⁸ UNHCR Resettlement Handbook, Country Chapter United Kingdom, September 2014; Government of the UK, information available at: www.gov.uk/browse/visas-immigration

³¹⁹ European Commission (2016), *Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement*, COM(2016) 222 final, Strasbourg, 12 April 2016.

³²⁰ (United Kingdom) Government of the United Kingdom, Syria refugees: UK government response, information available at: www.gov.uk/government/news/syria-refugees-uk-government-response

³²¹ European Resettlement Network, *First Syrians arrive in the UK under the Vulnerable Persons Relocation Scheme (VPRS)*, available at: www.resettlement.eu/news/first-syrians-arrive-uk-under-vulnerable-persons-relocation-scheme-vprs

³²² ECRE, *UK announces 'modest expansion to Syrian resettlement scheme*, 26 June 2015, available at: <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1111-uk-announces-modest-expansion-to-syrian-resettlement-scheme.html>

³²³ (United Kingdom) Government of the United Kingdom, Syria refugees: UK government response, information available at: www.gov.uk/government/news/syria-refugees-uk-government-response

³²⁴ ECRE, *UK announces 'modest expansion to Syrian resettlement scheme*, 26 June 2015, available at: <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1111-uk-announces-modest-expansion-to-syrian-resettlement-scheme.html>

³²⁵ (United Kingdom) Government of the United Kingdom, Syria refugees: UK government response, information available at: www.gov.uk/government/news/syria-refugees-uk-government-response

3.3 Analyses and conclusion

As mentioned earlier in this thesis, the number of refugees worldwide is increasing. Also the number of refugees in need of resettlement has been rising in the last years. Even though the efforts of resettlement countries are growing, only around 10% of the refugees in need are effectively resettled. Moreover, the greatest part of these refugees are resettled to only three countries; Canada, the United States and Australia. Less than 10% is resettled to the European Union. Looking at these data, it can be concluded that international responsibility sharing regarding resettlement efforts is highly unbalanced. Also within the European Union the resettlement commitments of the Member States are very uneven.

Further, the efforts of the EU Member States stay behind the commitments of the other resettlement countries in the world. Positive developments of the past few years are that more Member States got involved in resettlement activities and that the total number of resettlement places offered by the EU has been growing. However, the share of the EU remains around 9% of the resettlement places offered worldwide. This means that the growth of the EU countries has not kept pace with that of other resettlement countries.

The EU level

The European Agenda on Migration of May 2015 was the first response of the EU to the migration crisis in the Mediterranean. It was suggested to create a European resettlement scheme that offers 20,000 places. The proposal of this scheme is a positive initiative, because it would mean that the persons benefitting from this scheme do not need to make dangerous journeys in order to reach safety. However, the number of 20,000 is very modest. Especially when compared to the 130,000 places the UNHCR asked the international community to offer to Syrian refugees only.³²⁶

Since this resettlement scheme is based on voluntary participation, it is likely that the same countries will participate as the ones that already are involved in resettlement or humanitarian admission programmes. However, it would be desirable that the EU coordinates and incites a more equal sharing of responsibility. Even though, the Agenda encourages, except for resettlement, also the use of “*other legal avenues available to*

³²⁶ UNHCR (2015), *Resettlement and other forms of admission for Syrian refugees*, 13 May 2015.

persons in need of protection”, there are no more concrete proposals included in the document and initiatives are left to the individual Member States.

The resettlement scheme was confirmed on 20 July for 22,504 places. Until 12 April 2016, all together 5609 persons were resettled to 14 different countries (see data in table 2). This includes also the efforts of Iceland, Liechtenstein, Norway and Switzerland. The ten EU Member States that already participated in this scheme resettled together 4805 persons. These ten Member States are all countries that already were involved in resettlement initiatives in one way or another. Some countries integrated their activities into this framework, others continue to have a national programme in parallel to the EU scheme. Every country applies its own policy on resettlement with its own selection criteria and its own benefits linked to the programme. As concluded by the European Commission in one of its recent reports on resettlement, the differences in selection criteria between the Member States continue to be a main challenge.

Since the agreement of the EU with Turkey on the 1:1 mechanism is not a document that has been ratified by the European Parliament, it is not formally binding, and in fact, it is not more than a political statement. As a consequence, Member States can participate on a voluntary basis in the resettlement from Turkey. Since the start of this mechanism on 4 April 2016, the number of people irregularly crossing from Turkey into Greece has clearly decreased. The smuggling of people will continue as long as there is a market. From that point of view this mechanism has been effective, since the number of people irregularly crossing the border into Greece has reduced from a few thousand per day to around hundred per day.

As the concerns of the Member States about the unusual number of irregular arrivals in Europe, and the urgent need to find a solution led to the fast implementation of the agreement, this may have been at the expense of attention to Human Rights.

While before the entry into force of the mechanism the migrants and refugees that arrived in Greece, continued their travels onwards to northern Europe, now they have to stay in Greece, where they are confined in the refugee / reception camps. All refugees and migrants that arrived after 20 March are to be registered while they cannot leave the reception centres. They have to stay and wait in the camp for their case to be decided. In line with international law and to avoid collective expulsion, individual proceedings must be guaranteed. This means a heavy burden for Greece, because it is

responsible for the registration of the arrivals and the processing of the asylum claims and extra resources are needed for this. It depends on other Member States to send them the staff needed to carry out the proceedings. At the end of April, only 68 asylum experts were deployed, while 400 are needed. Further, from the staff that needs to be provided by other Member States, Frontex and EASO, only 63 of the 400 interpreters, 271 of the 1500 escort officers and none of the 30 judicial officials needed were deployed.

