STUDY

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European Parliament

Enhancing the protection of human rights defenders (HRDs): Facilitating access to the EU and supporting HRDs from third countries

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ABSTRACT

This study provides a comprehensive exploration of measures aimed at facilitating access to and expanding support for human rights defenders (HRDs) in the European Union (EU). Its introduction deals with the fundamental issue of defining HRDs which, in turn, will enable visa, borders and migration officers to apply the various recommendations here proposed. The subsequent section delves into the EU's Visa Code and Handbook, proposing substantial changes to accommodate the needs of HRDs seeking entry and short stays in the EU. For longer stays, the study examines available options within the existing legal migration *acquis* and possibilities offered by the Temporary Protection Directive. It also proposes a self-standing proposal for a Directive that aims to deal with HRDs' extended stays in the EU. Socio-economic assistance for HRDs is then discussed by proposing specific possibilities for additional measures, resources and policies at the EU level. The impact of digitalisation and EU databases on HRDs is also examined. Lastly, it presents recommendations categorised as soft-law and hard-law, providing a robust framework to safeguard HRDs and facilitate their access to the EU.

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Table of contents

List of abbreviations

CEDAW	Committee on the Elimination of Discrimination against Women
CoE	Council of Europe
CSDDD	Corporate Sustainability Due Diligence Directive
CSO	Civil Society Organisation
ECRIS	European Criminal Records Information System
ECRIS–TCN	European Criminal Records Information System – Third Country National
EEAS	European Union External Action Service
EES	Entry/Exit System
ETIAS	European Travel Information and Authorisation System
EU	European Union
EUAA	European Union Agency for Asylum
EUTRP	European Union Temporary Relocation Platform
FRA	European Union Agency for Fundamental Rights
HRDs	Human Rights Defenders
IOs	International Organisations
NDICI	Neighbourhood, Development and International Cooperation Instrument
NGO	Non-Governmental Organisation
NHRIs	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
SIS	Schengen Information System
SLAPP	Strategic Lawsuit against Public Participation
SLTD	Stolen and Lost Travel Document database
TDAWN	Travel Documents Associated with Noticed database
TFEU	Treaty on the Functioning of the European Union
TP	Temporary Protection
TPD	Temporary Protection Directive
UN	United Nations
VIS	Visa Information System

Executive Summary

This study aims to address the challenges and obstacles faced by human rights defenders (HRDs) when seeking access to the European Union (EU). It thus aims to propose comprehensive measures to make the EU more accessible for HRDs by facilitating their mobility. The study is grounded in EU Guidelines on HRDs as well as other EU and international commitments to safeguard their civil liberty, as they play a crucial role in protecting human rights and upholding democracy worldwide.

Based on extensive research, including interviews with experts from international and EU institutions, the Council of Europe (CoE), as well as academics and non-governmental organisations (NGOs), the following recommendations have been developed:

The identification of HRDs

Key to facilitating HRDs' access to the EU is the accurate identification of HRDs in accordance with EU and United Nations (UN) definitions. It is recommended here that experts working with HRDs be tasked with their verification and certification to facilitate visa, border and migration entry. This could be formalised through a 'trusted third party' system where various bodies, such as accredited organisations (e.g., UN, CoE and EU) and institutions (e.g., academic, research), as well as NGOs working with HRDs, would provide a letter of support to different categories of HRDs, depending on the type, duration as well as the reason for mobility and/or stay. This documentation should be clear, precise and complete, providing essential information about HRDs' identities and activities; it should serve to establish a presumption in favour of their status as HRDs. This presumption would be subject to security evaluations, but would prioritise the protection of HRDs. The list of trusted third parties should remain flexible to adapt to changing circumstances. It should be reviewed periodically and expanded to include organisations that meet the criteria for certifying HRDs. If there is any doubt regarding any individual's HRD status, visa officers should have clear instructions to contact the European External Action Service (EEAS) or refer to the EU's 'ProtectDefenders' mechanism for clarification. Accredited HRDs will have access to a number of facilitations proposed here, without prejudice to HRDs who do not have this letter of support, ensuring that the scheme is inclusive and does not disadvantage HRDs without contacts or access to trusted third parties. In every case, an accessible referral pathway needs to be established to facilitate the access of all HRDs to this 'trusted third party' system.

Short stays (90 days or less)

Proposed changes to the Visa Code include recognising HRDs as a specific category entitled to visa facilitations, allowing (indicatively): electronic visa applications; applications from outside the country of residence; waiving visa fees; reducing documentation requirements; expediting visa processing; providing multiple-entry visas; and supplying visas with extended validity (90 days). Should the Visa Code not be reopened for amendment, this study proposes targeted amendments to the Visa Code Handbook. The Visa Code is a flexible instrument that grants discretion for EU Member States to apply the derogations envisaged herein. For this reason, it is crucial that clear instructions be included in the Visa Code Handbook to enhance harmonisation among Member States and encourage them to apply the envisaged derogations for HRDs. Specifically, the Handbook should encourage EU Member States to treat HRDs as *bona fide* applicants, waiving additional documentation requirements, providing multiple-entry visas to HRDs and implementing other facilitations provided for in the Visa Code. Finally, the EU should consider incorporating specific provisions targeted to HRDs in existing facilitation agreements or exploring the development of tailored visa facilitation agreements for HRDs from third countries.

Extended stays:

For extended stays of HRDs in the EU, various key recommendations are proposed:

- Member States should allow HRDs with proper attestation to 'switch' to a longer-term residence status regardless of their existing immigration status;
- Work and study-related applications should be accepted even when HRDs are present within the EU's territory, irrespective of their immigration status;
- Formal issues such as travel document expiry should not be grounds for rejection and visa fees as well as other costs should be waived for HRDs;
- Requirements for comprehensive sickness insurance, accommodation and sufficient resources should be eased;
- When assessing public policy or national security, special care should be taken to avoid treating HRDs unjustly based on allegations from their country of origin;
- Suspensive right to appeal should apply against refusals based on formal or security grounds.

These recommendations extend to various categories such as Blue Card holders, intercorporate transferees, seasonal workers, students, researchers as well as interns and volunteers. Specific provisions should aim at providing flexibility, equal treatment and facilitation for HRDs in each category. These recommendations could be implemented either through amendments to the EU legal migration *acquis* or through Council and Commission recommendations to Member States.

Temporary protection

For HRDs at risk, this study proposes that the mass influx requirement in applying the Temporary Protection Directive (TPD) should cease. Standard criteria for identifying HRDs eligible for temporary protection should instead be developed, based mainly on the trusted third-party system and instructions from the EU External Action Service.

Proposal for an HRDs directive

The study further proposes a directive that regulates HRDs' entry and residence for periods exceeding 90 days, ensuring: expedited application procedures; the granting of temporary status during application for those already in the EU; provision of authorisations based on the intended purpose of stay; protecting HRDs' rights; and facilitation of access to socio-economic assistance. The directive would be applicable to those submitting letters of support from trusted third parties, who would confirm both individuals' capacities as HRDs and the reasons they need to stay in the EU for extended periods.

Policy recommendations:

In addition to the recommendations outlined above, this study emphasises the importance of addressing HRDs' socio-economic needs at both national and EU levels. For the latter, various key measures are proposed here:

- An EU Support Fund for HRDs should be established to provide financial assistance to existing HRDs programmes in Member States and encourage the creation of new initiatives;
- An EU Sponsorship Fund should be created to provide financial support to sponsors assisting HRDs with living expenses, healthcare and other necessities;
- Additional EU funding should be provided, directed towards capacity-building activities, training and awareness-raising campaigns related to HRD programmes;
- Facilitating networking and collaboration through conferences, workshops and online platforms will promote the exchange of best practices among EU Member States and other institutions (such as

universities) on existing arrangements and initiatives for HRDs. Monitoring and assessing the impact and effectiveness of existing national HRD programmes through an evaluation mechanism is crucial, with a particular focus on HRDs' experiences;

- At the EU level, comprehensive and transparent implementation of the existing guidelines on HRDs is imperative, with enhanced roles for EU delegations.

Furthermore, this study emphasises the need to incorporate HRDs in EU strategies by including explicit references to HRDs and their rights. Recognising HRDs and supporting actors through certificates, prizes and EU awareness campaigns is also important. The EU should be encouraged to promote and expand the scope of the EU Temporary Relocation platform, which is a critical step towards enhancing support for HRDs in the EU. Thus, additional funding should be provided to the ProtectDefenders mechanism and its coordinators. Ensuring access to housing, healthcare and financial services as well as support for employment, education and training is crucial, thus specific measures are proposed in this respect. Facilitating the access of HRDs' families into the EU is also pivotal. Finally, supporting civil society organisations is necessary as they often play a crucial role in identifying HRDs and providing support to them. By allocating funds to NGOs and other actors working directly with HRDs, the EU empowers these organisations to better support them. These socio-economic recommendations are integral to the present comprehensive approach to HRDs' support within the EU.

Borders

When dealing with attested HRDs, flexible approaches to travel document validity should be delegated to border guards, who should always grant a 90-day entry even where the reason for their entry is for a shorter period. Finally, HRDs should not be refused admission based on certain database entries and automatic suspensive effects should be granted for any appeal against refusal decisions.

Digitalisation and databases

Database recommendations focus on ensuring fair and just treatment for attested HRDs seeking entry into the EU. It is important to ensure that those from visa-exempt countries, who have been duly attested, are not summarily denied by the European Travel Information and Authorisation System (ETIAS) travel authorisations. Applications should be thoroughly examined, including the potential need for additional information and documentation to verify their status, as well as interviews if these are deemed necessary. Moreover, any rejection of an ETIAS authorisation or a visa application should not hinge solely on the presence of a Schengen Information System alert related to a prior failed asylum application or irregular residence status for attested HRDs. National authorities should actively consider the humanitarian grounds for granting ETIAS travel authorisations and make full use of this option. Additionally, ETIAS authorisations or visa applications for attested HRDs should not be declined solely on the basis of Interpol notices. To enhance this process, it is advised that specialised guidelines for handling ETIAS applications should be incorporated into the ETIAS Handbook.

In conclusion, these recommendations aim to create an effective system for HRDs to access the EU, ensuring their safety and enabling them to continue with their vital human rights work. The EU, with its commitment to protecting HRDs, can take meaningful steps to make the region a welcoming and supportive environment.

1 Introduction

This research follows a number of studies undertaken on the subject of enhancing protection and facilitating access to visas for third-country nationals who are human rights defenders (HRDs). This includes a detailed report by the EU Fundamental Rights Agency (FRA) which refers to: examples of practices by Member States that implement national HRDs programmes[1]; a European Parliament (EP) Implementation Assessment in 2022[2]; an own-initiative report in 2021[3]; a study by the Central and Eastern European Law Initiative (CEELI)[4]; EU Guidelines for HRDs[5]; a joint statement by non-governmental organisations (NGOs)[6]; and an EP resolution of 16 March 2023[7]. However, there is a need for concrete progress to be made on how EU law should be adapted to implement the changes necessary which will facilitate visa provision for HRDs and their work. The EU has recognised the need to support HRDs who are often at risk, isolated and vulnerable; it is now time to reflect on how best to do this through enhanced mobility options for them. Accordingly, this study sets out the practical measures needed to develop concrete and operational proposals on how policies, implementation guidance and legislation can be adapted to facilitate access by HRDs to the EU, thereby allowing them to continue their valuable human rights work.

This introduction briefly provides the study's context and objective, as well as a short analysis of the situation facing HRDs who are seeking entry into the EU. It also addresses the definition of HRDs and proposes a process that will help visa, borders and migration officers identify them to facilitate their access to the EU.

1.1 Context

Three areas of EU law are targeted specifically in this study:

- The Schengen visa and Borders codes together with the specific guidance and amendments that are needed to accommodate HRDs' needs;
- The measures needed to facilitate HRDs' longer stays when called for by their circumstances;
- The measures needed to safeguard HRDs in the face of digitalised visa processes and the processing of their personal data in the framework of interoperable EU large-scale IT systems (databases).

HRDs face various problems in gaining entry to the EU. Firstly, they are often refused Schengen short-stay visas because they fail to fulfil all requirements (e.g., income, sickness insurance, information about marital status and family, return tickets) or because the visa officer doubts that they will leave the EU at the end of their permitted stay. Secondly, when they arrive at the border, they may encounter related questions and concerns from border officials regarding their income and purposes. Thirdly, when they are under pressure in their country of origin, they may need 'breathing space' in the form of an extended stay in an EU country where they are not in constant fear for their lives or the welfare of their families. This means that mechanisms must be in place to enable stays exceeding 90 days out of every 180 and the necessary

[1] FRA, Protecting Human Rights Defenders at risk: EU Entry, Stay and Support, 11 July 2023.
[2] I. Ioannides, 'EU Guidelines on Human Rights Defenders: European Implementation Assessment', European Parliamentary Research Service, August 2022.
[3] EP, The EU Guidelines of Human Rights Defenders, 2021/2204 (INI), 2021.
[4] A. Meloni, J. Gaspar, A. Feruz, C. Elliott-Magwood and C. Lehmann (eds), Human Rights Defenders in EU Visa Policy: Recommendations for Reform, *CEELI*, 2021.
[5] Council, Ensuring Protection: EU Guidelines on Human Rights Defenders, Council document, 16332/2/08 REV 2, 10 June 2009.
[6] ProtectDefenders, 'Joint Statement: International Civil Society Organisations call for an effective and enabling EU Visa framework for At-Risk Human Rights Defenders', 2022.
[7] EP, Resolution of 16 March 2023 on the EU Guidelines on Human Rights Defenders (2021/2204 (INI)), P9_TA(2023)0086, 2021.

accompanying socio-economic rights. Finally, they may be at risk of persecution, torture or arbitrary disappearance in their country and need international protection from the EU. All these scenarios must be accommodated through amendments to EU policy and law.

HRDs are a vital component of human rights implementation and monitoring, sub-nationally, nationally, regionally and internationally. There are multiple forms of HRDs all of whom may need access to international mobility in pursuit of their activities. One group, environmental HRDs[8], are specifically covered by international law through the Aarhus Convention to which the EU is a party (Article 3(5))[9]. Other HRDs are covered by the mandate of the United Nations (UN) Special Rapporteur on the situation of human rights defenders and in the EU the Guidelines, Council Decision, Parliament resolutions and other documents cited in the FRA report 2023[10]. Many references to HRDs are made in the proposed Strategic Lawsuit Against Public Participation (SLAPP) Directive, albeit without a definition of who they are[11]. As noted by the FRA in its report on the proposed Corporate Sustainability Due Diligence Directive (CSDDD), the EP has also proposed a new recital on HRDs given that 'human rights and environmental rights defenders are on the front line of the consequences of adverse environmental and human rights impacts worldwide and in the EU have been threatened, intimidated, persecuted, harassed or even murdered. Companies should therefore not expose them to any kind of violence'[12]. Yet again there is no definition of an HRD.

The risks which HRDs face in their daily work are enormous often extending even to extra-judicial killing. These risks are well described in the FRA report where the statistics on HRDs' deaths are shocking[13]. Not all HRDs find themselves in the same situations and some are better protected than others. Hence, the practical concrete measures needed for their protection vary. A quick overview is as follows:

- Firstly, the most well-protected are those HRDs which form part of the state, *inter alia* Ombudspersons, National preventative mechanisms[14], data protection supervisors. For these HDRs embedded in state institutions, access to international mobility is generally facilitated by the state of origin, at least when such inter-state mobility is accepted as part of the normal duties of these HRDs. Ensuring practical measures for EU access to these HRDs is the first element. However, these HRDs may suddenly find themselves at high risk due to regime changes. For instance, Afghan HRDs after the fall of Kabul found themselves in such a changed situation. Under circumstances of radical political change, these HRDs may be particularly vulnerable because of their high visibility.
- Secondly, certain HRDs are employed by intergovernmental and international organisations (IOs)[15] where the weight of authority from their employers is frequently sufficient to assure their access to inter-state mobility, though this needs to be set out in law. Yet, as the experts were told in interviews

[8] Defined as: 'individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna'.
[9] See the Aarhus Convention (1998) on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
[10] FRA, Protecting Human Rights Defenders at risk: EU Entry, Stay and Support, 2023, op. cit., page 1.
[11] European Commission, Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM/2022/177 final, 27 April 2022.
[12] Recital 65a, European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final, 23 February 2022.
[13] FRA, Protecting Human Rights Defenders at risk: EU Entry, Stay and Support, 2023, op. cit., page 1; see also R. Shreeves, EU Guidelines on Human Rights Defenders, European Parliamentary Research Service, PE 739.386, March 2023.
[14] Part of the national implementation of the Optional Protocol of the Convention against Torture.
[15] The interviewees were consistent when responding to this question on the uneven access to visa facilitation for their HRD employees. These interviews were undertaken under Chatham House rules, therefore the authors agreed upon not to reveal the names of those who provided specific information for this study.

conducted for this study (see Annex I), even very well-known and respected IOs regularly encounter visa-induced obstacles to the mobility of their staff, affiliates or correspondents into the EU for short stay purposes.

