

UNHCR Written Contribution to the Public Consultation on the European Union's (EU) legislation on the legal migration of non-EU citizens (Fitness Check on EU legal migration legislation)

Introduction

UNHCR welcomes the initiative of the European Commission (EC) to collect evidence, experiences, data and opinions to support the evaluation, by the EC, of the existing EU legal framework for the legal entry and stay of nationals of non-EU countries to EU Member States (legal migration). UNHCR's primary interests in this consultation relate to the conditions for admission of third-country nationals for family reunification, study or research purposes, and work. This incorporates Directive 2003/86/EC on family reunification; Directives 2004/114/EC on Students and 2005/71/EC on researchers, later recast as Directive (EU) 2016/801 (entry into effect in 2018); and Directive 2009/50/EC on highly skilled employment (EU Blue Card).

Context

With the root causes of forced displacement and refugee flight unaddressed, the traditional approaches to solutions have proven inadequate. Innovative approaches are required, in collaboration with States and other partners, to help widen the options available for refugees with few prospects of attaining a durable solution. In the New York Declaration for Refugees and Migrants (hereinafter, the "New York Declaration") and the Comprehensive Refugee Response Framework ("CRRF"), adopted by the United Nations General Assembly on 19 September 2016, States made commitments to expand third-country solutions, including complementary pathways of admission, for refugees to be admitted to third countries. The New York Declaration also affirmed UNHCR's responsibility to support States to establish and expand complementary pathways of admission for refugees.

When durable solutions are not achievable for all members of a refugee population, particularly in large-scale and protracted situations, regulated and safe pathways of admission can help refugees access protection and sustainable solutions. Complementary pathways are not meant to substitute the protection afforded to refugees under the international protection regime –they complement it and serve as an important expression of global solidarity, international cooperation and more equitable responsibility sharing. In this regard, family reunification, scholarship and education programmes, and labour mobility schemes represent important safe, orderly and regular pathways of admission to protection and long-lasting solutions for refugees.

I. FAMILY UNITY AND FAMILY REUNIFICATION

In the New York Declaration, States commit themselves to considering the facilitation of family reunification. The obligation to respect the right of family unity is a basic human right, which applies irrespective of whether or not a State is a Party to the 1951 Convention relating to the Status of Refugees (hereinafter, the "1951 Refugee Convention").² Indeed, the UN General Assembly, New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1. 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. Universal Declaration of Human Rights recognises that the "family is the natural and fundamental group unit of society and is entitled to protection by society and the State." While the 1951 Refugee Convention does not confer a right to family reunification for refugees, this right is derived from universal human rights instruments and international humanitarian law.