Moreover, the load for Greece will be even heavier if relocation (the transfer from one Member State to another Member State) will be at the expense of resettlement from Turkey. As mentioned before, the European Commission proposed to create 54,000 places for resettlement, amending the Directive that foresees relocation from Greece and Italy to other Member States. This would have implications for Italy as well, since the number of sea crossings to this country has been increasing from the beginning of 2016. Furthermore, while under the 20 July scheme the regions for resettlement were quite wide-ranging, the remaining resettlement places will probably take place from Turkey as a consequence of the EU-Turkey agreement. A risk might be that resettlement from other neighbouring States of Syria that are under pressure will be far less considered.

The hotspots on the Greek island created not more than a year ago, where refugees and migrants were received and registered, have become detention facilities. The UNHCR has suspended some of its activities on the islands because it opposes mandatory detention. At the moment of making the agreement between the EU and Turkey, according to the UNHCR Greece was not prepared for assessing the asylum claims on the islands, the capacity was insufficient and there were no proper conditions to accommodate people decently and safely while waiting for the processing of their case.³²⁷ Also other major international organisation (Médecins Sans Frontières, the Norwegian Refugee Council, Save the Children, the International Rescue Committee) suspended their activities on the Greek islands, refusing involvement in the expulsion of refugees.

Reception and identification centres in the main places of arrival in Greece are overloaded: the centre on Lesbos has a capacity of 3500 people, but currently hosts

³²⁷ UNHCR, *UNHCR redefines role in Greece as EU-Turkey deal comes into effect*, 22 March 2016, available at: www.unhcr.org/56f10d049.html

4124 people; the centre on Chios has a capacity of 1100, but hosts the double at the moment (2265 persons), and on Samos the centre has a capacity of 850 people, while in fact there are 1047 people.³²⁸ All the main camps in Greece are overcrowded, backlogs in registration exist, there is a lack of information and there are tensions between the people in the camps.

The agreement states that “*for every Syrian readmitted by Turkey...the EU will resettle one Syrian from Turkey.*” The focus of this agreement seems to be principally on Syrian refugees. It is true that half of the irregular arrivals in Greece is represented by Syrian nationals, but nevertheless the other half should not be neglected, as many of them are in need of international protection.

According to EU and international law, individuals that arrive in Greece irregularly can be returned to Turkey under a readmission agreement between Turkey and Greece if they do not apply or do not qualify for asylum. Also those who submit an asylum claim, but are determined to have arrived from a ‘safe third country’ where they could have claimed asylum, are eligible for return. When looking at the information on the background of the migration crisis, provided in chapter one, it can be concluded that probably the greater part of those eligible for return, will be returned on the basis of the safe third country rule. It is questionable if Turkey can provide sufficient protection to these persons, especially to children that form a very high percentage of the arrivals in Greece.³²⁹

Another consideration should be made regarding Turkey being a ‘safe third country’: Turkey has ratified the 1951 Geneva Convention and its 1967 Protocol, but with a geographical limitation for non-Europeans. This means it recognises only refugees originating from Europe. The geographical limitation forms a barrier to accessing protection for non-Europeans. Syrians are provided temporary protection in Turkey for as long as the conflict in Syria continues. They have no long-term prospects and only limited access to education and employment.³³⁰

³²⁸ Data UNHCR, 3 May 2015, available at: <http://data.unhcr.org/mediterranean/documents.php?page=2&view=grid>

³²⁹ See also Collet, E. (2016), *The paradox of the EU-Turkey Refugee Deal*, March 2016.

³³⁰ See also Peers, S. and Roman, E. (2015), *The EU, Turkey and the Refugee Crisis: What could possibly go wrong?*, 5 February 2016, available at: <http://eulawanalysis.blogspot.it/2016/02/the-eu-turkey-and-refugee-crisis-what.html>

In April 2016, Amnesty International published the news of “*large-scale forced returns of refugees from Turkey*”. Their research shows evidence of returns of Syrian refugees from Hatay province.³³¹ The findings of the research published by Amnesty have been confirmed as well by research of the Dutch Broadcast Foundation (*Nederlandse Omroep Stichting*). Turkey has denied the accusations so far. The returns would be illegal under international law, and would have implications for the EU-Turkey agreements as well, because Turkey would result not to be a safe country of return. States may not send persons in need of international protection directly to countries where they might be at risk, neither may they be sent there in an indirect way (see paragraph 1.2.1 on the legal framework).

As it appears from the document of 6 April, the EU is conscious of the fact that the current approach is not efficient and that the instruments to govern this migration crisis are missing. Nevertheless, it is making just very modest moves to manage the situation. The document of 6 April does not present anything fundamentally new, most of all because the starting point is still the status quo, and not a radical change in the point of view. Moreover, participation of Member States in possible solutions continues to be on voluntary basis. Instead, rather a comprehensive approach would be needed in order to find effective solutions. Other instruments than resettlement for creating legal entry ways remain underexposed and maybe even underestimated. The development of these instruments would benefit from a European approach.