- Thirdly, HRDs who work for international NGOs such as Amnesty International or Human Rights Watch are more vulnerable to refusals of visas and access to the territory, but with the assistance of their employers solutions may be found. A formal mechanism for facilitating HRD visa applications needs to be made concrete and become a requirement in various EU authorisation processes. For these HRDs, evidence of their employment and confirmatory letters from their employers are critical to overcoming the visa-induced obstacles. Frequently, confirmation of an individual's status as an HRD is also verified by an official in the national Ministry of Foreign Affairs (usually in consultation with their respective capitals). Although they have designated officers responsible for HRDs, for the moment, there does not appear to be a structural role for European External Action Service (EEAS) delegations in the visa process. One recommendation is thus to change this.
- Lastly, those who are the least protected regarding international mobility are HRDs who work for national or sub-national bodies or associations where relations with state authorities are strained. This group may include, for instance, lawyers working as self-employed persons, journalists, artists and others. These HRDs are also likely to be poorly remunerated or indeed may be volunteers, which may make access to cross-border mobility exceedingly difficult, if not impossible. This group needs specific attention and facilitation in EU law to prevent discriminatory access to visas, borders and stays in the EU. Now, mobility for HRDs is closely linked with their visibility and the networks on which they can rely to obtain assistance and pressure on state authorities to facilitate this.

The study proposes that these informal systems of assistance to HRDs in visa processes be formalised in law and guidance. This will provide consistency across EU Member States and a level of certainty for applicants. Instead of relying on informal networks of contacts within IOs, NGOs or other actors and visa issuing authorities, a common set of criteria and duties will render the system more equal, accessible and coherent.

An illustrative example of the border-protection nexus for the protection of HRDs

A Cambodian woman, working both as a farmer on her family's land and a teacher, sought to protect herself and her community from arbitrary expropriation of her and her community's land by an international company closely linked to a government ministry. When harassed by state authorities (including death threats) and refused judicial redress, she and her family fled to neighbouring Thailand fearing arrest and death given the atmosphere of fear in the state concerning rural women defending human rights in land disputes. However, they were forcibly returned to the state two years later where state harassment and persecution recommenced.

The Convention on the Elimination of Discrimination against Women (CEDAW) Committee found multiple breaches of the CEDAW convention by the state.

Source: CEDAW Committee, Communication No 146/2019, 7 June 2023.

1.2 Definitions

The EU Guidelines on HRDs[16] are based on paragraph 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. This paragraph states that '[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels'[17]. HRDs are those individuals, groups and organs of society that promote and protect universally recognised human rights together with fundamental freedoms. They seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. HRDs also promote and protect the rights associated with members of groups, such as indigenous communities. Beyond its guidelines, the EU must also ensure a uniform application of the Aarhus Convention, to which it is a party, regarding the protection of environmental HRDs.

As the FRA notes, the EU considers HRDs to be 'natural and indispensable allies' in promoting human rights and democracy; they are 'essential in our constitutional democratic societies to bring life to and protect the values and rights enshrined in Article 2 of the Treaty on European Union and in the Charter'[18]. Hence, both within and beyond EU borders, the EU and its Member States underline their support to HRDs, as aligned with UN and regional human rights commitments.

Concerns both at international and European levels regarding the defence of HRDs have been extensive. In 2020, the UN established a Special Rapporteur on the situation of human rights defenders who has given a universal mandate[19]. In 2018, the Council of Europe (CoE) established special procedures for the defence of HRDs through investigating alleged reprisals against HRDs as a consequence of their interaction with the CoE[20].

In the EU, action to support HRDs has been focused on third countries, in particular on the situation of third country national HRDs and how the EU can work to help them, for which the principal actor is the EEAS. HRD protection is incorporated into external policy through a range of mechanisms engaging with the EEAS, including 140 delegations around the world and its Brussels headquarters[21]. There has been concerted action over the past 20 years to increase the effectiveness and extent of EU policies in defence of HRDs, in particular through EEAS efforts. This has taken the form of action in HRDs' countries of origin or activity rather than access for HRDs to the EU. However, pressure has been increasing regarding the access of third country national HRDs to the EU for various purposes. According to the interviews conducted for this study, a number of Member States have criticised the refusal of short-stay visas for HRDs to enter the EU for seminars and other events, as illustrated by the difficulties of finding sponsorship for Afghan HRDs after the Taliban's 2021 takeover of Kabul, a key issue in discussion. Between the question of short-stay visas and residence for longer periods, the lack of options in EU law has been highlighted.

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[16] For more information, see the EEAS website for an introduction to the 'EU Guidelines on Human Rights Defenders', webpage, 21 June 2016.

[17] UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, UN General Assembly Resolution 53/144, 9 December 1998.

[18] European Commission, 'A thriving civic space for upholding fundamental rights in the EU 2022 Annual Report on the Application of the EU Charter of Fundamental Rights', 2022, p. 3.

[19] See for example, UN General Assembly, Extension of Mandates and Mandated Activities: decision / adopted by the Human Rights Council on 13 March 2020, UN doc., A/HRC/DEC/43/115, 16 March 2020; and UN General Assembly, Mandate of the Special Rapporteur on the situation of human rights defenders: resolution / adopted by the Human Rights Council on 22 June 2020, UN doc., A/HRC/RES/43/16, 6 July 2020.

[20] CoE, 'Private Office procedure on human rights defenders interacting with the Council of Europe', 2019.

[21] See EEAS, 'Human rights defenders', website, 28 September 2021.

In 1999, Member States provided the EU with competence over short-stay visas, border control and surveillance rules, as well as migration and asylum. At the same time, they incorporated into EU law most of the *acquis* of an intergovernmental system called 'Schengen', creating a control-free border area within (most) of the Member States and common external border measures. Exercising these new competencies took place throughout the first decade of this millennium and was hampered to some extent by the division between full EU competence in some areas and Schengen authorities acquiring competence on visas, border controls and expulsion. This continues to be a point of some friction within the EU regarding what is a continuation of the Schengen *acquis* and what is the exercising of full EU competence. This history affects HRDs seeking visas and entry to the EU as there continue to be tussles over Member States and EU competences, which can detrimentally impact a consistent, EU-wide system for HRDs. These gaps can simply be resolved through guidance on the application of or amendment to the Schengen extension measures (for instance the Visa and Borders Codes), accompanied by guidance and amendment of EU rules on migration and/or an HRD-specific directive.

The definition of an HRD has been addressed by both the UN and the EU. Within the former, responsibility for HRDs has been allocated to the UN Office of the High Commissioner for Human Rights (OHCHR). It states that 'human rights defender' is a term used to describe people who, 'individually or with others, act to promote or protect human rights in a peaceful manner'. HRDs are identified above all 'by what they do, and it is through a description of their actions[22], and of some of the contexts in which they work'[23], that the term can best be explained.

The definition adopted by the EU expressly follows that of the UN:

'Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as Indigenous communities. The definition does not include those individuals or groups who commit or propagate violence'[24].

The proposed SLAPP Directive makes explicit reference to HRDs, but does not define them. Similarly, the proposed CSDDD has implications for HRDs as confirmed in the Parliament report, but does not define them either[25]. While the EU Asylum Agency (EUAA) does not define HRDs, it does include in its country reports, those states where human rights activists are at a heightened risk of arbitrary arrests, detentions, abductions, forced disappearances, prosecutions, death threats, restrictions of movement, defamation and other forms of intimidation.

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[22] To be a HRD, a person can act to address any human right (or rights) on behalf of individuals or groups. HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights.

[23] There is no specific definition of who is or can be a HRD. The Declaration on HRDs refers to 'individuals, groups and associations […] contributing to […] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals' (fourth preambular paragraph). In accordance with this broad categorisation, human rights defenders can be any person or group of persons working to promote human rights, ranging from intergovernmental organisations based in the world's largest cities to individuals working within their local communities. Defenders can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds. It is important to note that human rights defenders are not only found within NGOs and intergovernmental organisations but might also, in some instances, be government officials, civil servants or members of the private sector.

[24] Council, EU Guidelines on Human Rights Defenders, 2009, op. cit., page 1, paragraph 3.

[25] EP, Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)), P9_TA(2023)0209, 1 June 2023.

A definition for environmental HRDs can be found in the regional Escazu Agreement[26], where Article 9(1) states that 'each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters so that they are able to act free from threat, restriction and insecurity'.

According to all the definitions, being an HRD is a badge of honour, a status which merits respect and protection on account of the importance which is accorded to those who defend human rights and democracy. As mentioned above, the FRA notes that: 'The EU considers human rights defenders "natural and indispensable allies" in promoting human rights and democracy'[27].

There are many ways in which the EU seeks to support HRDs and their work. However, this study will address only the international mobility issues for third country national HRD where the EU has the power to facilitate cross border movement and residence. There are four main types of mobility which need to be considered:

- The participation of HRDs in short duration activities in the EU, *inter alia* conferences, seminars, panels;
- Access to the EU for longer periods for the purpose of rest and respite from potentially problematic situations in the country of origin (or work);
- Access to the EU for a just-in-case safety net in case of risk;
- Relocation to be protected from risks to life, physical integrity and liberty.

Each of these mobility types engages Member States' visa officers, border and immigration (or asylum) administrators, state bodies responsible for determining entry and residence in the EU and its Member States. The EU Guidelines have clearly confirmed the intention of enabling HRDs to come to the EU for all the above purposes individually or potentially in combination. The problem is how to ensure that HRDs can access this facilitated treatment.

While international and EU bodies have deliberately provided a very wide and inclusive definition of HRDs for visa, borders and immigration officials to carry out their functions properly, they must have the ability to carry out identification with the highest degree of accuracy. The advantages of a wide definition, able to encompass many distinct types of HRDs (from street artists to landless agricultural workers) are very substantial to provide much-needed protection. However, the disadvantages are considerable for visa/border/migration control officials whose main job is not identifying HRDs, but determining who should and should not be allowed to enter the EU, a strong focus being on preventing irregular migration and thereby safeguarding national security. Hence, a key challenge is designing a system which is sufficiently precise to identify correctly those HRDs who are entitled to receive facilitated treatment in visa/border/migration procedures.

The identification of genuine HRDs, as opposed to those who otherwise seek EU access without fulfilling the criteria, is not a challenge exclusive to this situation. While the wide HRD definition can be problematic for these officials[28], their daily work requires them to make decisions on many other categories of applicants, from medical specialists to dancers, whose admissibility depends on the certification of their

[26] It covers countries in the Caribbean and Latin America; See Chapter XXVII, on Environment. United Nations, 18. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Treaty Series, 4 March 2018.
[27] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit., page 1.
[28] For example, border, visa and immigration officials.

expertise. The EU legislator has sought to resolve these problems with a system of trusted third-parties' documentation, that is referred to in Annex II of the Visa Code which contains a non-exhaustive list of supporting documents for distinct types of applications including *inter alia* business trips or journeys undertaken for political, scientific, cultural, sports or religious events. This Annex is explicitly non-exhaustive and many EU Member States in third countries' visa posts require additional documentation tailored to the perceived irregular migration or security risks there[29]. Hence, to some extent the coherence of Annex II has been broken, a lesson which should be heeded when designing procedures for HRDs. Considering the sensitivity of their situations, a more robust system of documentation constructed by trusted third parties is needed whereby any HRD in possession of such documentation must be allowed facilitated treatment by visa, border and migration officials.

It may be that a tiered system of trusted third parties will need to be adopted by the EU legislator, ranging from those whose documentation of an HRD is definitive (subject only to a genuine and evidenced security threat) to those whose documentation creates a presumption in favour of facilitated treatment. Trusted third parties need to be designated according to the purpose for which the HRD seeks facilitated access to visa, border and migration procedures. For instance, a wide range of trusted third parties should be entitled to issue such documentation for short stays within the scope of the Schengen Visa and Borders Codes.

The **UN**, **CoE**, and the **Organisation for Cooperation and Security in Europe** accredited bodies should be recognised as trusted third parties regarding the identification of HRDs for short stay purposes. Similarly, **FRA-**accredited bodies should enjoy the same status as well as members of the EU Temporary Protection Platform and **ProtectDefenders**. The EU legislator may wish to build flexibility into the list to cover changing circumstances. **Universities and other educational institutions**, **NGOs** and other similar bodies in the EU which issue invitations to HRDs to attend events within the EU should qualify as trusted third parties for these purposes. When a visa applicant holds a letter from one of these trusted third parties confirming their status as within the EU definition of an HRD, there need to be clear instructions to visa officers to treat such a letter as conclusive or establishing a presumption regarding the individual's status, in the absence of fraud or falsification. The recognition of this status should entitle the individual to the facilitated procedures discussed elsewhere in the study. In the event of any reasonable doubt on the part of the visa officer regarding the status of the individual, he or she should immediately contact the EEAS-designated HRD officer or refer to ProtectDefenders for clarification.

The establishment of an individual's status as an HRD by a trusted third party does not affect the visa officer's duty to ensure that the visa applicant is not a security risk to security. Whilst that is a separate assessment, with respect to HRDs it needs to be addressed in the full knowledge that the HRD's national authorities may make unfounded allegations about the individual as a threat to national security based on their legitimate human rights activities within the definition of HRDs. Where an HRD's identity is listed in the Schengen Information System (SIS) as a person to be refused access to the territory of the EU, a rapid review system needs to be in place (see Section 4).

The list of trusted third parties for visa and border procedures will be different from those for the purposes of longer stays for educational, training or research activities. As set out in Section 3, these trusted third parties will be sponsors, as required under EU measures applicable to extended or long stays.

For those HRDs with protection needs, even seeking assistance to leave their country may heighten their risk. Those able to leave their home state to go to a country for which they do not require a visa may still be in substantial need of relocation on account of inter-state cooperation between their country of origin and the country where they have been able to enter.

[29] This is to say, because the Annex does not limit the documentation required for a Schengen visa, Thus, many EU visa posts have added substantial addition documentation which may not be foreseen in the Annex.

In the first instance, those responsible for HRDs in **EEAS delegations** within third countries should be charged with issuing standard documentation for visa, border and migration purposes. Through the **EEAS network** coordinated in Brussels, specific procedures for the issue of such documentation should be established, which need to be clear, precise and complete. Those in the delegations responsible for HRDs should be coordinated accordingly by the headquarters in Brussels and not the relevant state's Ambassador, given that the primary duty of Ambassadors is to enhance and retain relationships with governments. As HRDs may be greater or lesser irritants to those governments, the capacity of Ambassadors to do their job should not be compromised or hampered by any responsibility regarding HRDs' documentation.

In the second instance, **National Human Rights Institutions** (NHRIs) in third countries often provide initial assistance to HRDs in difficulties. Under the Paris Principles, NHRIs are subject to a ranking system which is maintained by the **OHCHR**. Those ranked as compliant should be able to issue certification documentation regarding HRDs in their country which either create a presumption in favour of an individual's status or are conclusive in providing such status, given the absence of fraud or falsification (without prejudice to security evaluation). In the event of doubt, documentation could be verified by the local EEAS member responsible for HRDs.

In the third instance, **international and regional NGOs** should also be listed as trusted third-parties for this purpose. There are specialised organisations already working in this area within the EU. **ProtectDefenders**, is foremost in this category and host of the abovementioned Temporary Relocation Platform for HRDs. As part of its work, vetting HRDs is intrinsic and hence their expertise is critical. Other important NGOs are working in this area such as Scholars at Risk and Artists at Risk, which focus on a specific group of HRDs by occupation, and others such as **Front Line Defenders**[30], which focus on all HRDs at risk. These bodies should be authorised to produce HRD documentation for visa/border/migration purposes.

For those claiming to be HRDs who spontaneously approach visa, border and migration officials, a concrete system for their immediate referral to the local EEAS officer should already be in place. On the EEAS website (and where existing EEAS delegation websites) a specific (searchable) webpage should explain the EEAS activities regarding HRDs. There should also be a dedicated email address which HRDs can use to contact the EEAS headquarters in confidentiality with the guarantee of a response within a specific timeframe either from the headquarters or someone responsible for HRDs in their country of origin or work.

As mentioned above, the great advantage of this trusted third-party approach is to remove from the responsibilities of visa, border or migration officials the onerous task of determining who is an HRD, instead leaving this to the experts, namely those working in the field. A robust system of reviewing trusted third parties to ensure that no irregularities are occurring must also be established. The possibility of double verification by the EEAS should resolve any outstanding concerns that visa officers may have.

For countries where there are systemic violations of human rights and threats against human rights activists as determined by the **EUAA,** the Council should propose the opening of a temporary protection (TP) scheme, possibly with a territorial scope to include the countries where there are systemic violations and a personal scope to those with documentation proving that they are HRDs[31]. Regarding the Ukraine TP scheme, Article 11 of the Directive should be suspended to allow these HRDs the possibility of moving to the EU. This TP scheme should be subject to annual review by the European Commission regarding its geographical scope where applicable.

[30] See Front Line Defender's website, nd.

[31] See L. Apostol, 'Methodology for assessment of systemic human rights violations', Council of Europe, February 2020.

The following Sections will use this framework to examine the policy, guidance and legal changes which are needed to introduce a system of access facilitation to the EU for HRDs in all three categories (see 1.1), which is workable and effective for achieving this objective. The study will investigate each aspect of HRDs' mobility in four Sections: (a) visas; (b) extended stays; (c) socio-economic rights; as well as (d) borders, digitalisation and databases. Each Section will first explain the issue at stake and then propose (i) policy guidance not requiring legislative change which could be put into place to achieve the objective; (ii) precise legislative changes which could be made to achieve the result in law and thus would be more durable and legally effective than policy guidance. The study also sets out the essential elements for a dedicated directive on HRDs' mobility to the EU should the EU legislator prefer this approach to the amendment of existing EU measures, most of which have recently been recast. The conclusion will also review anticipated progress under the Spanish Presidency and the viability of achieving the objective.

2 Amendments to the EU Visa Code and the Handbook

Section 2 aims to address gaps in the existing EU legislation on short-stay visas to facilitate HRDs' access into the EU. This Section proceeds as follows. The first part focuses on targeted amendments to the Visa Code to ensure that the special needs of HRDs are considered when processing short-term (90 days in a 180-day period) visa applications[32]. In the second part, the focus shifts to soft law, specifically the Visa Code Handbook[33]. The latter proposes options for making better and more frequent use of the existing flexibility in EU Law to enhance procedural facilitations for HRD visa applicants. Finally, this Section proposes possibilities for including specific provisions in visa facilitation agreements. In summary, the primary objective of Section 2 is to create a visa application procedure that is more accessible for HRDs who are looking for short-term movement into the EU.

2.1 Proposals for legislative initiatives: Amendments to the EU Visa Code

This Section focuses on proposing specific and targeted amendments to the EU Visa Code in official recognition of HRDs as forming a distinct and special category of applicants who are entitled to facilitations within the visa application process[34]. Recognising that the recent Visa Code reform in 2019 may preclude imminent amendments, it is important to approach these recommendations in tandem with the following subsection (about soft law amendments). This approach is essential to ensure an optimal visa procedure for HRDs.

Reference to HRDs should already be provided in the Visa Code recitals. It is worth recalling that the EU's commitment to HRDs here in its external human rights policy, highlights the importance of EU Guidelines and encourages practical support to facilitate defenders' mobility. Furthermore, these recitals should emphasise the risks faced by HRDs during their activities, the potential impacts on their families and hence the importance of temporary relocation to the EU as part of the EU's broader protection plans.

2.1.1 Inclusion of the definition of an HRD in the Visa Code

To recognise HRDs as a category entitled to visa facilitations[35], it is essential to provide their definition in the Visa Code. As mentioned in the introduction, although EU legislation refers to HRDs (e.g., in the SLAPP Directive), it does not define who they are. In this respect, Article 2 of the Visa Code should be amended as follows:

- Article 2 of the Visa Code. *For the purpose of this regulation the following definitions shall apply:*

  14. A 'human rights defender' is an individual who falls within the definition envisaged in the EU Guidelines on Human Rights Defenders and has been attested as such by a trusted third-party through an official letter of support.

[32] 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), Official Journal of the EU, 15 September 2009 (hereinafter Visa Code).
[33] European Commission, Annex to the Commission Implementing Decision amending Commission Decision C (201) 1620 final as regards replacement of the Handbook for the processing of visa applications and the modification of issued visas (Visa Code Handbook I) C (2020) 395 final, 28.01.2020.
[34] ProtectDefenders, 'Joint Statement: International Civil Society Organisations call for an effective and enabling EU Visa framework for at-risk Human Rights Defenders', 2022, op. cit., page 1..
[35] The abovementioned CEELI report on Human Rights Defenders in EU Visa Policy: Recommendations for Reform proposes the explicit inclusion of HRDs as a category entitled to certain visa facilitations in the legal instruments on visas.

15. A 'trusted third party' is a recognised actor, organisation or entity that falls within one of the categories specified in Annex [xx] and has the authority to issue a letter of support for HRDs.

2.1.2 Facilitated visa application procedure for HRDs

Electronic application

Article 10 of the Visa Code specifies the general rules for lodging visa applications. This provision initially required the in-person lodging of a visa application. By way of a positive development, the 2019 amendment to the Visa Code made possible the electronic lodging of an application, where it is available[36]. However, an in-person appearance is still necessary for the collection of fingerprints[37]. As HRDs may face difficulties in travelling to consulates or external service providers[38], as certain Member States do not even have a consulate where the applicant resides, or the consulate is not easily accessible[39], all Member States need to establish electronic visa application systems. Visa applicants should be able to submit their application and provide data required in the application form, a scanned copy of the travel document and supporting documents in digital format through the application platform[40]. Additionally, an electronic procedure should be established for identity verification, which could take place for example through an online application[41]. This electronic identity verification system would ensure that HRDs do not have to appear in person before an external service provider or a competent consulate for the collection of biometrics. It may be that certain risks exist regarding the availability of secure online connection for visa applicants, which will not be subject to data breaches and cyber security attacks, as well as possible issues associated with digital literacy. To make the visa application process more accessible and safer for HRDs, it is of utmost importance, therefore, to foresee a secure online visa application system in the Visa Code. This has also been confirmed in the EU Pact on Migration and Asylum, which aimed at making the visa procedure fully digitalised, with a digital visa and the ability to submit visa applications online[42]. In this regard, the following amendment is proposed:

- Article 10 (1). *Each applicant shall submit a manually or electronically completed and signed application form, as set out in Annex I. All Member States shall establish an electronic visa application system. Applicants shall appear in person when lodging an application for the collection of fingerprints, in accordance with Article 13(2) and (3) and point (b) of Article 13(7). Applicants may also verify their identity electronically, where available.*

[36] Recital 20 of the Visa Code: 'Electronic application systems are an important tool to facilitate application procedures'.
[37] Article 10 (1), Regulation 810/2009 as amended by the Regulation 2019/155 of the European Parliament and of the Council of 20 June 2019. Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), Official Journal of the EU, L 188/25, 12 July 2019.
[38] Article 8 of the Visa Code envisages that 'If a Member State is neither present nor represented in the third country where the applicant is to lodge the application, that Member State shall endeavour to cooperate with an external service provider, in accordance with Article 43, in that third country'. However, this option should be a last resort, whereas Member States should offer all applicants the possibility to lodge applications directly at the consulate.
[39] This is a common problem according to the CEELI report (op. cit., page 1). In the report 30 % of the respondents indicated that there was no consulate within a half-day of land travel.
[40] European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 1683/95, (EC) No 333/2002, (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure, COM(2022) 658 final, 27 April 2022.
[41] A very good example is the 'UK Immigration: ID Check' app that allows applicants to verify their identity through their mobile phone, without having to appear in person to consulates. UK government, 'Using the 'UK Immigration: ID Check' app', website, 5 October 2020.
[42] C. Dumbrava, K. Luyten and A. Orav, EU Pact on Migration and Asylum, European Parliamentary Research Service, PE 739.247, June 2023.

Applying from outside the country of residence

According to Article 6 Visa Code, only applications lodged by persons who reside legally in the jurisdiction of the competent consulate should be accepted. However, paragraph 2 of the same article provides for an exception when a third country national is legally present, but not residing in the jurisdiction of that state if the applicant has provided justification for lodging the application at that consulate. Hence, it is necessary to include HRDs explicitly in this provision:

- Article 6. '*Applications submitted by HRDs who are present in a state other than their country of residence should be examined when justification is provided*'.

HRDs should have the ability to relocate to another country, perhaps a neighbouring country, where they can easily attain access, knowing that they can initiate the visa application there. This is particularly important in cases where their activism might lead to biases or unfair treatment within their home country's system or if there is a risk or anticipated risk related to their human rights work if they remain in their home country. However, it is crucial to acknowledge the significant challenges HRDs face when attempting to relocate, even to neighbouring countries. There have been various cases where HRDs have been either forced to enter a neighbouring country irregularly or have entered legally, but then overstayed their visas, which often excludes them from access to visas and regular immigration channels. This situation poses a significant problem for HRDs, as they are left with few options for regular entry or stay. Recognising these challenges, this recommendation aims to provide HRDs with a clear and accessible pathway for lodging visa applications, even in cases where legal access to neighbouring countries may be difficult, thereby addressing some of the hardships and risks they face.

Visa fees

To support HRDs further, it is proposed that waiving or reducing the visa application fee for them should be considered, recognising the significance of their work and the potential financial barriers they may face[43]. Accordingly, both Article 10 and Article 16 should be amended. Article 16 (4) outlines some categories of applicants for whom visa fees are to be waived[44]. HRDs should be explicitly mentioned as a visa fee-exempt category. Although some HRDs might qualify within the current category of 'participants aged 25 years or less in seminars, conferences, sports, cultural, or educational events organized by non-profit organisations', this is limited in terms of age and purpose of visit. By explicitly exempting HRDs from visa fees, financial burdens can be alleviated, encouraging more HRDs to participate in international events or engage with the EU or national institutions[45]:

- Article 16 (4). *The visa fee shall be waived for applicants belonging to one of the following categories [..] (e) human rights defenders as defined in Article 2 of this Regulation.*
- Article 10 (3). *When lodging the application, the applicant shall: [..] (e) pay the visa fee; unless the person falls within one of the categories outlined in Article 16 (4).*

Another option would be to propose an amendment to Article 16(6) to include human rights interests explicitly as a basis for waiving or reducing visa fees:

- Article 16 (6). *In individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign*

[43] Article 10 (3e) of the Visa Code specifies that the payment of the visa fee is a requirement for the lodging of the application.
[44] Such as children under six years, students, researchers, representatives of non-profit organisations aged 25 years or less participating in seminars.
[45] In addition to the application fee, a service fee by an external service provider (based on Article 17 Visa Code) should not be charged to HRDs.

policy, development policy, human rights and other areas of vital public interest or for humanitarian reasons.

Supporting documents

A different part of the facilitation process concerns the supporting documentation that should be submitted in a visa application, as specified in Articles 10 to 15 of the Visa Code. These include a travel document, a photograph, supporting documents such as documents indicating the purpose of the journey, documents about accommodation, proof of sufficient means of subsistence, information enabling an assessment of the applicant's intention to leave the territory of the Member State and, where applicable, proof of adequate and valid travel medical insurance cover[46]. The requirement for submitting some of the supporting documents may be waived in the case of applicants known for their integrity and reliability according to Article 14 (6) of the Visa Code. This arrangement should also be extended to HRDs who qualify for treatment as *bona fide* applicants. It may often be difficult and burdensome for HRDs to provide all the necessary documents, such as the documents that prove sufficient means of subsistence. They may have either low or no income, thus making it difficult to collect sufficient evidence of subsistence and prove their financial stability[47]. In addition, HRDs will have already submitted various documents to prove their status to the trusted third party; hence, this letter of support should be enough to prove their capacity. In this respect, the following amendments are proposed:

- Add in Article 14: *Attested HRDs shall submit the trusted third party's letter of support when lodging the application, which shall be recognised as sufficient evidence of the applicant's status as an HRD.*
- Add a paragraph in Article 14: *The requirements of Article 14 (b)[48] and (c)[49] shall be waived for attested HRDs. In such cases where the standard documentation requirements are waived, a trusted third party or the applicant can provide any additional information supporting the application. It should also be presumed that HRDs who are 'VIS [*Visa Information System*] registered applicants'[50] fulfil the entry conditions regarding the risk of irregular immigration and need to possess sufficient means of subsistence*.
- Add in Article 15. *HRDs shall be exempt from the requirement to hold travel medical insurance*.

Overall, in the cases where HRDs submit a trusted third-party's letter of support, they should not be required to provide additional documentation proving their means of subsistence. Of course, it will still rest within their discretion to submit any additional documentation in support of their application, such as: confirmation that they have received funding for their stay in the EU; proof of accommodation under an EU or a Member State initiative; verification of medical coverage through a sponsoring organisation; or indication of any other means of financial support they may have received.

Visas at external borders

Another important amendment could be made in Article 35 of the Visa Code, which is relevant as it gives Member States discretion to issue visas at the external borders in exceptional cases. This will be enormously

[46] Articles 10, 14 and 15 of the Visa Code.
[47] The abovementioned CEELI report on Human Rights Defenders in EU Visa Policy: Recommendations for Reform, op. cit, page 1.
[48] Documents in relation to accommodation, or proof of sufficient means to cover their accommodation.
[49] Documents indicating that the applicant possesses 'sufficient means of subsistence both for the duration of the intended stay and for the return to their country of origin or residence', or for the 'transit to a third country into which they are certain to be admitted', or that they are in a 'position to acquire such means lawfully', in accordance with Article 5(1)(c) and (3) of the Schengen Borders Code.
[50] In addition, VIS registered applicants shall not be required to appear in person when lodging an application, where their fingerprints have been entered into the VIS.

helpful for HRDs who may need to leave their country urgently due to immediate danger[51]. A new provision could be added in this chapter[52], entitled *'Visas issued to HRDs at the external border'*. This could provide for HRDs' right to apply for visas at external borders when they have been unable to apply in advance due to urgent and unforeseen circumstances. In such cases, HRDs should present valid evidence of their identity, proof of their status as HRDs together with a detailed explanation of the reasons and the urgent circumstances that prevented them from applying for a visa in advance. The visa application process for HRDs at external border crossing points should be expedited, considering the urgency of such situations. This provision should also specify whether the visa issued will be 'uniform', hence valid in the Schengen area, or a visa with a limited territorial validity, meaning only for the territory of the issuing Member State[53]. The visa's duration should also be defined. The length of the authorised stay shall correspond to the time that is necessary according to the HRD's personal circumstances without exceeding the three-month timeframe.

Visas and readmission agreements

Finally, the new Article 25a of the Visa Code entails provisions that may adversely affect HRDs from third countries that are considered not to cooperate sufficiently on readmission[54]. Some provisions should not apply to applicants or categories of applicants who are nationals of a third country that is considered not to be cooperating sufficiently. These include the possible waiving of: a requirement for submitting additional documentation[55]; the visa fee waiver[56]; the 15-day deadline for deciding on the visa application[57]; and the issuing of multiple-entry visas[58],[59]. As the policy of a third country on readmissions should not adversely affect HRDs, a risk analysis should at least be undertaken, possibly by EEAS, whereby any restrictive visa measure will be evaluated against the potential risk specifically for HRDs[60]. This risk analysis should be made available to the Council and the EP before any measure is taken[61]. Otherwise, an exemption should be explicitly provided for HRDs in the Visa Code:

- Add in Article 25a: *HRDs shall be exempt from the non-application of specified provisions, even if their home country is considered as not cooperating sufficiently on readmission.*

2.1.3 Timeframe

The Visa Code regulates the timeframe both for lodging and examining applications[62]. HRDs need to know that they can apply for visas and leave their countries immediately and that their applications will be processed without unnecessary delays. In this context, a fast-track procedure to expedite their applications should be implemented. This could involve setting shorter lodging and processing times, as well as some priority given to electronic visa application procedures for HRDs:

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[51] See the abovementioned CEELI report on Human Rights Defenders in EU Visa Policy: Recommendations for Reform, op. cit, page 1.
[52] Chapter VI of the Visa Code: 'Visas issued at the External Borders'.
[53] Article 2 (3) and (4) of the Visa Code.
[54] Statewatch, 'EU moves ahead with plans to use visa policy as 'leverage' to increase deportations', 14 April 2021.
[55] Article 14 (6) of the Visa Code.
[56] Article 16 (5) of the Visa Code.
[57] Article 23 (1) of the Visa Code.
[58] Article 24 (2) of the Visa Code.
[59] Article 25a of the Visa Code.
[60] European Council on Refugees and Exiles (ECRE), 'Playing the Visa Card?. ECRE's Assessment of the EU's Plans to use Visa Leverage to increase Readmission to Third Countries', Policy Note 35, 2021.
[61] ECRE, 'Playing the Visa Card?', 2021.
[62] Articles 9 and 23 of the Visa Code.