It is true that resettlement, and other protected entry procedures, can have secondary benefits, other than only for the resettled persons themselves. The strategic use of these instruments can enhance the asylum possibilities for refugees and their integration prospects on one hand, while on the other hand there might be positive effects as well for other refugees, the hosting State and other States when during the implementation of the instruments the focus is on maximising those benefits. However, it should be kept in mind that the primary goal of these policies is to guarantee protection for persons in need. When the primary goal is confused with the secondary benefits, there is a chance that the most vulnerable people that are in need of protection will be excluded from the target group of the policy. When looking at the proposals presented in the

³³¹ Amnesty International, *Turkey: illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal*, 1 April 2016, available at: www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/

document of 6 April for legal ways, it is striking that the focus is almost exclusively on labour migration. The use of a proactive labour migration policy in the reform of the Common European Asylum System continues the risk that the most vulnerable refugees will be left out, because they are not able to benefit from this. If legal ways to protection are used to “*fill talent and skills gaps*” in Europe, it would mean that for example children, persons with medical needs and or elderly people are not eligible: the policy would then overshoot its target.

The Member State level

In chapter two the different instruments for creating legal channels to protection were explained. It already became clear that some terms are very wide-ranging and that sometimes in practice they can have a slightly different meaning than they have in theory. This depends on the context and the policy of a certain country. In the third chapter, it was set out in what way the Member States of the European Union have implemented the different instruments. From this it can be learned that in some cases, the various tools overlap. This is for example the case of resettlement and family reunification in the Netherlands, where family reunification is partly integrated in the resettlement policy. Another example is the SHAP in Ireland, which is a programme that combines the tools of humanitarian admission and family reunification with the tool of private sponsorship. It can be concluded that in practice not always a net distinction can be made between the different tools to create legal ways. Often, rather a combination of instruments is used.

Half of the Member States of the European Union (14) currently has an annual resettlement programme implemented, this includes: Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom. Most of these countries already have a long resettlement history, some already since the end of the Second World War, and over the years they have developed a stable programme (see table 3). A few countries however, have only recently become involved in resettlement activities and find problems in starting up their programme.

Member State	Involved in resettlement since	Has implemented an annual resettlement programme since
Austria	1945	-
Belgium	1945	2011
Bulgaria	-	-
Croatia	-	-
Cyprus	-	-
Czech Republic	2005	2008
Denmark	1956	1979
Estonia	-	-
Finland	1979	1985
France	1957	2008
Germany	2008	2011
Greece	-	-
Hungary	2012	2012
Ireland	1965	1998
Italy	2008	-
Latvia	-	-
Lithuania	-	-
Luxembourg	1979	-
Malta	-	-
Netherlands	1977	1986
Poland	-	-
Portugal	2006	2007
Romania	2008	2008
Slovakia	-	-
Slovenia	-	-
Spain	1979	2011
Sweden	1950	1950
United Kingdom	1945	2004

Table 3

Hungary for example, announced in 2010 that it would become a resettlement country. Yet, it took two years before an annual programme was created. The economic situation and the limited capacities of the country formed obstacles in the implementation of the programme. Some submissions were made, but it was not until 2014 that the first resettled refugees (10 persons) actually arrived in Hungary. Also Romania found some problems in starting up a resettlement scheme. It created the first programme in 2008, which covered a three year period. Only in 2010, the last year covered by the programme, a group of 40 refugees departed to be resettled in Romania. After two years, another programme was created, covering the period between 2012 and 2014.

Again, only one group of 40 persons was effectively resettled to Romania during the entire period. An exception to this is Germany that became involved in resettlement only in 2008. It implemented an annual programme in 2011 and has since then resettled a few hundred refugees per year. Spain on the contrary, has a long resettlement history, but it has been hit hard by the economic crisis and it has been struggling due to financial constraints. This has had its influence on the political climate and it has led to division over the implementation of the annual resettlement programme. Austria and Luxembourg have a long history in resettlement as well, and have set up several ad hoc programmes, but they do not have an annual programme implemented. Also Italy has become involved in resettlement operations since 2008, but does not have an annual programme.

Ten of the 28 Member States are not involved in resettlement at all. However, some of them have shown the intention to become resettlement countries. For instance, Poland, at the end of 2014, declared its willingness to become involved in resettlement. A pilot project is planned for 2016. The current legislation of Slovenia provides a basis for resettlement, however, there has been no practical implementation yet. Further, Bulgaria has considered resettlement opportunities since it became a member of the EU in 2007. Plans have been made for a pilot project, but the implementation has lacked so far.

As a response to the migration crisis, five of the 14 Member States that have an annual resettlement programme in place have raised their quotas (Belgium, Germany, Spain, Finland and Hungary). While Spain and Hungary have found problems in effectively resettling more persons, the other three countries have resettled significantly more people. Five countries have implemented additional resettlement programmes as a reaction to the crisis: next to their annual programme the Czech Republic, France and the United Kingdom have created another resettlement programme. Luxembourg and Slovakia have put in place ad hoc programmes to respond to the crisis. Further, six of the 28 Member States have implemented other kind of programmes, different from resettlement, this includes Austria, the Czech Republic, Germany, France, Ireland and Italy. It is interesting to see that the countries that put in place additional programmes (resettlement or other kind of protected entry procedures) are all countries that are involved in resettlement (on an annual or an ad hoc basis), with one exception: Slovakia that admitted a group of 149 Assyrians from Iraq under a national programme. Ten

Member States did not implement any resettlement programme or any other kind of programme in reaction to the crisis, this includes Bulgaria, Cyprus, Estonia, Greece, Croatia, Lithuania, Latvia, Malta, Poland and Slovenia.

As mentioned before, the Member States all have their own national policy on resettlement and apply their own selection criteria to choose the beneficiaries of their programmes. In general, it can be seen that when a person in need of protection does not meet the criteria for being a refugee under the 1951 Convention, it can be hard to be eligible for resettlement, as possible host countries might not recognise him / her as a refugee. In the selection process, more attention should be paid to the personal situation of the persons in question. Even when a person does not meet the criteria for being recognised as a refugee under the Convention, the personal circumstances might determine their need for resettlement. Host countries should take this into consideration when selecting individuals that can benefit from their resettlement programme.

The majority of the Member States that have an annual resettlement programme in place use the integration potential as a criteria in their selection procedure. Nine out of the fourteen countries (Belgium, the Czech Republic, Germany, Denmark, Estonia, Finland, Hungary, the Netherlands, and Romania) take aspects such as education, work experience and language knowledge, into consideration during selection. Attention should be paid when applying these selection criteria, as this can exclude the most vulnerable categories of persons in need of international protection of being eligible for the programme. These nine countries also carry out selection missions to conduct interviews with pre-selected candidates. Further, also Ireland, the UK and Sweden use selection missions to interview possible beneficiaries of the programme. Only Portugal and France do not carry out in-country missions and selection is done only on dossier basis. Especially in the case of France (as Portugal prefers other durable solutions and accepts submissions only when those are excluded), this allows the UNHCR to submit very varied cases from many different countries of first asylum.

The resettlement countries have very different policies on status and permits granted to refugees. While in some countries the resettled individuals receive refugee status right away, in other countries they first need to go through the asylum procedure (often a shortened procedure) before they can be granted refugee status. There are also differences in the residence permits granted to resettled persons: in almost half of the countries they are granted a permanent residence permit, while in the other half they

are granted a temporary residence permit. Further, the legislation of some of the resettlement countries provides specific provisions on resettled refugees, while in other countries there is no difference between resettled refugees and those recognised as refugees via the national asylum system.

After having analysed the implementation of the resettlement instrument by the European Member States, now the focus will be on the other instruments. Even though the resettlement instrument has been implemented in quite a number of countries, still other kind of legal ways of entry remain underdeveloped. Humanitarian Admission Programmes have been complementing traditional resettlement programmes in response to the Syrian refugee crisis. Austria and Germany both have implemented a Humanitarian Admission Programme. The programmes create 1500 and 20,000 places respectively and are set up principally for displaced Syrians. In both countries the programme has a family reunification element, focusing on refugees that already have family in the country.

The instrument of humanitarian visas has benefited only very few people. States are reluctant to implement this instrument probably because of a fear of an uncontrollable increase in the number of applications. No statistics on humanitarian visas exist that can be used for analyses. France has a provision in national law that offers the possibility to issue visas for humanitarian reasons in emergency situations. It uses this instrument to provide access to protection for Syrian and Iraqi displaced persons, many times Christians fleeing Islamic State. It was confirmed that, especially in the first phase after starting to issue humanitarian visas to these categories of displaced persons, the French consulates received a huge amount of applications. Italy currently has a pilot project, creating a humanitarian corridor for up to 1000 Syrians. To be able to do this, visas with limited territorial validity issued on humanitarian grounds are used as Italian law provides the possibility to issue national humanitarian visas. Special regional offices have been created to select beneficiaries and to mediate between the beneficiary and the Italian diplomatic representation.

In 2013, there was no single private sponsorship programme in practice in Europe. Yet, since the migration crisis, some private sponsorship arrangements have been set up. Examples of this can be found in Ireland and in Germany that created programmes for family members of Syrian nationals who stay in their territory. The family members

function as a sponsor and need to cover living costs of their relatives. 114 and 22,000 persons have respectively benefited from these programmes.

After having analysed the initiatives of the EU as well as the implementation of various instruments for legal entry ways by the Member States, it can be concluded that inside the European Union many different traditions and methods exist in providing access to protection. Also the answers to the migration situation of the Member States have been vary varied. Regarding an EU-wide resettlement scheme it can be concluded that while some countries have a long resettlement history and consider this a regular activity, some other countries are unprepared for resettlement policies. The legislation of some of these countries has not been prepared for resettlement and they would need legislative amendments and reforms in law and policies. Also the specific economic and political situation of a Member State should be taken into consideration. These differences between the Member States form obstacles in the creation of an EU-wide resettlement scheme. Further, as long as Member States have such a variety of practices, it is hard to draw an EU policy and a common approach towards persons in need of international protection that try to reach the territory of the European Union.