- Article 9 (1)*: HRDs may lodge their visa applications at any time within the 6-month period leading up to the intended visit, even if the period falls within the last 15 days before the proposed travel date. HRDs seeking an exemption from the standard visa application timeframe must indicate their status as HRDs and the urgency of their travel in their visa application.*

Moreover, to expedite the procedure, an additional amendment could be applied:

- Article 9 (3). *The consulate shall allow the lodging of an application either without prior appointment or with an immediate appointment available to HRDs. In this case, more than one location should be made available for applicants. Member states shall also establish a 'priority' service for HRDs who choose to lodge their visa applications electronically. This priority service should be provided to HRDs without an increase in the application fee.*

Finally, in Article 23 which concerns the timeframe to decide on a visa application[63], an addition to paragraph 2a has already been included, stating that 'applications shall be decided on without delay in justified individual cases of urgency'. HRDs could also be prioritised based on this provision when they cannot wait safely in their home country for a decision on the visa application:

- Add in Article 23 (2a)*: HRDs who can demonstrate the urgency of their travel shall fall within this category. In case prior consultation is needed in accordance with Article 22, and there is a case of urgency, Member States may issue a limited territorial validity visa according to Article 25 (1a) iii*[64].

2.1.4 Decision on visa applications

The immigration authorities must decide first on the admissibility of a visa application and then on the visa issuance. Article 19 outlines the admissibility criteria for visa applications. As mentioned above, HRDs may be unable to submit the application on time, especially when they urgently need to leave their home countries. Furthermore, they may encounter many difficulties in providing all the necessary supporting documents, especially those related to their financial stability. Moreover, as proposed above, visa fees may be waived for them. To address these concerns and prevent HRDs' applications from being declared inadmissible on formal grounds, this provision should be modified:

According to Article 19 (4): '*By way of derogation from paragraph 3, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds, for reasons of national interest or because of international obligations'*.

- Add in 19 (4): *or when the application is lodged by an HRD.*[65]

This amendment will also prevent external service providers from rejecting HRDs' applications as inadmissible before forwarding them to the competent state for substantive evaluation, as the Member States are solely able to use discretions envisaged in the Visa Code[66].

[63] Article 23 (1) of the Visa Code foresees that applications shall be decided on within 15 calendar days of the date of the lodging of an application which is admissible in accordance with Article 19.

[64] A visa with limited territorial validity shall be issued exceptionally, in the following cases: '[..] (iii) to issue a visa for reasons of urgency', although the prior consultation in accordance with Article 22 has not been carried out.

[65] There could be also a reference to 'or for human rights interests' which however might be interpreted in various ways and could potentially lead to disputes or inconsistent application.

[66] See the abovementioned CEELI report on Human Rights Defenders in EU Visa Policy: Recommendations for Reform, op. cit, page 1.

When an interview is needed, according to Article 21 Visa Code, it could be conducted using modern digital tools and remote means of communication, such as voice or video calls via internet[67]. This should be encouraged, especially for the interviews with HRDs as they may face difficulties travelling to consulates[68].

A visa may be refused for the reasons outlined in Article 32 Visa Code. However, HRDs should not have their visas refused on the grounds that they cannot prove sufficient means of subsistence, as explained previously[69]. HRDs who have a letter of support should be treated as *bona fide* applicants and the submission of additional documentation should be waived.

In the event of entry conditions not being fulfilled, the Visa Code also allows Member States to assess whether the circumstances justify an exceptional derogation from the general rule, which then makes it possible for a visa with limited territorial validity to be issued[70]. This could also be applied to HRDs.

Regarding the risk assessment that is conducted in accordance with Article 21 to verify whether an applicant presents a risk of illegal migration or to the security of the states, it should be noted that a criminal record, which may be requested as part of the visa application process, should not result in the automatic refusal of an HRD's visa application. HRDs may often be subject to criminal prosecution in their home countries and in such cases a letter of support from a trusted third-party should be considered. As part of the visa application process, consultations with the Visa Information System (VIS) and the SIS, as well as other EU and international databases should also be conducted. However, specific attention must be given to avoiding the imposition of further obstacles on HRDs during this process. This will be analysed further in Section 5 under digitalisation and databases.

Finally, when a visa is refused, the applicant has the right to appeal, as covered in Article 32 (3). Member States need to establish appeal procedures that uphold the right to an effective remedy. Appeal procedures should be swift, transparent, efficient and easily accessible, enabling applicants to seek effective remedy against a refusal decision[71]. Ensuring a fair and efficient appeal process is crucial in safeguarding HRDs' rights.

2.1.5 Multiple entry visas and extended visa duration

As a general rule, uniform visas do not permit stays of longer than 90 days in any 180-day period. An amendment could be proposed in Article 24 to anticipate that '*visas for HRDs should always be issued for 90 days irrespective of the length of the intended stay*' to provide HRDs with the maximum flexibility should their situations change.

Furthermore, Article 33 envisages extension of a visa's duration when the holder can provide proof of *force majeure* or humanitarian reasons preventing them from leaving a Member State's territory. This provision can apply to HRDs in situations where they are facing difficult circumstances that prevent their immediate departure from the EU. HRDs that find themselves in such circumstances which demand longer stays in

[67] Recital 20 Visa Code.
[68] It could be added in Recital 20 of the Visa Code.
[69] Article 32 (1a) iii and vii of the Visa Code.
[70] Article 25 of the Visa Code.
[71] See European Court of Human Rights (ECtHR), Case of García Ruiz v. Spain, application No 30544/96, 21 January 1999 and ECtHR, Kudła v. Poland, application No 30210/96, 26 October 2000 where the ECtHR stressed that undue delays in appeal proceedings may violate the right to an effective remedy under Article 13 of the ECHR; Court of Justice of the European Union (CJUE), Soufiane El Hassani v Minister Spraw Zagranicznych, Case C-403/16, 13 December 2017; see also T. Lock and D. Martin, 'Article 47 CFR: Right to an effective remedy and to a fair trial' in M. Kellerbauer, M. Klamert and J. Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford University Press, Oxford, May 2019.

host countries should be granted visa duration extensions. In addition, Member States have the discretion to extend visas when 'serious personal reasons' justify extensions of HRDs' stays[72] and thus should do so.

The most crucial amendment that should be proposed is the possibility of granting multiple-entry visas to HRDs that will give them flexibility to exercise their tasks and maintain frequent contact with EU-based organisations and stakeholders. This option would also allow HRDs to hold a valid visa in advance of possible risk, including unforeseen immediate risk[73]. According to the FRA study, this is also beneficial for HRDs mentally: 'Simply knowing about the opportunity to relocate can constitute a very effective form of support, empowering them to continue their work knowing that they have an exit strategy in place'[74]. In this respect, Article 24 should be amended to explicitly make HRDs a category eligible for multiple-entry visas.

- Article 24. Add HRDs to the list of beneficiaries of multiple-entry visas.

2.2 Proposals for non-legislative initiatives: Amendments to the EU Visa Code Handbook

As it may not be easy to reopen Visa Code, another feasible way to facilitate HRDs' entry into the EU is for its Member States to apply the optional assistance permitted under the Visa Code. In such cases, the following amendments could be implemented in the Visa Code Handbook, providing specific rules for visa applications submitted by HRDs. It is worth noting here that a definition of an HRD in the EU Visa Code Handbook should also be provided (see Introduction, Section 1.2).

2.2.1 Determination of the competent Member State and the competent Consulate of that Member State

(1) Competent Member State

Article 5 (4) of the Visa Code envisages that Member States will cooperate to prevent a situation in which an application cannot be examined and decided on because the competent Member State is neither present nor represented in the third country where the applicant lodges an application. The Handbook states that 'in the absence of the normally competent Member State, a Member State may agree to examine such applications in individual, exceptional circumstances and take a decision on it for **reasons of justified urgency**, and after having obtained the agreement of the normally responsible Member State'[75]. This should also apply to applications lodged by HRDs to ensure they will be able to apply for a visa even when the competent Member State is not represented in this country. Thus, the Handbook could specifically mention here that:

- *'A Member State may, in the absence of the normally competent Member State, agrees to examine such applications in individual, exceptional circumstances and take a decision on it when the application is lodged by an HRD, and after having obtained the agreement of the normally responsible Member State'.*

(2) Application from an applicant not residing in the jurisdiction of the consulate.

According to Article 6 of the Visa Code, as a general rule only applications from persons who reside legally in the competent consulate's jurisdiction should be accepted. However, according to the Handbook, 'an application may be accepted from a person legally present – but not residing – in the jurisdiction of the

[72] Article 33 (2) of the Visa Code.
[73] FRA, Protecting Human Rights Defenders at risk, op. cit., page 1.
[74] FRA, Protecting Human Rights Defenders at risk, op. cit., page 1.
[75] See part 1.6., page 23 of the Visa Code Handbook.

consulate where the application is submitted if the applicant can **justify why** the application could not be lodged at a consulate in their place of residence'[76]. It is for the consulate to gauge whether an applicant's justification is acceptable. Hence, ensuring that HRDs' applications are examined even when they have relocated to another state is of the utmost importance.

In many cases, HRDs relocate to neighbouring countries or other states to escape risks in their home countries or due to hardships and other humanitarian reasons. It is crucial to ensure that HRDs can leave their country and move to another location, while knowing that they can initiate the visa application process from the country where they are present. Member States should use this Visa Code flexibility to examine applications lodged by HRDs for visas in countries other than the country of residence. To illustrate this, the Handbook should provide concrete examples of HRDs who need to travel to neighbouring countries due to safety concerns related to their human rights work. As these countries would not be long-term options for applicants but rather emergency solutions driven by urgent departures from home countries, HRDs should have the option to apply for visas in countries where they are legally present. In this context, it should be clarified that applications should be accepted and examined, even though not lodged in places of residence.

2.2.2 Lodging an application

(1) When can an application be lodged?

According to the Handbook, 'applicants shall not be required to appear (in person) at more than one location to lodge an application'[77]. Here, it could be added that EU Member States are encouraged to establish secure electronic visa application systems and applicants should have the discretion to decide whether they prefer to lodge their applications in person or electronically.

The same chapter refers to the timeframe within which to lodge an application. The rule is that a visa application should be submitted at least 15 days before the intended day of travel. However, there is a possibility of accepting applications lodged later than 15 days in individual **cases of justified urgency.** There should be an explicit reference that this may also apply to HRDs who prove they could not apply for visas earlier. To illustrate this, a concrete example could be provided involving an HRD who lodged a visa application less than 15 days before the planned travel day and the application was not rejected as inadmissible. This example would underline the idea that some timeframe flexibility could be applied in exceptional situations where HRDs face unforeseen urgent circumstances that prevent them from adhering to the standard 15-day application period.

(2) Appointments

In line with the Handbook, it is possible to arrange an immediate appointment or direct access for submitting a visa application **in justified cases of urgency**[78] without unnecessary delay. An example of a 'justified case of urgency' is provided in this section. An example of an HRD who needs a swift application process could be provided to indicate that an appointment should be given immediately.

(3) Fast-track procedures

The Handbook envisages that a consulate may decide to establish a 'fast-track' procedure for the submission of applications to handle **certain categories of applicants**[79]**.** To be included in this provision

[76] See part 1.8., page 24 of the Visa Code Handbook.
[77] See part 2.1., page 26 of the Visa Code Handbook.
[78] See part 2.2.1., page 27 of the Visa Code Handbook.
[79] See part 2.2.3., page 28 of the Visa Code Handbook.

could be the wording '*such as HRDs*'. This addition serves to emphasise the importance of expediting the processing of HRDs' applications.

(4) Interviewing the applicant

It is stated in the Handbook that 'irrespective of where and how the application has been lodged (e.g., at a consulate or via an external service provider) and whether the application has been lodged by the applicant in person, electronically, or by a third party, consular staff may carry out an interview during their examination of an application'[80]. It is also mentioned in section 6.12[81], that the interview may also be carried out using other forms of communication (e.g., video calls), but adequate safeguards should be taken to prevent identity fraud.

To avoid a disproportionate burden for an applicant, particularly any living at considerable distance from the consulate, video calls may be carried out from the premises of external service providers or honorary consuls. The Handbook should make clear that in the case of HRDs the interview will take place remotely via video call. As HRDs may find it difficult to travel to consulates, it is important to provide other options for them, such as online video calls, to avoid unnecessary costs and risks.

2.2.3 Basic elements of the visa application

(1) Travel document

According to the Handbook, 'the travel document presented must be valid at least three months after the intended date of departure from the Member States in case a single-entry visa is applied for. In **justified cases of urgency**, a travel document that has a shorter period of validity than indicated above may be accepted. Justified cases of urgency are situations (need to travel) which could not have been foreseen by the applicant and who could therefore not have obtained in time a travel document with the required validity'[82]. Here, a concrete example involving an HRD could be included to demonstrate that this exception can apply to HRDs. In such cases, the travel document should be accepted with any requirement for a three-months validity being waived.

(2) Visa fees

HRDs should either be exempted from payment or at least pay reduced visa fees. However, the categories where a visa fee should or could be exempted are specifically mentioned in the Visa Code (Article 16). Thus, the only legal basis that could be used to provide for an exemption or reduction of the visa fee for HRDs is Article 16 (6) Visa Code. According to the Handbook, 'EU Member States may decide to waive or reduce the visa fee **in individual cases** based on particular interests to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons or because of international obligations'[83]. Human rights protection and promotion is part of international obligations and thus it could be added in the Handbook that Member States are encouraged to waive or reduce visa fees for HRDs.

(3) Admissibility

The Handbook explains that inadmissible applications may be examined even when they do not fulfil the criteria for being considered admissible[84]. Exceptionally, these applications may be examined **on humanitarian grounds,** for reasons of national interest or because of international obligations. This discretion should also extend to HRDs' applications, which in the first instance should not be declared

[80] See part 2.3.3., page 29 of the Visa Code Handbook.
[81] Page 69 of the Visa Code Handbook.
[82] See part 3.1.1., page 30 of the Visa Code Handbook.
[83] See part 3.4.3.2, page 38 of the Visa Code Handbook.
[84] See part 3.7., page 40 of the Visa Code Handbook.

inadmissible on formal grounds (such as a lack of official documentation) and always be examined thoroughly.

By way of illustration, this section could include a specific example featuring an HRD application where the individual's documentation might not entirely meet formal requirements. Nevertheless, considering the unique circumstances and importance of HRDs' work, the rule on admissibility could be relaxed and the application examined.

2.2.4 Supporting documents and travel medical insurance

(1) Supporting documents

According to the Handbook, states have the discretion to require fewer documents from ***bona fide*** applicants[85]. The example given is the case of employees in reliable international companies that can prove their status. However, the authors strongly believe that HRDs should also be treated as *bona fide* applicants and accordingly consider that an additional sub-chapter should be incorporated into the Handbook, specifically addressing HRD applicants' treatment. In this new sub-chapter, it should be explained that HRDs will be required to submit a letter of support from a trusted third-party, establishing their presumed credibility. Furthermore, in such cases it should be stated that HRDs will not be required to submit supplementary documents that, for instance, demonstrate their financial stability, but be assessed *primarily* on their letters of support. However, this is not to say that HRDs should be prevented from submitting any additional documentation in support of their application such as any scholarship, financial assistance, sponsorship, or a reference letter they may have received.

(2) Medical travel insurance

The Handbook states that 'the exemption from presenting proof of travel medical insurance may concern **particular professional groups,** such as seafarers, who are already covered by travel medical insurance because of their professional activities'[86]. HRDs should also be included under this category.

2.2.5 Examination of the visa application

In this Section, it is important to reiterate that HRDs shall be treated as ***bona fide*** applicants and thus the letter of support from the trusted third party should be adequate proof of the intended stay's purpose (part 6.5 of the Visa Code Handbook) and conditions (part 6.6.), including factors such as sufficient means of subsistence and subsequent departure from the Member State territory. This approach aims to ensure that any HRD's visa application will not be rejected due to a lack of documentation that demonstrates the aforementioned aspects, as the letter of support from the trusted third-party will constitute sufficient evidence of all necessary requirements.

Consultation of VIS (part 6.2., pp. 57, 58), security risk (part 6.7, pp. 63, 64) and risk of illegal migration (part 6.13, p. 70) will be examined in-depth in Section 5 under digitalisation and databases.

2.2.6 Deciding on a visa application

(1) Deadlines for deciding on an application

The Handbook states that 'while processing a visa application, the consulate should not systematically let this deadline expire but take account of **duly justified urgency** claimed by the applicant (humanitarian grounds)'[87]. To illustrate, a typical HRD case should be provided, thereby encouraging states to expedite

[85] See part 5.2.3., page 54 of the Visa Code Handbook.
[86] See part 5.3., page 55 of the Visa Code Handbook.
[87] See part 7.1., page 73 of the Visa Code Handbook.

examination of HRD applications. For instance, to emphasise the necessity for expedited processing, a scenario could be presented involving an HRD who is under immediate threat in the home country and requires rapid relocation for reasons of safety and protection.