Chapter 4: Conclusion

In the introduction the central question of the thesis was introduced: in how far can the (further) implementation of legal ways to enter the European Union contribute to resolve the migration crisis? In order to be able to answer this question, in the first chapter the background situation of the migration crisis was set out, as well as the legal and the policy framework. It was also made clear how the existing system failed in the context of the crisis and why there is a need for change. Next, the different instruments that governments have at their disposal to create legal pathways to protection were described. After, it was illustrated which steps the EU took to respond to the migration crisis and in what way the Member States have implemented the different tools to create legal avenues to protection for persons in need of international protection. In this final part of the thesis the main question will be answered, drawing on the conclusions of the previous parts of this thesis.

In 2015, the migration crisis dominated headlines and political debates. A growing number of persons, in the absence of regular alternatives, tried to reach Europe in an irregular way. The enormous rise in the number of arrivals after 2014 shows a significant increase compared with previous years. This migration crisis is unprecedented in terms of the number of persons involved: in 2015, more than one million people made their way to Europe. The management of these migration flows have become a real challenge for the European Union.

In the first half of 2015, Greece became the first country of arrival. This was mainly the consequence of an increase of Syrian refugees that prefer the western Balkan route, which is less far and less dangerous than the central Mediterranean route to Italy. Most migrants travelled through Turkey and entered the EU by sea-crossing. From Greece, they travelled across the Balkan countries, first into Hungary, and later, when Hungary built fences along the borders, via Croatia and Slovenia to Austria. From there they continue their travel towards western Europe and apply for asylum.

The greater part of those arriving are persons in need of international protection. They are fleeing war, widespread violence and persecution in their place of origin and they come to Europe in search for safety and security. The current migration flows mainly originate from Syria, Iraq and Afghanistan. One of the main causes of the high influx

of arriving refugees is the worsening situation in Syria. Almost half of the arrivals in 2015 is from Syrian origin. Their fear for persecution, torture and death is the central reason for leaving. After five years of war, the Syrians start to lose hope that the conflict will end any time soon. The war has caused, except for 6.5 million internally displaced persons, also more than five million refugees, most of whom fled to neighbouring countries. These states, especially small countries like Lebanon, are under high pressure because they are hosting large numbers of refugees. Europe is currently hosting around one million Syrian refugees. Furthermore, one out of five people that arrived in Europe in 2015 has the Afghan nationality, and one out of ten were Iraqis. Instability and political uncertainty in their countries of origin were the main reasons for leaving. Moreover, the deteriorated situations in countries of first asylum contributed to the migration flows. Refugees in these countries have only limited access to employment and education and there is a lack of opportunities for them for building up a 'normal life'. Many of these factors are not new, but they have intensified over time, and led to worsened situations.

Europe has been unprepared to respond in an adequate way to the unusual high number of irregular arrivals. The migration crisis has imposed an unequal burden on some Member states. Countries along the main migration route have been struggling to receive, assist and process the large number of people. The lack of coordination between different levels of governance and the almost absent communication between countries on this matter worsened the crisis. Transit and destination countries found difficulties in addressing the humanitarian needs of the incoming persons. Vulnerable groups are at risk and especially the high number of (unaccompanied) children among the arrivals is particularly concerning.

Looking at the larger context, it is reported by the UNHCR that the worldwide displacement is at the highest level ever recorded. At the end of 2014, the number of forcibly displaced persons had reached almost 60 million. The vast majority of these persons fled to neighbouring countries, or are internally displaced in their own countries. More than 80% of the refugees worldwide are hosted in developing countries. In these countries, they are often in a vulnerable position and they run various risks concerning their health and safety.

Against this backdrop of high numbers of worldwide forced displacement and the increasing figures of arrivals to Europe, the function of the European Union as a global

protection actor is gaining importance. The EU and its Member States have a responsibility in safeguarding the rights of these persons. Therefore, there is an urgent need for a European response in accordance with the rights and obligations of international and EU law. Since there are only very few possibilities for persons in need of international protection to enter the EU in a safe and legal way, they often need to rely on smugglers in order to reach safety. Strengthening legal ways to access protection would decrease the number of lives lost at sea, the smuggling market would be reduced, and moreover it would enhance international responsibility sharing. This option would not put an end to tragedies and policy deadlocks, but certainly might help to improve the current performance of the migration governance.

European policies regarding asylum and migration have not been developed in a legal vacuum, but in the context of existing international law. The 1951 Geneva Convention relating to the Status of Refugees and the subsequent 1967 Protocol form the basis. This United Nations multilateral treaty gives a definition of refugee and it explains the principle of non-refoulement. This principle is enshrined in the Charter of Fundamental Rights of the European Union, which prohibits collective expulsion. There is also a link with the prohibition of torture and inhumane treatment as described by the European Convention on Human Rights. It follows that States may not send individuals (directly or indirectly) to other States where they might face such a risk. Further, the Charter contains the explicit right to seek asylum. Consequently, refugees have the right to seek asylum, but States are not obliged to grant asylum to refugees, they do however, have the obligation of non-refoulement. On the basis of the 1951 Convention and the principle of non-refoulement, as well as obligations under EU law, the Member States of the European Union have the obligation to provide access to protection in Europe.

In 1999, the European Council agreed to work towards the creation of a Common European Asylum System and a start was made to coordinate action externally in an effort to manage migration flows. However, there are some shortcomings in this system. First of all, it has failed to share responsibility equally between Member States. Further, widely diverging recognition rates and reception conditions continue to exist. Also, the external asylum dimension is still underdeveloped and there are only few opportunities for legal avenues to protection. On the contrary, the EU has made access to protection more difficult by reinforced border controls and building fences.