2.2.7 Types of visas to be issued

(1) Multiple-entry visas

Issuing multiple-entry visas to HRDs holds utmost importance to facilitate their travel within the EU when required. This approach not only empowers them to engage in their human rights work within their home countries but also ensures they can leave swiftly in situations of risk or urgency. As currently mentioned in the Handbook, 'special consideration should be given to individuals **travelling for professional purposes**'. This category already includes representatives of civil society organisations (CSOs) attending educational training, seminars and conferences. To enhance this provision, HRDs should explicitly be incorporated as a category eligible for multiple-entry visas, emphasising their unique circumstances and need for flexible travel.

Moreover, visas should be consistently granted with extended validity periods, such as 90 days. This approach would offer HRDs the flexibility to remain in the EU for longer should there be unexpected changes of circumstances, even if their initial reason for travel is a time-limited event such as a conference.

2.2.8 Refusal of a visa

A visa can be refused for specific reasons envisaged in the legislation. However, Article 19 (4) of the Visa Code allows for the acceptance of applications not meeting requirements to be considered admissible **on humanitarian grounds** or for reasons of national interest. Furthermore, Article 25 (1) allows visas to be issued with limited territorial validity even if entry conditions are not fulfilled. This could be extended to include HRDs, thereby ensuring that their applications are not being refused on formal grounds[88]. Additionally, some of the reasons for refusal outlined on page 90 of the Handbook should not apply to HRDs, as previously discussed (such as points 3, 4, 14 and 16). HRDs should be regarded as *bona fide* applicants and as such, the criteria used to demonstrate the purpose and conditions of their stay should not serve as valid grounds for refusal when they have a letter of support from a trusted third party. In addition, in case of doubt about the subsequent intention to leave the Member State territory, an HRD visa should be issued when the state considers it necessary. In such cases, Article 25 could be used as a legal basis for issuing a visa with limited territorial validity. These explanations should be provided in the Visa Code Handbook to ensure that HRD visa applications are not subject to frequent refusal, especially on formal/typical grounds.

2.2.9 Visa applied for at the external border

The Visa Code provides that 'a visa may be applied at the external borders in case of **unforeseeable and imperative reasons for entry**'. Whilst the Visa Code Handbook (part IV) gives specific examples, the case of an HRD should also be included to prove that applications lodged by HRDs at the external border may be accepted when there are reasons and urgent circumstances that prevent them from applying for a visa in advance. In such circumstances, some of the elements of a visa application could be waived such as the requirement that the applicant has valid travel medical insurance. Here, it should also be added that the general rules regarding the type of visas to be issued apply to HRDs, albeit the specific nature of their work

[88] European Commission, Communication from the Commission. Providing guidelines on general visa issuance in relation to Russian applicants following Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, C(2022) 6596 final, 9 September 2022.

should be taken into consideration by allowing a certain margin when determining the duration of an authorised stay and hence visa validity period.

2.2.10 Extension of an issued visa

In the Handbook (part V), it is stated that 'in case a visa holder who is already present on the territory of the Member States is unable to leave before the expiry of his/her visa for reasons of *force majeure*, **humanitarian reasons or serious personal reasons,** he/she should address the request for extension of the visa to the competent authorities of the Member State where he/she is present even if that is not the Member State whose consulate issued the visa'[89]. A specific example could be provided here illustrating that there is justification for extending a visa duration period for an HRD who is citing 'serious personal reasons', thereby alerting states to such situations. The 'serious personal reasons' could serve as a legal basis for extending the duration of such visas.

2.2.11 Revocation of an issued visa

This is part of the VIS analysis that will be provided in Section 5.

2.3 Practical arrangements

To establish an efficient visa application process tailored for HRDs, it is crucial to incorporate supplementary provisions within the Visa Code Handbook. These additions should outline the following points:

- Immigration officers in consulates and staff within external service providers who handle visa applications should receive appropriate training, which should encompass the identification of HRDs and effective management of their applications;
- EU Member States are advised to establish comprehensive instructions and guidelines for consulates and external service providers regarding the treatment of applications from HRDs. These guidelines must encompass the specific provisions and facilitations extended to HRDs under the flexibility given in the Visa Code. This includes provisions for expedited processing, fee exemptions, waivers for additional documentation, issuance of multiple-entry visas and 90-day visas;
- Collaborative efforts between EU Member States, UN bodies, the FRA and recognised civil society entities are encouraged to create training programmes and draft relevant guidelines;
- EU Member States are mandated to institute mechanisms for monitoring the processing of visa applications submitted by HRDs. These monitoring mechanisms should cover all phases of the application process, from initial submission to the final decision. Enhanced monitoring of external service providers is also imperative and here the EU could play a supportive role;
- EU Member States must ensure that procedural facilitations and multiple-entry visas with extended validity (90 days) are also made available for the family members of recognised HRDs.

By incorporating these provisions into the Visa Code Handbook, a more streamlined and supportive application process can be established for HRDs, acknowledging their unique needs and contributions to human rights advocacy.

[89] Part V, 1, page 127 of the Visa Code Handbook.

2.4 Visa facilitation agreements

Finally, it is important to note that the EU has signed visa facilitation agreements with third countries such as Armenia, Russia and Azerbaijan[90]. These aim to facilitate the issuing of short-term visas through the introduction of a simplified procedure. These agreements could include targeted provisions specifically aimed at further facilitating the process for HRDs from these third countries, such as prioritised and expedited visa processing, visa fee exemption and waiving the obligation to submit supporting documents demonstrating sufficient resources. These agreements should also stipulate that HRDs are eligible for multiple-entry visas, granting them flexibility in conducting their tasks as well as maintaining contact with EU-based organisations and stakeholders.

Another option would be for the EU to sign visa facilitation agreements with third countries concerning specific categories of applicants. This could apply to HRDs, who are nationals of that third country and apply for a visa on the territory of that third country, providing them with simplified and expedited visa procedures. Key components of these agreements for HRDs could include expedited processing, reduced documentation requirements, extended validity, multiple-entry visas, visa fee waivers, dedicated visa processing centres as well as regular monitoring to assess their effectiveness and their impact on HRDs. However, in practice the inclusion of provisions on HRDs in visa facilitation agreements may be politically unrealistic. It must be remembered that in many cases HRDs may have strained relations with their governments which could render any intergovernmental request for facilitation unwelcome and even impossible to achieve.

[90] European Commission, Communication from the Commission. Providing guidelines on general visa issuance in relation to Russian applicants following Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, C(2022) 6596 final, 9 September 2022.

3 Extended stays of HRDs in the EU

As noted in numerous studies covering HRDs and cross-border movement, the issue of extended stays is important[91]. It is recognised that HRDs frequently need periods of rest and respite outside their countries of origin. This may be on account of harassment and threats which they have received for their work or for lesser-level problems. Section 2 has examined issues regarding short-stay visas. This section covers long stays, where HRDs are at serious risk of harm in their countries of origin or need to relocate to the EU for other reasons (e.g., study and work).

The matter of intermediate stays of over 90 days out of every 180 days is one of the most difficult areas to regulate and consequently EU migration competencies have been exercised in a piecemeal manner. The European Commission proposed a touring visa for up to 12 months (which depending on the legislator's approach could have been issued at the border or even possibly within the territory of a Member State), but it was withdrawn in 2018 due to the legislator's lack of enthusiasm and concerns about competence[92]. From the perspective of HRDs seeking an intermediate stay, this withdrawal was disappointing, there being no other general directive on migration which could form the basis for longer stays. Instead, there are various sectoral directives which were not drafted with HRDs in mind, but could still provide solutions for those needing to stay for longer periods in the EU. These are all based on Article 79(2)(a) and (b) of the Treaty on the Functioning of the EU (TFEU).

The first consideration for HRDs who may need to stay in the EU for longer than 90 days is that, for all categories of regular migration discussed below, Member States should accept and process their applications (with confirmation of their status as such by a trusted third party) who are already present on the territory of that Member State, whether regularly on a short-stay visa and/or entry or irregularly. In no circumstances should a Member State reject an application on the grounds that the HRD must make that application from their home country. This could be the subject of a joint recommendation by the Council and the European Commission to immigration officials.

The assumption underlying all sectoral measures is that a third country national will have sufficient income to cover the costs not only of personal needs, but also those of any accompanying family members (usually these categories prohibit access to social assistance or support). Similarly, there is an obligation to have an all-risks sickness insurance. These financial obligations are lifted only when the third country national has completed five years of residence in a Member State, fulfilling all the conditions and obtaining permanent residence (if the category permits this)[93]. However, from HRDs' perspective, being included within a class of 'ordinary' third country national migrants for work or study means that they do not have to identify themselves as HRDs for visa, border and immigration purposes, where such identification might place them, their families and/or associates at greater risk. The disadvantage of not identifying as HRDs means that generally they will be unable to benefit from facilitation provisions which may be put in place for HRDs. The decision whether to self-identify or not must not only rest with HRDs themselves, but also with experts advising on the consequences.

The work-related sectoral directives have all been recast recently, all of them requiring the entry of third country nationals to be dependent on sponsors[94]. This Section will briefly summarise the main

[91] FRA, Protecting Human Rights Defenders at risk, op. cit., page 1.

[92] See EP, 'Visa policy package – Visa Code recast and Touring Visa', Legislative Train Schedule website, 20 August 2023.

[93] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal of the EU, L 16, 23 January 2004.

[94] The following Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive

requirements for each, the duration of residence which they provide and access for family members from the perspective of HRDs' admission and residence. This is a body of EU law which is difficult to render applicable to HRDs needing longer stays. Recommendations which would not require some legislative actions are not self-evident. However, all these legislative measures establish minimum standards only and EU Member States are therefore entitled to adopt or maintain more favourable provisions regarding certain requirements[95].

To achieve EU-wide consistency in the application of already existing extended stay measures, the authors propose that one or more (joint) Council and Commission recommendations should be published, expressing Member States' agreement to apply these directives to HRDs in a facilitated manner, as set out below. These recommendations should deal with all relevant issues within the directives' scope, including provisions which specify where Member States can apply their discretion. There could either be one recommendation covering all directives or a series of recommendations covering the implementation of each. Finally, the interface between EU law on HRDs and national immigration or nationality law may need to be addressed at Member State level as there is no EU competence on the acquisition of Member State nationality.

After analysing the existing sectoral directives, this Section explores the possibility of establishing a temporary protection scheme for HRDs. Ultimately, a self-standing proposal for an HRDs Directive is put forward, specifically addressing the needs of HRDs for extended stays in the EU.

3.1 Highly skilled migration

The Blue Card Directive applies to third country nationals who apply for admission, or who have been admitted, to an EU Member State territory for the purpose of highly qualified employment[96]. A Blue Card will be issued only when the third country national presents a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment covering a period of at least six months in the Member State. Furthermore, the salary must be at least as much as but not higher than 1.6 times the average gross annual salary in the Member State[97]. A Blue Card can also be refused on the basis that the vacancy concerned may be filled from the national/EU workforce, or by third country nationals who are already lawfully resident in that Member State[98].

The normal minimum duration of a Blue Card is at least 24 months unless the contract is of a shorter duration, in which case it may be for that duration plus three months. The card is renewable and eventually permanent residency will follow after five qualifying years. There is also an exception regarding duration in cases where a third country national's travel document has a shorter period of validity. For the first 12 months of the Blue Card's existence there are strict rules regarding any change of employer, which are abridged thereafter. Simplified family reunification rules apply similar to those covering other third country

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2009/50/EC, Official Journal of the EU, L 382/1, *28 October 2021*. *See also,* Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Official Journal of the EU, L 157/1, *27 May 2014 (hereinafter Intra-corporate Transfers Directive)*; Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, Official Journal of the *EU*, L 94/375 28 March 2014 *(hereinafter Seasonal Workers Directive)*; Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast), Official Journal of the EU, L 132, 21 May 2016 *(hereinafter Students and Researchers Directive*).

[95] These are contained in Article 4 of each Directive.

[96] Article 2(2) of the Blue Card Directive: 'highly qualified employment' means the employment of a person who: '(a) in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, another person; (b) is paid for that work; and (c) has the required high professional qualifications'.

[97] Articles 3 and 5(1)(a) of the Blue Card Directive.

[98] Article 7(2)(a) of the Blue Card Directive.

nationals in the EU. Under Article 4, Member States are specifically permitted to adopt or retain more favourable provisions on: '(1) disregarding periods of unemployment for the purposes of renewing (or not withdrawing) Blue Card status; (2) procedural safeguards; (3) equal treatment rights; (4) admission and rights for family members; and (5) the acquisition of long-term resident status, notwithstanding absences from the state of more than 24 months'. Member States should apply all these powers to make more favourable provisions for HRDs.

This directive could be useful for HRDs who may have entered the EU for a short stay and receive a work offer which is in line with Blue Card requirements. The EU legislator could recommend that Member States: automatically make use of HRDs' possibility of applying for a Blue Card while on a Member State's territory; disapply the requirement for a travel document valid for more than the length of the contract/residence period for HRDs; and waive any fees which might be payable. The directive states that Member States can provide for a lower salary threshold to benefit third country nationals during a certain period following their graduation. If Member States apply such a reduction, this could also be applied to HRDs without the link to graduation. For HRDs who achieve Blue Card status, but then become unemployed, the normal rule is that they lose their status after three months if they are resident for two years or less or six months if longer than that. However, Member States may apply more generous provisions, which would be appropriate for HRDs. Intra-EU labour-related mobility is permitted, but requirements to be fulfilled are substantial. Regarding family reunification, Member States could apply the more generous rules which apply to a mobile EU citizen's family reunification. This would mean that a wider group of family members would be eligible and have important socio-economic rights. As suggested above, these rights could be included in a joint recommendation by the Council and the European Commission to achieve consistency across all EU Member States.

3.2 Intra-corporate transferees

The Intra-corporate Transferee Directive applies to third country nationals who: reside outside the territory of Member States at the time of application and apply to be admitted; or have been admitted to a Member State's territory in the framework of an intra-corporate transfer as managers, specialists or trainee employees[99]. The definition of an intra-corporate transfer is extremely complex. Hence, this directive is unattractive for many employers who may recognise certain related issues, albeit not necessarily all the definition's strict limits for qualification[100]. It is particularly poorly adapted for the NGO sector where legal structures are often designed by a host state's national law in ways which will avoid legal and financial responsibility for sister NGOs elsewhere. This directive would be relevant to HRDs employed in a sector only where the legal structures of a transnational employer fulfil all requirements.

Before transfer, any HRD would need to have been employed by the undertaking or group of undertakings for at least 3 and up to 12 uninterrupted months immediately preceding the date of the intra-corporate transfer[101]. Member States may require that transferees will have sufficient resources during their stay to maintain themselves and their family members without having recourse to the Member States' social assistance systems. The maximum duration of a permit is three years for managers and specialists but one

[99] Article 2 of the Intra-corporate Transfers Directive.

[100] Article 3(b) of the Intra-corporate Transfers Directive on an intra-corporate transfer 'means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States'.

[101] Article 5(1)(b) of the Intra-corporate Transfers Directive.

year for trainee employees[102]. Family reunification is permitted under the EU family reunification directive[103] and limited intra-EU mobility is possible. Article 4 permits Member States not only to apply more favourable provisions regarding which family members are entitled to accompany or join transferees, but also be granted equal rights, regarding procedural safeguards and treatment. As recommended with respect to Blue Card status, assimilating family reunification to that of mobile EU citizens would resolve many issues of protecting family members which arise for HRDs.

To make this directive of value for HRDs' Member States would call for the application of a very flexible approach to employers' relationships which could include related NGOs in different countries. All the powers to apply more favourable provisions under Article 4 should certainly be exercised in the case of HRDs. As with the previous recommendation above, this could be the subject of a Council and European Commission joint recommendation to achieve EU-wide consistent application.

3.3 Seasonal workers

The Seasonal Workers' Directive applies to third country nationals who: reside outside Member States' territories and apply to be admitted; or have already been admitted to Member States under this Directive for the purpose of employment as seasonal workers[104]. A 'seasonal worker' means 'a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons[105], under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State'[106]. A creative interpretation of activities dependent on the passing of seasons is possible, including such spheres as education and summer schools. The permit is again dependent on a valid work contract. Duration is either a short stay, 90 days or less, or a long stay limited to 9 months out of every 12 months. Member States are required to ensure that seasonal workers will have sufficient resources during their stay to maintain themselves without having recourse to their social assistance systems and accommodation[107]. There is no provision for family reunification or intra-EU mobility. Because of the requirements and duration, a seasonal worker permit for HRDs seems likely to have limited value. Yet, this Directive's concept, in that it covers stays for up to 9 months out of every 12 with work authorisation, is attractive for HRDs and their supporters.

Article 4 permits EU Member States to provide more favourable provisions regarding procedural guarantees, fees and costs, accommodation, equal treatment and facilitation of complaints. This provision should be used fully in respect of HRDs. As with earlier recommendations above, this could be the subject of a Council and European Commission joint recommendation to achieve consistent application across all Member States.

3.4 Students, researchers and other temporary migration

The Student and Researchers Directive represents a more promising route towards longer stays for HRDs. It has a wider scope than its name might indicate, by including third country nationals 'who apply to be

[102] Article 12(1) of the Intra-corporate Transfers Directive.
[103] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal of the EU, L 251, 03 October 2003 (hereinafter Family Reunification Directive).
[104] Article 2 of the Seasonal Workers Directive.
[105] This is defined as an 'activity dependent on the passing of the seasons' which means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations.
[106] Article 3(a) of the Seasonal Workers Directive.
[107] Article 6(3) of the Seasonal Workers Directive.

admitted or who have been admitted to the territory of a Member State for the purpose of research[108], studies[109], training[110] or voluntary service[111] in the European Voluntary Service. Member States may also decide to apply this Directive's provisions to third country nationals who apply to be admitted for the purpose of a pupil exchange scheme or educational project and voluntary service other than the European Voluntary Service or au pairing'[112].

As mentioned above, it would be necessary to tell immigration officers that no application under this Directive from an HRD already within EU territory should be found inadmissible or rejected even when an applicant's status is less than a valid residence permit or long-stay visa under Article 7(4)[113]. The final paragraph of Article 7 refers: 'By way of derogation, a Member State may accept, in accordance with its national law, an application submitted when the third country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory'. It is additionally justified by the wording of Article 5, final paragraph, which states that: 'Where a Member State issues residence permits only on its territory and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third country national with the requisite visa'. The flexible application of Article 5 could also cover applications by HRDs who may not legally be present on the Member State's territory, but are seeking to regularise their stay. In such cases, the requisite visa should be issued while an HRD is on the territory or notionally at the Member State's border[114]. Such a flexible interpretation of these provisions is justified as HRDs in these circumstances may be seeking to remain in the Member State to seek respite from harassment or persecution in their country of origin. As recommended above, this could again be the subject of a Council and Commission Recommendation to achieve consistent application across all Member States.

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[108] Defined as: 'researcher means a third-country national who holds a doctoral degree or an appropriate higher education qualification which gives that third-country national access to doctoral programmes, who is selected by a research organisation and admitted to the territory of a Member State for carrying out a research activity for which such qualification is normally required' (Article 3 (2)).

[109] Defined as: 'a third-country national who has been accepted by a higher education institution and is admitted to the territory of a Member State to pursue as a main activity a full-time course of study leading to a higher education qualification recognised by that Member State, including diplomas, certificates or doctoral degrees in a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training'. (Article 3 (3)). School pupils have their own definition (Article 3 (4)).

[110] Defined as: 'trainee means a third-country national who holds a degree of higher education or is pursuing a course of study in a third country that leads to a higher education degree and who is admitted to the territory of a Member State for a training programme for the purpose of gaining knowledge, practice and experience in a professional environment' (Article 3 (5)).

[111] Defined as: 'a volunteer means a third-country national who is admitted to the territory of a Member State to participate in a voluntary service scheme' (Article 3 (6)).

[112] Defined as: 'au pair means a third-country national who is admitted to the territory of a Member State to be temporarily received by a family in order to improve his or her linguistic skills and knowledge of the Member State concerned in exchange for light housework and taking care of children' (Article 3 (8)).

[113] Article 7(4) of the Student and Researchers Directive: 'The application shall be submitted and examined either when the third-country national concerned is residing outside the territory of the Member State to which the third-country national wishes to be admitted or when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa.'

[114] See by analogy the CJUE's judgment (Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State, Case C-459/99, 25 July 2022) regarding family reunion with third-country national family members (required to have a visa) of EU citizens exercising a free movement right in the host Member State: ' [..] in the light of the principle of proportionality, a Member State may not send back at the border a third country national who is married to a national of a Member State and attempts to enter its territory without being in possession of a valid identity card or passport or, if necessary, a visa [..].'

This Directive is constructed around the principle that the third country national will have a host entity[115] or a host family[116]. Article 7(5) covering Students and Researchers permits an application to be submitted by the third country national or the host entity or family. For HRDs, both options should be available to facilitate rapid submission of the application.

The general conditions for a permit to be issued under this Directive require the applicant to have a valid travel document, including an optional requirement that its validity should cover the whole period of any stay. As set out above, HRDs often have great difficulties obtaining or renewing travel documents, thus immigration officers should exercise a more favourable discretion regarding this issue. This should be included in instructions on the Directive's application. Special provisions apply to minors requiring parental consent. Where parents are under pressure in the country of origin to force their child to return, this requirement should be waived[117]. Applications must carry proof not only that the HRD is in possession of or has applied for sickness insurance for all risks over the duration of any stay, but also that during the planned stay there will be sufficient financial resources to cover all subsistence costs without having recourse to a Member State's social assistance system and provision of return travel costs.

For HRDs, this requires substantial investment from sponsors. For the moment, there are no EU-wide sponsorship programmes for HRDs (though some Erasmus support has been made available for certain Afghan HRDs). Specific funding should be made available to sponsors (who are also likely to be trusted third-parties) to cover the costs of stays for HRDs they are sponsoring (this will be covered in more depth in Section 4). Finally, any applicant who is considered to pose a threat to public policy, public security or public health shall not be admitted (or granted a residence permit). As discussed above, HRDs may be the object of unjustified vilification by authorities or those acting on behalf of them in their own state, including allegations that they are terrorists. When undertaking public policy, public security assessment migration officers must be vigilant that unsupported allegations of threat do not colour their decision-making.

These general conditions are augmented by additional specific requirements for each category. Thus, for researchers, a hosting agreement and, if required by the Member State, a contract with detailed and specific elements is to be included. For HRDs, Member States should require only a hosting agreement and dispense with the contract requirement if applicable. Because of HRDs often exceptional circumstances, hosting institutions acting as sponsors may be willing to cover costs, but not enter into a binding contract, a fact that should be formally acknowledged. Similarly, Article 8(2) allows any Member State to penalise hosting institutions if any applicant remains illegally within its territory. The financial penalties can be substantial and thus a dissuasive measure for hosting institutions. However, for HRDs this potential threat should always be waived.

Article 9 provides for Member States to have approval procedures for public and/or private research organisations to host researchers. Where any Member State applies such a procedure and the researcher is an HRD, this approval should be automatic and facilitated. Article 10 sets out a wide range of elements which should be included in a hosting agreement, but mandatory requirements are: the research title or purpose (though this can be waived under Article 4); an undertaking by the third country national that the

[115] Defined in Article 3(14) of the Student and Researchers Directive as: 'host entity means a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme or an entity hosting trainees to which the third-country national is assigned for the purposes of this Directive and which is located in the territory of the Member State concerned, irrespective of its legal form, in accordance with national law'.

[116] Defined in Article 3(15) of the Student and Researchers Directive as: 'host family means a family temporarily receiving an au pair and sharing its daily family life in the territory of a Member State on the basis of an agreement concluded between that family and the au pair'.

[117] There are some famous environmental HRDs such as Greta Thunberg whose activities began while she was still a minor.

research will be completed; an undertaking from the research organisation that the third country national will be hosted for this work; as well as the duration of such work and whether intra-EU mobility is anticipated. Article 10(2) allows Member States to treat these applications more positively (according to Article 4) and for HRDs this discretion should always be favourably exercised. There are additional optional requirements which need not be applied[118] and hence for HRD researchers these should always be waived.

For students, a different set of additional requirements apply as set out in Article 11. Only evidence of acceptance by a higher education institution to follow a course of study is mandatory. The others[119] are optional and should never be applied to HRDs seeking to remain as students. Slightly different requirements apply to school pupils which will not be examined here considering its limited relevance to the subject. Students are permitted to work for at least 15 hours a week, but Member States are specifically permitted to be more generous as set out in Articles 24 and 4. Similarly, HRD researchers should be permitted not only to teach for payment, but also engage in entrepreneurship and job searching (see below). These discretions, permitted under Article 4, should always be exercised favourably in respect of HRDs.

Specific additional requirements for trainees are: a training agreement with a host entity, which provides for theoretical and practical training[120]; a description of the training programme, including educational objectives or learning components; traineeship duration; traineeship placement and supervision conditions; traineeship hours; as well as the legal relationship between trainee and host entity. The trainee must also have evidence that a higher education degree was obtained within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree. Various further optional requirements[121] are available to Member States, but these should always be waived for HRDs. All formal conditions are already so complex and bureaucratic that for smaller employers they may be highly dissuasive.

Additional requirements for volunteers are contained in Article 14. These are 'provision of an agreement with the host entity which includes: (a) a description of the voluntary service scheme; (b) the duration of the voluntary service; (c) the placement and supervision conditions of the voluntary service; (d) the volunteering hours; (e) the resources available to cover the third-country nationals' subsistence and accommodation costs and a minimum sum of money as pocket money throughout the stay; and (f) training

[118] These are: 'information on the legal relationship between the research organisation and the researcher; information on the working conditions of the researcher; that an agreement can only be signed if the research activity has been accepted by the relevant instances in the organisation, after examination of: (a) the purpose and estimated duration of the research activity, and the availability of the necessary financial resources for it to be carried out; (b) the third-country national's qualifications in the light of the research objectives, as evidenced by a certified copy of the qualifications' (Article 10 (3a) of the Students and Researchers Directive). These requirements are always waived where the educational institution has approved status where such a procedure exists.

[119] These are: 'fees charged by the higher education institution have been paid; sufficient knowledge of the language of the course to be followed; evidence of sufficient resources to cover the study costs' (Article 11 (1b) of the Students and Researchers Directive).

[120] Article 13 of the Student and Researchers Directive provides that 'Member States may require that such training agreement is approved by the competent authority and that the terms upon which the agreement has been based meet the requirements established in national law, collective agreements or practices of the Member State concerned'. This requirement should always be waived in respect of HRDs.

[121] These include, that for the duration of the stay the third-country national will have sufficient resources to cover the training costs; the third-country national has received or will receive language training so as to acquire the knowledge needed for the purpose of the traineeship; the host entity will accept responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular as regard to subsistence and accommodation costs; the third-country national will be accommodated throughout the stay by the host entity and the accommodation will meet the conditions set by the Member State concerned.

the third-country national will receive to help perform the voluntary service (as applicable)'. Additionally, the hosting entity must provide evidence that it has subscribed to a third-party insurance policy. Three other requirements[122] are optional and should be waived in respect of HRDs. The Directive provides approval procedures for higher education institutions, education establishments, organisations responsible for a voluntary service scheme and entities hosting trainees.

Specific additional requirements for au pairs are contained in Article 16. These are 'the provision of an agreement between the third-country national and the host family defining the third-country national's rights and obligations as an au pair, including specifications about the pocket money to be received, adequate arrangements allowing the au pair to attend courses and the maximum hours of family duties; the age limit (18-30 years-old but Member States may allow for higher ages); that the host family or an organisation mediating au pairs, accepts responsibility throughout the stay in the territory of the Member State, in particular with regard to living expenses, accommodation and accident risks for the individual; and the maximum number of hours of au pair duties per week shall not exceed 25 hours. The au pair shall have at least one day per week free from au pair duties'. There are various other optional requirements which should never be applied when an HRD is involved.

Authorisations under this Directive are for at least one year, extendable for researchers and students at the end of their studies. Article 25 permits them to seek permission to stay for a period of at least nine months to seek employment or set up a business. Trainees receive a maximum of six months unless the training contract is for a longer period. Volunteers get a maximum of twelve months unless their contracts are longer. Au pairs are permitted a maximum of one year extendable for six months. However, Article 4 permits Member States to apply more favourable provisions regarding these time periods. This flexibility regarding length of stay may be important in the case of HRDs, for whom Member States should apply the flexibility permitted under Article 4 for any extensions of stays under these categories.

Article 20 sets out the grounds for rejection of any application made under this Directive. It specifically permits any Member States to reject applications (though does not require this) where '(a) the hosting entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions; (b) the national terms of employment or collective agreements or practices are not met by the host entity or family; (c) as regards au pairs the host family or mediating organisation have been sanctioned in accordance with national law for undeclared work or illegal employment; (d) the host entity was established or operates for the main purpose of facilitating the entry of third country nationals; (e) the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place'. All these grounds for rejection are beyond the applicant's control. As regards HRDs, none of these grounds should be used to reject an application until the HRD has been afforded a sufficient period for the failure to be remedied or an alternative hosting entity to be found.

Article 21 provides extra protection for applicants where the state is considering withdrawal or non-renewal of a permit under the Directive's terms. In particular, Article 21(6) (which applies only to students) requires Member States to allow them to submit applications for hosting by different higher education institutions for an equivalent course of study in order to facilitate the completion of studies whenever a negative decision has been taken on one of four grounds under which the host entity: has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions; has been sanctioned in accordance with national law for undeclared work or illegal employment; is operating primarily to facilitate the entry of third country nationals; or the business is being wound up, has already been terminated or is inactive. In such a case, the student must be allowed to stay within Member

[122] This comprises accommodation, basic introduction to the language, history, political and social structures and minimum and maximum age limits.

State territory until a decision is taken. This flexibility should be applied to all HRDs irrespective of the category under this Directive.

Article 22 provides for equal treatment for persons staying in the EU under the categories covered by the Directive, but permits Member States to exclude categories from many areas of equal treatment for instance to procedures for obtaining housing and/or services provided by public employment offices. Article 4 also permits Member States to be more generous under this provision. In the case of HRDs, they should be provided the maximum equal treatment rights with no exclusions.

Only the admission of researchers' family members is specifically addressed in Article 26, applying the family reunification Directive with modifications[123]. This means only spouses and unmarried minor children have rights to seek family reunification (although the Directive permits Member States to apply this to a wider group of family members). This provision removes various conditions within the family reunification Directive from applying to researchers' family members. However, Member States are allowed to be more generous under Article 4. This provision could be used to provide family reunification for HRDs in all categories covered by this Directive which mirrors family reunification for mobile EU citizens under Directive 2004/38. This would allow a wider group of family members to join the HRD, thus not only diminishing any potential consequences of risks for them in the country of origin, but also providing them with access to socio-economic rights.

There are provisions on intra-EU mobility which may be relevant for some HRDs, albeit not discussed in depth here as they are highly technical and marginal for this group. More generally, Article 34 states that any decision regarding rejection of an application shall be open to legal challenge in the Member State concerned. This also covers the renewal of applications and withdrawal of authorisation. Written notification must specify the court or administrative authority with which an appeal may be lodged and the time limit for lodging such an appeal (Member States can provide more favourable provisions in respect of this under Article 4). Any refusal of an HRD application under this Directive should be automatically suspended should the HRD already be within the EU, irrespective of immigration status. Article 36 allows states to apply a handling fee for the application which must not be disproportionate or excessive. For HRDs, this fee should always be waived. As recommended above, these proposals could be the subject of a Council and Commission Recommendation to achieve consistent application across the Member States.

3.5 Temporary protection

The EU adopted the Temporary Protection Directive (TPD) in 2001[124]. Although in September 2020 the European Commission proposed substantial changes to the system[125], in March 2023, the Commission recommended that the TPD be retained[126]. On 4 March 2022, the first EU TP scheme ever was opened in response to Russia's invasion of Ukraine. This experience has and continues to provide a wealth of

[123] See the Family Reunification Directive. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal of the EU, L 251, 03 October 2003.

[124] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal of the EU, L 212, 07 August 2001 (*hereinafter Temporary Protection Directive or TPD*).

[125] European Commission, EU Pact on Migration and Asylum, 23 September 2020, op. cit., page 12.

[126] Commission, Communication from the Commission to the European Parliament and the Council, Temporary Protection for those fleeing Russia's war of aggression against Ukraine: one year on, COM (2023) 140 final, 8.3.2023.

information about the operation of an EU-wide scheme which provides extensive protection to those fleeing war[127].

The Directive is designed to provide protection in cases of mass influx of displaced persons who cannot return to their country of origin. Its purpose is to establish minimum standards for giving TP in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between EU Member States in receiving and bearing the consequences of receiving such persons[128]. It is important to note here that as a solution for HRDs, a definitional problem regarding the use of this Directive is immediately evident – HRDs do not constitute a class of mass influx as set out in the Directive. They are rather a relatively small group of persons in need of special arrangements. Concerning this criterion, it is worth bearing in mind that when the Ukraine TP scheme was initiated Member States agreed to disapply Article 11, which expresses a key aspect of the directive scope: the promotion of a balance of effort between Member States in receiving and bearing the consequences of receiving such persons. There is no legal challenge to this decision to disapply Article 11. Hence, a similar approach appears possible when applying this Directive to a group which does not constitute a mass influx through an agreement taken by EU Member States to ignore this condition.