In the context of the migration crisis, the common asylum policy has shown some weaknesses in case of massive and sudden inflows. The system has failed to ensure an equal sharing of responsibility between Member States. Moreover, it is not offering effective and efficient access to protection for those in need. The current migration flows are highly complex and very diverse in terms of nationalities, as well as in terms of motivations of the individuals. Because refugees often arrive as part of mixed flows of humanitarian and economic migrants, destination countries have the difficult task of disentangling this. As required by international law, each individual must receive an individual assessment of their protection claim. This is often a long and resource-intensive process, and there is a need to accelerate processing and avoid large backlogs.

The public confidence in the asylum system and in the ability of the authorities to control the borders and manage migration is undermined by the large and persistent flows of irregular migrants. It is not likely that the push factors driving refugees and migrants to Europe will be resolved any time soon. This situation might not only be a short term crisis, but a more structural condition with continued flows. In this light, Europe needs to rethink its approach to its protection responsibilities.

People fleeing their country because of war or persecution may have difficulties in accessing legal migration ways. Because they are desperate to reach safe territory, they resort to smugglers and attempt dangerous journeys. Smuggling will continue as long as there is a market, and one way of lowering the demand for smuggling is by offering more legal alternatives to access safety.

Resettlement is the most important and the most used instrument for guaranteeing protection and international responsibility sharing. In 2014, of the 19.5 million refugees worldwide, 105,200 were resettled to 26 countries. Half of these are European countries. Nevertheless, all together the European countries resettled just 6% of the total number that year. The number of refugees has been growing very fast in the last few years. This growth, however, has not been met by an equal growth in the number of resettlement places offered. Furthermore, the growth of the places offered by the European states stay behind that of the other countries. Even though more EU Member States got involved in resettlement, the share of the EU in total remains around the same of the worldwide number. Since it is not a right-based instrument, it very much depends on the humanitarian and the political will of countries to implement a resettlement

programme. International responsibility sharing is highly unbalanced and also within the EU commitments are very uneven.

Coordination of the EU on resettlement started only quite recently and the first common action was in 2008 during the Iraqi refugee crisis. The number of resettling Member States doubled in that period from 6 to 12. In 2009, the Commission made a proposal to create a Joint EU Resettlement Programme, but it was not until January 2013 that this went into force. This programme offers only a political framework, as the participation of Member States is on voluntary basis, there are no operational mechanisms included and not numerical targets are set. The main goals of the programme are to involve more Member States, to increase the humanitarian impact of the EU, and to and to coordinate the resettlement efforts at the EU level.

The voluntary participation has led to a low level of political cohesion, which is evident in the varying level of commitment. Currently, the number of Member States that have implemented an annual resettlement programme is 14, three Member States participate on an ad hoc basis, and 11 are not involved in resettlement at all. The resettlement countries all have their own national policies and apply their own selection criteria for choosing the beneficiaries of their programmes. The benefits from resettlement differ from country to country and national policies on status and residence permits granted to resettled refugees are highly variant. Almost all of the resettlement countries (12 out of 14) apply a double screening for selection and use in-country selection missions to conduct interviews with persons pre-selected by the UNHCR. Nine resettlement countries use the integration potential of the candidate as a selection criteria. Aspects such as education, work experience and specific skills are taken into consideration during interviews and selection. A few European countries also use health status and religion as selection criteria. The risk is that resettlement is used as an immigration pathway and a way to control the intake of refugees. This focus on domestic considerations illustrates that selection standards in many cases are subject to internal interests. When paying more attention to the integration potential of the individual than to the protection needs and vulnerabilities, there is a chance that the most vulnerable refugees will fall out of the eligible category or even that there are persons resettled that actually do not face protection risks. France is an exception to the double screening practice: no in-country missions are carried out and selection is done only on dossier

basis. This allows the UNHCR to submit very varied cases from many different countries of first asylum.

In many Member States the admission decision is based on the basis of a well-founded fear of being persecuted in the country of nationality of the candidate. This implies that when an individual does not meet the criteria for being a refugee under the 1951 Convention, it is hard to be eligible for resettlement. Even when a person does not meet these criteria the personal circumstances might determine the need for resettlement. For this reason, the UNHCR advocates to use a broader definition for recognising refugees. Resettlement countries should take the personal circumstances into consideration when selecting individuals for their programme.

An important observation is that resettlement programmes should not substitute national asylum procedures, as this would undermine the right to seek asylum. Especially now that there is a high number of asylum applications, there is a risk that resettlement might be used to justify restrictions on asylum applications on the territory. Balancing between refugees that arrive through resettlement and refugees that ask for protection through the national asylum procedure, and as a consequence use resettlement at the expense of asylum granted to domestic asylum seekers, is to be avoided.

Resettlement is an important tool to provide international protection, and this has become even more important since the migration crisis. In light of international responsibility sharing, there is still room for improvement. All Member States, rather than just some of them, should contribute to a fair share of resettlement places, each according to their capacity and possibilities. Also harmonising the national policies on resettlement continues to be a point of improvement, as large differences persist.