While the Directive does not cover the entry of beneficiaries into the EU, it does provide that Member States shall, where necessary, provide persons to be admitted to their territory for the purposes of TP with every facility for obtaining the necessary visas, including transit visas. Visa formalities must be reduced to a minimum because of the urgency of such situations. Visas should be free of charge, or their cost at least reduced to a minimum[129]. The case of visa facilitation for TP under a specific scheme is not for the issuance of visas under the Visa Code and thus does not present the same obstacles (see Section 2)[130].

Once persons within the designated class of scheme beneficiaries enter the EU, they are immediately entitled to a wide range of rights under the Directive which Member States are legally obliged to provide. The Directive recognises that some TP beneficiaries are likely to be refugees under the Refugee Convention, but their protection is not based on those grounds and nor are they required to apply for refugee status. This is important for HRDs who frequently do not wish to apply for refugee status due to the consequences this may have on their work and their returning to their country of origin (temporarily) without risking the loss of their status in the EU[131].

A TP scheme is opened based on a Commission proposal which includes: (a) a description of the specific groups of persons to whom the temporary protection will apply; (b) the date on which the TP will take effect; and (c) an estimation of the scale of the movements of displaced persons[132]. The proposal is submitted to the Council which then determines whether to make a decision opening a scheme. If the Council agrees, then its decision must include: (a) a description of the specific groups of persons to whom the TP applies; (b) the date on which the TP will take effect; (c) information received from Member States on their reception capacity; as well as (d) information from the Commission, UN High Commissioner for Refugees and other relevant IOs[133].

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[127] Only Denmark does not participate in the scheme on account of its specific opt out of all migration and asylum measures contained in a protocol to the TFEU.
[128] Article 1 of the TPD.
[129] Article 8(3) of the TPD.
[130] CJUE, X and X v État belge, Case C-638/16 PPU, 7 March 2017.
[131] According to the Refugee Convention, where a refugee voluntarily avails him or herself of the protection of his or her state of origin, for instance by returning there, his or her refugee status lapses.
[132] Article 5(1) of the TPD.
[133] Article 5(3) of the TPD.

Where a scheme is opened, TP beneficiaries are immediately entitled to residence permits[134], allowing them to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For the purposes of labour market policies, TP beneficiaries are entitled to equality regarding remuneration and working conditions, access to social security systems relating to employed or self-employed activities and other conditions of employment applicable in the state[135]. They must have access to suitable accommodation or, if necessary, receive the means to obtain housing[136]. Similarly, they are entitled to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care (including at least emergency care and essential treatment of illness)[137]. States are also required to provide necessary medical or other assistance to persons enjoying TP who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence[138].

Within the terms of TP, those under 18 years of age are entitled access to the education system under the same conditions as nationals of the host Member State[139]. In cases where families already existed in the country of origin and were separated, the following persons must be considered to be part of a family: the spouse of the sponsor or their unmarried partner in a stable relationship; minor unmarried children of the sponsor or of their spouse; as well as other close relatives who lived together as part of the family unit at the time and who were at that time wholly or mainly dependent on the sponsor[140]. Special arrangements are required for vulnerable persons such as unaccompanied minors.

Persons who come within the scope of these arrangements can be excluded on the basis that they have: (a) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments; (b) committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State; and (c) been guilty of acts contrary to the purposes and principles of the UN or there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State[141]. There are no grounds for exclusion merely because the home state authorities have requested that individuals be returned to their country (except for formal extradition proceedings).

Under this Directive, the normal rule is that TP beneficiaries must reside in the first Member State where they arrived[142]. However, through a note attached to the Council Decision opening the TP scheme for those fleeing Ukraine, Member States agreed not to apply this provision (Article 11). Thus, Ukraine TP beneficiaries can move freely within the EU and change Member State of residence[143]. The purpose of the

[134] Article 8(1) of the TPD.
[135] Article 8(1) of the TPD.
[136] Article 13(1) of the TPD.
[137] Article 13(2) of the TPD.
[138] Article 13(4) of the TPD.
[139] Article 14(1) of the TPD.
[140] Article 15 of the TPD.
[141] Article 28 of the TPD.
[142] Article 11 of the TPD.
[143] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection Official Journal of the EU, L 71/1, 04 March 2022.

Directive to promote a balance of effort among Member States in receiving and bearing the consequences of arrivals was intentionally disapplied.

A TP scheme is limited to a maximum of three years, though it may be closed earlier if the situation in the country of origin permits. The advantage of opening a TP scheme for HRDs facing persecution or serious harassment in their country of origin is that it would provide consistency across the EU. Their treatment would not depend on national legislation in each Member State.

If such an option were to find favour with the legislator, an EU-wide mechanism for designating HRDs entitled to TP would need to be established. Two aspects would then have to be addressed: the territorial and personal scope of any scheme. As regards the former, it may be that there is no need for any limit (outside the EU/EEA), which could then cover HRDs in any third country. If this approach is not favoured, then the EUAA compiles country of origin information on what it defines as human rights activists. This definition is narrower than the UN/EU definition of HRDs as it is designed to cover those in need of long stays outside their country of origin. The EUAA definition refers to, *inter alia*: persons who are at heightened risk of arbitrary arrests and detention, abductions, forced disappearance, prosecution, death threats, restriction of movement, defamation, as well as other forms of intimidation and harassment[144]. The territorial scope then refers to the countries where there is such a risk. These two definitions could constitute a basis for determining the scope of a TP scheme[145].

As regards the personal scope of a scheme for HRDs, the purpose is to include only those needing long stays in the EU and any additional economic and social support available under a TP scheme. Hence, it is necessary to introduce a mechanism for rapidly identifying such HRDs based on the expertise of those best placed to understand the political and social situation of the state from where applicants are fleeing. Here coordination by the officials responsible for HRDs in the EEAS delegations may be particularly helpful. A standard set of criteria would need to be established. The FRA report includes information about such criteria designed by the Polish authorities for their HRD relocation scheme, which could be a good starting point for the EU legislator[146]. Similarly, the EUAA definition of human rights activists could provide a solid foundation for the criteria.

3.6 Proposal for a Directive on the conditions of entry and residence of human rights defenders in the EU

In response to the pressing need for longer stay options for HRDs, this subsection aims to propose a new Directive specifically tailored to address such needs, largely covering longer stays (exceeding 90 days) in the EU. Of course, it is not possible for third-country nationals to stay longer in the EU based on the existing provisions for short stays (Visa Code). Long-term permits are usually purpose-bound, issued in relation to work, business, study, family reunification and so on, as detailed above, but in principle not foreseen for HRDs. Indeed, certain Directives already entail some provisions for longer stays, such as those concerning Researchers and Students or the Blue Card. Whilst these could be applicable to certain HRDs, they are limited in purpose and scope, as explained in previous subsections. Hence, it is essential to develop a

[144] See EU Agency for Asylum, '2.9. Human rights activists', webpage, September 2020.
[145] See, for instance, the country-of-origin information on Syria. EU Agency for Asylum, '2.9. Human rights activists', webpage, September 2020.
[146] The FRA report states that these criteria are: (1) is the life, liberty or personal safety of the HRD threatened (2) would the HRD be forced to work; (3) would the HRD be deprived of the right to a fair trial or be punished without legal basis. A long stay visa also appears to be available for those where return to the country of origin would violate the right to family or private life or the rights of the child endangering their psycho-physical development. FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

separate, comprehensive legal framework that directly addresses the needs of HRDs. Mindful that the above-mentioned Directives were quite recently recast, it may not as yet be politically easy to re-open them and thus the establishment of a new, targeted framework is the most feasible option. The proposed Directive could: prioritise the distinct challenges faced by HRDs; introduce an authorisation for stays of longer than three months in the Schengen area; and propose concrete measures that ensure longer and more secure stays for these individuals in the EU. The proposed Directive would fortify HRDs' work and underscore the EU's commitment to ensuring a safe environment that will allow them to continue their mission of advancing human rights globally.

3.6.1 Legal basis

Article 79 TFEU is the relevant legal basis for a proposed Directive on HRDs in the EU[147]. It sets out the EU's objective to develop a common immigration policy that ensures the efficient management of migration flows, provides fair treatment of third country nationals residing legally in the Member States and adopts enhanced measures to combat illegal migration and trafficking in human beings. Paragraph 2 specifies that Member States should introduce measures in some areas, covering, *inter alia*: 'the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification'. As the aim of this proposed Directive is to regulate HRDs' entry and residence for more than 90 days, Article 79 forms the relevant legal basis. Following difficulties encountered in adopting a single instrument covering all 'legal' immigration into the EU, the current approach consists of adopting sectoral legislation, by category of migrants, to establish a regular immigration policy at the EU level[148]. Thus, this proposal will concern exclusively HRDs that need to be supported, and their mobility to be facilitated, as HRDs contribute positively to the EU through their work in promoting and protecting human rights.

Article 78 of the TFEU could not form the legal basis for this proposal, but it could be used to propose an alternative long-term option for HRDs, under a TP scheme[149], as discussed above. This would concern situations where HRDs need to be protected from risks to their lives, physical integrity and liberty. The study does not address the possibilities of applying for international protection, as it is understood that HRDs primarily seek alternatives to applying for asylum which have significant consequences for their ability to continue their work and return to their home countries. Hence, the only option here would be for Member States not to revoke or refuse to renew the refugee and/or subsidiary protection status when any person returning to a country of origin is an HRD and needs to travel there for commitments related to human rights work. This would require quite a flexible interpretation (or amendment) of the Qualification Directive[150].

Article 77 of the TFEU confers the power to the Union to act on 'short-stays' in the Schengen area. The target group of this proposal already has the option to apply for short-term visas under the Visa Code to be allowed to stay in the EU for a period not exceeding 90 days in any 180-day period and thus this legal basis is not appropriate for regulating long-term residence of HRDs in the EU.

[147] Article 79 of the TFEU, Official Journal of the EU, C 326, 26 October 2012.
[148] EP, Immigration Policy, Factsheet on the European Union, 2023.
[149] See the TPD.
[150] Article 14 and 19, of the Directive 2011/95/EU of the European Parliament and of the Council on n standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Official Journal of the EU, L 337/9, 20 December 2011.

3.6.2 Proposal for a Human rights defenders Directive

This proposal aims to establish a comprehensive legal framework within the EU for the long-term entry and residence of third country national HRDs by:

- Establishing an authorisation for HRDs for an intended stay in one or more Member States lasting more than 90 days, but no more than one year (with the possibility of extension up to two years);
- Determining the application procedure and the issuing conditions for these authorisations, as well as the rights attached to the status.

A Directive on the Conditions of Entry and Residence of HRDs in the EU should entail at least the following principles and key elements:

General provisions

Initially, the Directive's subject matter should be defined. Specifically, the proposed Directive aims to lay down the conditions of entry and residence for third country national HRDs in Member States' territory for a period exceeding 90 days. It further aims to establish a formal facilitated procedure for the lodging and processing of authorisation applications from HRDs (long-term visas or residence permits).

Then, the Directive's scope of application should be defined. This should cover third country national HRDs who seek to enter or are already present within EU territory and want to extend their stays, for the purpose of:

- continuing their human rights work
- conducting research or studying in a university and/or institution in the EU
- undertaking a traineeship or volunteerism
- rest and respite from potential problematic situations in their country of origin
- [additional reasons could be added]

This means, that its scope of application should encompass third country nationals who are in their home countries and seek to enter or to be admitted to the EU, those who entered legally (e.g., with a short-stay visa), but are now seeking to extend their stay for a longer period (more than 90 days) to pursue the activities specified in the Directive, and those that are irregularly present in the EU as their authorisation has expired. Visas for HRDs at risk are better placed in the context of the TP scheme than in the proposed Directive[151]. Should the legislator consider that such a visa should also be included there, it could be accommodated, but the legal basis should be both Article 78 and 79 of the TFEU.

The Directive should exclude individuals who resort to violence or engage in activities that are contrary to the principles of peace and non-violence. It should also be explained that the Directive shall not apply to third country nationals who seek international protection or who are beneficiaries of international protection under the Directive 2011/95/EU of the EP and the Council or who are beneficiaries of TP in accordance with the TPD 2011/55/EC, as in this case another legal basis would be required (Article 78, TFEU). In the event of a conflict between these Directives and others covering Researchers and Students or the Blue Card, this Directive shall take precedence, as *lex specialis*, due to its specific focus on protecting HRDs.

[151] The TP scheme emphasises the urgency of the situation and requires Member States to provide individuals admitted for TP with many facilitations (see Section 3.5.). This is important for HRDs who may face immediate threats and need swift relocation. Visa formalities required under the proposed Directive could hinder the direct relocation of at-risk human rights defenders to other countries and their immediate protection.

However, if an HRD wants to apply for a long-term residence on the basis of another Directive (e.g., they do not want to be identified as an HRD or have not received the necessary letter of support from the trusted third party to fall within the scope of the proposed Directive) they should have the option to do so. Thus, the long-term authorisation for an HRD based on another Directive (e.g., the Student and Researchers or Blue Card) should never be refused with the justification that the person should apply for a long-term authorisation based on the proposed Directive. Immigration policies need to be flexible and adaptable to applicants' diverse needs and situations.

The definitions should then be provided. This is the place where the definition of an HRD should be provided and the procedure for recognising someone as an HRD (see Introduction, Section 1). Additional definitions that could be provided, are those of a 'trusted third party', 'rest and respite', 'long-stay visa', 'residence permit' and 'family members'. The definitions should already be provided in the beginning to ensure clarity and understanding of these terms within the context of the document.

Finally, it must be stated that this Directive shall be without prejudice to more favourable provisions of bilateral or multilateral agreements concluded between the EU or the Union and its Member States and one or more third countries as well as agreements concluded between one or more Member States and one or more third countries. Furthermore, it shall not preclude or diminish any rights or protections granted to HRDs under other relevant EU Directives or international obligations. Instead, it should aim to complement and reinforce existing legal frameworks by proposing specific and targeted measures for the entry and residence of HRDs in the EU, acknowledging their role in the promotion and protection of human rights. As the aim of this Directive is to set common standards for HRDs, it can also be mentioned that it is without prejudice to the rights of Member States to adopt or maintain more favourable provisions for HRDs.

Application procedure

Thereafter, general conditions for the admission of HRDs should be provided. Member States shall ensure expedited and flexible application procedures for HRDs. Initially, HRDs should apply for long-term authorisation in their country of residence. However, those who are already present on Member State territory should also be eligible to apply for a long-term authorisation, without the need to travel back to their country of residence. This provision aims to prevent exposing them to unnecessary risks or costs associated with such travel. Facilitating the application process for HRDs already within the territory of a Member State is crucial for ensuring their safety and reducing unnecessary risks. In such cases, states should grant temporary status to HRDs until their new status is determined. Similarly, they should be able to apply for a long-term authorisation when they are in a third country, other than their country of residence, to ensure they can leave immediately from their country knowing that they can start the authorisation process from another country (e.g., a neighbouring country). As mentioned above (see Section 3 on extended stays), in no circumstances should a Member State reject an application on the grounds that HRDs must make their applications in their home country. The same should apply here. It is not in the EU's security and economic interests to have these people leaving the Schengen area to apply for long-term authorisation in their home countries. However, the Directive should exclude the possibility of applications for long-stay authorisations to be lodged at the external borders, as authorising a stay of possibly up to one year in the Schengen area requires thorough scrutiny elsewhere. This should be without prejudice to the rules on short-term visas at the border, as previously discussed.

It is crucial to underline here that HRDs should have access to a trusted third-party system, which is a vital aspect of support within the proposed Directive. For this reason, EU Member States should create a clear and well-publicised referral pathway which includes dedicated email addresses and can help bridge the gap for HRDs who may not be aware of the trusted third-party system or may initially hesitate to reach out because of concerns about confidentiality or security. This approach ensures that HRDs will always be able

to seek support and verification, whether through a trusted third party directly or through immigration officers who can guide them and refer them to relevant organisations.

In terms of general conditions, they should be very much in line with those developed in the existing *acquis* on legal migration:

- HRDs should first present a valid travel document. However, this requirement could be applied with flexibility in the case of applicants who may face many challenges in obtaining valid travel documents from their countries of origin. In these cases, alternative means of identity could also be considered such as temporary or emergency travel documents, national ID cards or even passports with limited validity combined with information available in relevant databases. The procedure could also include a waiver of the requirement to have a valid travel document for the entire duration of stay, as it may be difficult for HRDs to renew their passports. In every case, the individual circumstances should be always considered.
- If the third country national is legally classified as a minor within the Member State concerned, the applicant should present a parental authorisation or an equivalent document for the planned stay.
- Applicants must prove that they have sickness insurance covering all risks for the duration of their stays or at least proof that applications have been submitted. In the case of HRDs, this proof may be replaced by a document issued by a sponsor or a trusted third party.
- Then, as in all authorisation procedures, evidence should be provided that the applicant has paid the fee. In the case of HRDs, the application fee should be a reduced amount, or it could be completely waived.
- Finally, in recognition of the unique circumstances and challenges faced by HRDs, the requirement of submitting an abundance of documents to prove they have sufficient resources should be waived. Thus, HRDs should be exempt from providing financial documentation or evidence of sufficient resources during the application process and the absence of such documentation should not constitute grounds for refusal of the application. Member States shall consider the unique circumstances of HRDs and may apply a more lenient assessment of economic self-sufficiency requirements.