In response to the crisis, five of the 14 Member States that have an annual resettlement programme in place have raised their quotas, five countries created additional resettlement programmes next to their annual programme, and two countries implemented ad hoc programmes. Six of the 18 Member States implemented other kind of programmes, different from resettlement. Ten Member States did not implement any kind of instrument to create legal ways to protection in response to the migration crisis.

Two countries have implemented humanitarian admission programmes, mainly for the benefit of displaced Syrians. These programmes have been complementing traditional resettlement programmes in the migration crisis.

Only very few people have benefitted from humanitarian visas. States are reluctant to implement this because of a fear of an uncontrolled increase in the number of applications. Those that do so usually do not publicise it. Moreover, for security or political reasons States are often required to close down their diplomatic representations in countries affected by war or conflict, which makes it practically impossible to implement this instrument. Even though this instrument is favoured by the European Commission and the European Parliament, France is at the moment the only European country that issues national visas for humanitarian reasons. In this case, it was confirmed that, especially in the first phase, the French consulates received a very high number of applications. This causes also logistical and financial problems.

External processing is a widely discussed tool. It should be carefully constructed and monitored in line with EU and international law. Until now, this kind of programme has not been put in place, because of various concerns about the implementation of this instrument. Even though the European Parliament had indicated temporary protection as a possible way to address the Syrian crisis, the Temporary Protection Directive has never been activated since its entry into force in 2001. A large scale operation of humanitarian evacuation as in 1999 for with the Kosovo-Albanians has not been implemented for Syrian refugees.

In the case of family reunification there is no direct claim for asylum, but this is still an instrument that can help persons in need of protection that find themselves outside the EU to reunite with their family members that are already in the EU. Sometimes family reunification is integrated in other kind of legal entry programmes and in other cases refugees should just apply through the regular family reunification programme. Some countries have specific provisions that create exceptions for refugees, for example regarding a proof of sufficient income. The narrow definition of the family unit often forms an obstacle for refugees. The European Commission called on Member States to increase the access to family reunification for refugees, and to use the margins when applying the definition of the family unit. Practices vary very much between Member States.

Even though, there are disagreements among the Member States on how to respond to the migration crisis, there is a large consensus on enhancing safe and legal ways to access protection. Though, a practical obstacle is that the implementation of the instruments can be expensive in terms of human and economic resources. Alternatives to the traditional programmes can be explored by involving other stakeholders, as NGOs, religious organisations, or individual persons, in order to find additional resources and to create a broad social consensus. Involving civil society can also contribute to raise public awareness and support. Private sponsorship by family members, private individuals, churches or other organisations can be an alternative, next to state sponsored refugees. The State remains responsible for carrying out the necessary screening and entry formalities. This is a flexible tool that can be combined with other instruments. While this instrument is used in Canada and the United States already for some years, in Europe there was no single practice of this until 2013. Since the migration crisis, some private sponsorship programmes have been set up. Examples of this can be found in Ireland and Germany where programmes have been created for family members of Syrian nationals that stay in their territory. Relatives function as a sponsor and need to cover living costs for their relatives.

Another interesting example of an alternative programme can be found in Italy, where a running pilot project creates a humanitarian corridor for Syrians in need of protection. The Ministry of the Interior and the Ministry of Foreign Affairs signed an agreement with three religious organisations that are responsible for the practical implementation of the project. Visas with limited territorial validity based on humanitarian grounds are issued by Italian consulates in order to reach Italian territory. Special regional offices have been created by the organisations to select candidates and to mediate between the beneficiary and the Italian diplomatic representation. The religious communities are also responsible for the financing of the project.

As can be concluded from this, Member States respond each in their own way to the migration crisis. There is a lack of a common European approach. Most of the Member States in reaction to the crisis have strengthened their existing legal ways to protection, or created new programmes. Nevertheless, the numbers remain low and even though resettlement has become quite a common practice, the other kind of legal ways of entry remain underdeveloped. Over the period 2013-2015, around 50,000 people in total have benefited from the extra programmes that have been implemented by the European

Member States (so outside the regular resettlement schemes). It is striking that almost all these programmes target Syrian refugees. Few of the programmes focus on Iraqi refugees.

In reaction to the crisis, some Member States, on the contrary, resorted to individual actions to prevent refugees and migrants to enter the country. But by building fences and reimposing border controls, migration flows will not necessarily stop and major problems in other countries are created by this.

Diverging interests and a lack of political will and cohesion among Member States prevent them from applying a more common European approach. The different extent to which the Member States are exposed to the problem, combined with the different social and economic situations of the countries, make the discussion at the European level very complicated. The fact that Member States want to preserve their autonomy in the area of asylum and immigration stands in the way of a collective response. In the context of the migration crisis, it is exactly the absence of a harmonised approach that has become evident and that prevented from taking steps to overcome the crisis.

The existing European policies have failed in two ways: they do not provide protection to those in need, and they do not support international solidarity and responsibility sharing. This has become more evident during the migration crisis, and the need for change is urgent.

The first initiative at the EU level came in May 2015, with the European Agenda on Migration. The Agenda still gives the idea that the focus is more on fighting irregular migration, than on providing ways to access protection. However, the proposal to create a European resettlement scheme is a positive development, but the number of places is modest and the basis for participation continues to be voluntary. Until now, the same Member States that were already involved in resettlement, participate in this scheme. Yet, the EU should coordinate and incite more the equal sharing of responsibility. In the first year of the scheme, moderated progress was made with one fourth of the total number being resettled.

In March 2016, the EU made an agreement with Turkey on the effort to stop irregular migration. A 1:1 mechanism was created: for every Syrian readmitted by Turkey the EU will resettle one Syrian from Turkey. The number of irregular arrivals into Greece has reduced drastically since the entry into force of this mechanism. However, it seems

that due to the hasty implementation less attention has been paid to the Human Rights aspects of this agreement. All refugees and migrants that arrived after 20 March are confined in the reception / registration centres where they need to be registered, where they can file an application for protection and where they have to wait for their case to be decided. At the moment of making this agreement, Greece was not prepared for assessing the asylum claims on the islands, the capacity was insufficient and there were no proper conditions to accommodate people decently and safely. Some of the major international organisations (including UNHCR and Safe the Children) suspended their activities on the Greek islands, because they refuse to be involved in the expulsion of refugees. Reception centres are overloaded, there are backlogs in registration, there are tensions between people in the camps and there is a lack of information on the processing. In line with international law and to avoid collective expulsion every individual must be guaranteed a personal assessment of their case. This means a heavy burden for Greece that needs extra resources and extra staff in order to do the registration and to process the asylum claims. For this it depends on the other Member States. Until now, only a small part of the extra staff that is needed and that should be provided by the Member States, Frontex and EASO, is actually deployed on the Greek sites. Until now, almost 400 persons have been sent back from Greece to Turkey. It is questionable if Turkey can provide sufficient protection to these persons. Concerns have been raised after a publication of Amnesty International that argues forced returns to Syria find place.³³² This would be illegal under international law.

Even though the EU is conscious of the limited effectiveness of the current approach and the fact that the instruments to govern this crisis are missing, no fundamental change of approach has taken place. The proposals made by the EU continue to be based on voluntary participation and so a real common approach, which is needed to address the migration crisis in an effective and efficient way, is still lacking. The document of 6 April on reforming the Common European Asylum System and the development of safe and legal pathways to Europe, the Commission focuses almost exclusively on labour migration regarding legal entry ways. In the reform of the CEAS the use of a proactive labour migration policy is proposed. This includes the risk that the most vulnerable refugees will be left out of the target group of this policy. Legal ways to

³³² Amnesty International, *Turkey: illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal*, 1 April 2016, available at: www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/

enter the EU can contribute to resolve the migration crisis if the focus will be on the aim of resettlement and other protected entry procedures, in other words, on providing protection to those in need. Instead of every Member State responding in its own way to the migration crisis, a common approach is needed in order to formulate an effective response.

It should be mentioned that this thesis is the result of a limited research in which the different instruments to create legal entry ways and the implementation of these have been described from a Human Rights point of view. It is clear that there are other elements that influence the formation of asylum and migration policies, but for the purpose of this thesis, these have been left out of consideration. However, it can be concluded that from a human rights point of view the (further) implementation of legal ways to access protection would have a positive contribution to tackling the crisis. This is because it would enhance the chances for refugees to access protection and avoid the need to undertake dangerous travels, it would contribute to combatting the smuggling in human beings and it would contribute to international responsibility sharing. Enhancing access to protection by strengthening legal ways touches upon the root causes of the migration crisis. The situation of the unusual high influx of refugees and migrants was aggravated by the fact that Europe was unprepared for this. Further, the lack of coordination between the Member States, but also between the different levels of governance within Member States, contributed to the development of the crisis. That countries are affected differently by the crisis and that the existing system failed to ensure equal responsibility sharing Member States stands in the way of a common approach to the crisis. Implementing legal entry ways could only be effective in its contribution to resolving the crisis if all Member States participate (each to their own possibilities and capacities) and if large differences in the policies for implementing the instruments are avoided. It is important to keep in mind that legal channels should exist next to the national asylum procedure, and not substitute it. In order to avoid that refugees resort to irregular migration they should be informed and they should know about the existence of legal avenues. In order to be effective, the number of available places should be increased, legal ways should be promoted and awareness campaigns might be necessary. Involvement of civil society could be highly relevant; it would help to raise public awareness and it would contribute to create a broad social consensus. It would have a positive effect on integration as well. Denmark is a good example of the

involvement of NGOs in the resettlement process. Private sponsorship programmes could play an important role in the involvement of civil society, and, moreover, it creates additional resources. Also the example of the pilot project in Italy, creating a humanitarian corridor, as a result of cooperation between different stakeholders could inspire alternative models for the future. The involvement of civil society has become even more important in the context of the ongoing discussion on the paradigm of the security environment with strengthened border controls and restrictive visa policies on one hand and widening access to protection on the other. Tensions exist between control and protection, because more border controls on one hand, create difficulties for persons in need of international protection to reach safety on the other. Moreover, the security aspect has become even more important since the terrorist attacks in Paris and in Brussels. But strengthening legal channels would also enhance security. Legal entry ways have the advantage that immigration is more controlled and that the identity of the admitted persons is known. Currently protected entry procedures are not part of the CEAS. However, they could become an important and useful part of it.

Once again, this is the result of only a limited research. In order to form a more holistic view, further research should be done on other elements of influence, as for instance the economic crisis, public opinion and the role of the media. Also the different responses from civil society could be analysed, including movements like “Refugees Welcome” and the formation of far right groups.

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