It is worth noting that a parallel approach exists within Directive 2004/38, where students are required to declare their commitment not to become reliant on social assistance, rather than substantiating this through documentation[152]. This serves as an instructive parallel, as the need to prove financial sufficiency through documents can be replaced by a declaration from HRDs or information existing in the letter of support provided by a sponsor or a trusted third party. This approach respects the unique challenges that HRDs encounter and seeks to streamline their application process while ensuring they are not unduly burdened by documentation requirements[153]. This exemption should not preclude HRDs from providing additional information on their activities, sponsorships or scholarships they have received, or other relevant details that may support their application for entry and residence in the EU.

Following that, reference should be made to the specific conditions for admitting HRDs into the EU. The first stage focuses on verifying identity as an HRD, while the second stage delves into determining whether

[152] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), Official Journal of the EU, L 158, 30 April 2004.

[153] The previous subsections for extended stays have specifically analysed which documents should be waived for HRDs per category: Blue Card, seasonal workers, intra-corporate transfers, researchers, students, trainees, volunteers and au pairs. These recommendations could be also applicable in this proposal depending each time on the reason of entry/residence in the EU.

the identified HRD necessitates an extended stay within the EU. If both conditions are met, the proposed Directive will be applicable.

The process details are outlined below:

Stage 1: Verification of HRD Status

Applicants seeking admission as HRDs are required to present comprehensive documentation substantiating their HRD status. Such evidence shall include a letter of support from a trusted third party confirming any individual's capacity as an HRD. The document from the trusted third party (as set out in Annex [..] of the Directive), shall be recognised as sufficient evidence (or presumption) of the applicant's status as an HRD, not only in the Member State where the application is lodged, but also across all Member States, thus eliminating the need for additional and redundant verification processes within the EU. For this purpose, Member States shall establish clear and transparent procedures for the verification and acceptance of documentary evidence submitted by HRDs which should also be conducted in a timely manner to avoid undue delays, especially for those most at risk.

Stage 2: Verification of the extended stay requirement

Following the successful completion of the first stage, the second stage involves assessing whether the identified HRD necessitates a prolonged stay within the EU due to their specific circumstances. This information will be provided in the same or a separate letter of support from a trusted third party, incorporating information sourced (possibly) from EU delegations. The focus now is on validating the necessity for a prolonged stay. The letter of support, derived from collaboration between the trusted third party and the EEAS, will serve to substantiate the reasons underpinning this requirement.

In every stage, the verification process shall consider the unique risks and challenges faced by HRDs, with a focus on protecting their privacy and security throughout the application process. The EU shall be responsible for maintaining a registry or database of trusted third parties to ensure consistent application of the verification process among Member States. This provision shall not preclude HRDs from providing additional supporting documentation to substantiate their status or specific risks related to their activities. However, a letter of support from a trusted third party shall remain the primary criterion for applying the proposed Directive.

Authorisations and duration of residence

In this subsection the potential authorisations for HRDs will be addressed. Authorisations may be in the form of a residence permit or long-stay visa. Either shall enable the HRD to reside in the Member State territory for a period exceeding 90 days, subject to the conditions outlined in this Directive. In neither case should there be any explicit reference to the authorised person's capacity (as an HRD) to protect them from possible risks related to being identified as an HRD.

Applications should be processed in a timely manner that does not exceed the processing time that is required for applications for a short-stay visa (15 days).

Attention should then be given to the authorisation's duration, which should range from more than three months to one year depending on the intended purpose of a stay. This may include (but is not limited to) advocacy, research, studies, training, voluntary service or rest and respite. For instance, if the authorisation is for a student or a researcher, the authorisation should be valid for at least one year to accommodate the duration of their academic or research activities. The provision on duration could be similar to the provisions already found in other legal migration Directives.

In all cases, the authorisation shall be renewed or extended when there is proof of a continued need for the HRD's presence in the EU either for human rights work or due to existing risks in their home country.

Expiring passports should be effective for extending the duration of an authorisation. However, for an extension to apply, the applicant must fulfil all entry and authorisation issuing conditions, for instance stating that the person's human rights work is ongoing. Where the Member States allow entry and residence during the first year based on a long-stay visa, an application for a residence permit shall be submitted before the expiry of the long-stay visa – and if there are reasons to justify the continuation of legal residence in the EU. This residence should also count towards the five years required for the application of long-term resident status as defined in Directive 2003/109/EC[154].

Grounds for refusal, withdrawal or non-renewal of authorisations

This subsection should provide the grounds for rejection of an authorisation, which should be carefully defined to balance the state's interests related to national security and the need to protect HRDs. Some potential grounds for long-term authorisation rejection could include the presentation of false or misleading information in the application, insufficient explanation of the reasons that a long-term authorisation is needed and insufficient justification that a short-term visa cannot serve the purposes of a visit[155]. Other reasons could include credible evidence that the person poses a threat to national security and public order, for example, due to the existence of an SIS alert (although, as it will be shown in Section 5, even in those cases the credibility of an SIS alert should be reviewed). However, a notice in Interpol databases should not be considered as credible evidence, considering that there have been numerous reports showing that these databases are not fully reliable[156]. Furthermore, the lack of sufficient documentation that proves the financial sustainability of the applicant should not be a reason to refuse their authorisation. In such cases, additional evidence may be required from either the HRD, the trusted third party or the sponsor, which will at least provide information on accommodation and the applicant's health insurance whilst staying in the EU. It is essential to ensure that an appeal procedure will be envisaged to challenge refusals.

Subsequently, the grounds for withdrawal or non-renewal of an authorisation will be provided. The Directive should stipulate that the authorisation may be withdrawn or not renewed when the third country national no longer meets the general conditions laid down or when documents presented have been fraudulently acquired, or falsified. Other grounds may include: a trusted third party revoking an HRD's capacity; the HRD's work is no longer ongoing; the HRD is involved in criminal or other violent activities; and the HRD's circumstances have substantially changed. Additionally, non-compliance with visa conditions could result in the withdrawal or non-renewal of an authorisation. Member States may also withdraw or refuse renewal for reasons of public policy, public security or public health. Any decision to withdraw or refusal to renew an authorisation shall consider the HDR's specific circumstances and respect the principle of proportionality.

Rights

This chapter should address the measures that need to be adopted to support HRDs during their long-term stay in the EU. In this respect, the FRA has conducted interviews to identify HRDs' key needs which should be addressed here[157]. This includes provisions to facilitate access to services such as financial and social assistance, banking services, access to the labour market, self-employment, access to education, insurance, recovery including medical and psychological care, support to continue human rights work and facilitating

[154] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal, L 16, 23 January 2004.
[155] Although, the letter of support from the trusted third-party should be sufficient evidence of the reasons of the intended stay. The importance of the letter of support should be highlighted as it should constitute significant evidence that demonstrates the necessity of an intended stay for HRDs.
[156] Fair Trials, 'Interpol: New data reveals 1,000 Red Notices and Wanted Person diffusions rejected or deleted each year', 7 November 2022.
[157] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

the entry of HRDs' family members into the EU. Section 4 on socio-economic rights will be instructive for this part of the Directive.

In every case, Member States shall ensure that HRDs have access to suitable accommodation or, if necessary, receive the means to obtain housing. Member States should also make provision for HRDs to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, including medical care. Medical care should at least include emergency care and essential treatment in the event of illness. Of course, proving insufficient resources should not be considered a reason for refusing HRDs' visa applications as such support may be provided later, for example when authorisation approval is awaited or even after the authorisation has been approved, but not as yet formalised. HRDs should also have access to employment (HRDs who receive work offers corresponding to Blue Card requirements shall be eligible to apply for a card while within the Member State territory, with automatic recognition of their HRD status) and education as well as access to vocational guidance, initial and further training as well as rehabilitation services to address their unique needs, including psychological, legal and practical support.

Member States shall establish a dedicated fund to provide financial support to HRDs (and/or organisations that support HRDs) during their stay, covering living expenses, legal fees, healthcare, and other necessities. EU funding also needs to be available for supporting HRDs' long-term stays in the EU. Member States shall also establish mechanisms to protect HRDs from threats, harassment and persecution during their stay, including restraining orders and confidentiality measures. The CoE's skills in this area should be considered and their experts must be consulted on best practices[158].

HRDs' family members shall be entitled to join the HRD in the host country and Member States shall provide all necessary support services. The TPD could be considered as a reference point for the treatment of HRDs' family members[159].

Mobility between Member States

Intra-EU mobility should be allowed for HRDs during short-term (90 days) stays, not only to promote their work, but also to participate in actions and events related to human rights. Long-term mobility should be allowed when firstly there is evidence that the HRD needs to stay in another Member State to continue human rights work, for a period exceeding the short-term mobility period and secondly proof that sufficient resources exist to cover subsistence costs (maybe from a sponsor). Documented proof for intra-EU mobility may include collaboration with NHRIs and local human rights groups, engagement in specific projects, research initiatives, field research and exceptional circumstances related to risk in the host country. HRDs long-stay visas and residence permits should be notified by the Member States for the purposes of Article 39(a) Schengen Borders Code[160] as the equivalent of a visa for intra-EU mobility.

Databases

The topic of databases will be analysed separately in Section 5.

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[158] The most recent overview on the different CoE mechanisms can be found in the Follow-up to the Helsinki decisions on civil society: implementation of the Secretary General's proposals -Final Report report, SG/Inf(2022)13, 12 April 2022. At the Reykjavík Summit on 16-17 May 2023, the heads of state and government of the 46 member states of the CoE adopted the Reykjavík Declaration where it is stated that 'We reiterate the pan-European role of the Council of Europe and in this regard, we will step up and strengthen the Council of Europe's engagement with democratic actors in Europe and its efforts to create an enabling environment for human rights defenders'. This aspect will be followed by the CoE Committee of Ministers' working groups and the Secretary General as mentioned during an interview with the CoE.

[159] This could include provisions related to the family unity (Article 15 of the TPD).

[160] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Official Journal of the EU, L 77/1, 23 March 2016.

Practical arrangements

To ensure the proper implementation of this proposed Directive, the following arrangements should be put in place:

- Training on the recognition of HRDs as well as their rights and protections should be conducted for immigration officials and law enforcement personnel. In addition, guidelines and manuals should be created to cover the handling of HRDs' applications;
- A referral pathway should be established at the EU level, potentially through the EEAS, to ensure that all HRDs can be brought into contact with a trusted third party;
- Member States should also designate national focal points to act as central authorities that will assist with the Directive's implementation;
- Monitoring and reporting mechanisms should be established to control implementation of this Directive.
- There should be collaboration with civil society actors, the FRA, the CoE and the UN Special Rapporteur on the situation of HRDs to ensure their input and expertise in the implementation process.
- In the framework of local Schengen cooperation, consulates should exchange statistics and other information on these authorisations.
- It must be ensured that data related to HRDs is carefully collected and analysed.

4 Strengthening socio-economic support of HRDs in the EU and enhancing coordination between Member States, EU delegations and liaison officers

4.1 Introduction

Given the critical role that HRDs play in the protection and promotion of human rights, it is vital not only for proactive programmes to be enhanced and broadened, but also for additional practical support as well as a safe environment to be provided covering them and their families coming to and staying within the EU. CSOs interacting with HRDs have confirmed that those arriving in the EU require help in various ways, including an assistance with access to rights and services, recovery, ongoing human rights work, integration, addressing security threats, ensuring freedom of movement in the EU for networking and advocacy purposes, as well as legal assistance for authorisation procedures or other issues. Problems opening bank accounts have specifically been highlighted.

There are currently two main initiatives at the EU level for the support of HRDs[161]:

- ProtectDefenders is the EU HRDs mechanism, which leads a consortium of 12 NGOs active in the field of human rights and it has supported over 60 000 HRDs worldwide[162]. The organisation operates a rapid response mechanism to provide urgent assistance and practical support to HRDs and their families. A programme of temporary relocation has also been managed through the EU temporary relocation platform (EUTRP) since 2016. ProtectDefenders further provides training, financial support, accompaniment and capacity-building for HRDs, it is also monitoring their situations and promoting coordination between organisations dedicated to providing them with support[163].
- The EUTRP initiative was created in 2014 as a network of organisations engaged in the temporary relocation of at-risk HRDs. It is coordinated by ProtectDefenders[164]. The platform aims to facilitate coordination and collaboration among entities involved in temporary relocation efforts for HRDs.

While the previous Sections addressed possible legal ways of facilitating HRDs' short-term and long-term access to the EU, the focus will here shift to the exploration of potential EU-level policy measures related to HRDs' socio-economic support once they have gained access to the EU. These measures aim to promote existing Member States' initiatives and introduce novel strategies to fortify support.

4.2 Amplifying Member States' existing programmes

4.2.1 Member States' initiatives

Various EU Member States have implemented practices to facilitate provisions and support for HRDs in the EU. These programmes include access to a work permit, education, healthcare, banking services, capacity building, trauma relief and psychological help[165]. However, common policy measures at the EU level to

[161] For a detailed description of what the EU is doing to support human rights defenders, see in I. Zamfir, 'EU support for human rights defenders around the world', European Parliamentary Research Service, PE 733.529, June 2022.
[162] See ProtectDefenders, 'Joint Statement: International Civil Society Organisations call for an effective and enabling EU Visa framework for At-Risk Human Rights Defenders', 2022.
[163] For more information, see ProtectDefenders, 'Shelter Initiatives Programme' webpage, 10 June 2020.
[164] For more information, see the EUTRP Programme website, nd.
[165] The FRA report entails information for all relevant national programmes, see FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

promote support for HRDs and their families have yet to be developed. The aim of this Section, therefore, is to present existing initiatives implemented in various Member States and then investigate how new EU-level policies could promote these programmes.

The following Member States have already developed programmes to accommodate the needs of HRDs: Czechia, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Netherlands, Poland, Spain and Sweden[166]. In terms of beneficiaries, most programmes are open to HRDs from all over the world, while others are available only for defenders from specific countries such as Belarus and Russia. Many relocation programmes have a limited personal scope, being restricted to specific categories of participants, such as journalists, artists[167], academics[168] and authors. Support schemes include financial and housing assistance, capacity building, connection with other HRDs, psychological support, as well as access to work permits and banking services. Family members are covered only in certain schemes and same-sex partnerships are recognised as families only by specific countries[169]. The following Section will provide an overview of each country's scheme[170].

During their interviews, the authors gathered information about two types of programmes that support HRDs in Czechia: (i) the civil society programme and (ii) visas for Belarusian students. The programme was established in May 2022 and is a government-approved programme for citizens of Russia and Belarus who are at risk due to political persecution in their country of origin. It is implemented by the Ministry of Foreign Affairs and the Ministry of the Interior in cooperation with the non-governmental sector. Persons who meet the criteria for participation in this programme can apply for a residence permit at the Czech Embassy. The same applies to their immediate family members. In such cases, simplified and accelerated processing of residence permit applications (within 30 days) is ensured. HRDs can apply for various residence permits, such as employee cards, blue cards, long-term visas for study, long-term residence permits for study, long-term residence permits for scientific research, long-term visas for business purposes and long-term visas for other purposes. Family members can apply for long-term family visas or long-term residence permits for family reunification[171]. The programme has been operational since 20 May 2022, with an annual quota of 500 applicants.

To be eligible, the visa applicant must have a sponsor, usually a non-profit organisation working in the field of human rights. The entry criteria require applicants to be citizens of Russia or Belarus and demonstrate that they are freedom fighters, HRDs, representatives of civil society, representatives of independent media or academia, or individuals persecuted by state authorities and hence compelled to leave their home countries for security reasons. This could include their active defence of democratic principles, in particular freedom of expression, an inability to practice their profession freely and safely, or any other reasons related to human rights[172]. The other Czech programme concerns Belarusian students who are entitled to various types of scholarships to attend courses in Czech universities[173].

[166] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[167] See 'Artists at Risk', website, nd.
[168] 'Scholars at Risk Network, website, nd.
[169] See in I. Zamfir, 'EU support for human rights defenders around the world', op.cit., page 38.
[170] The information has been mainly derived from FRA, Protecting Human Rights Defenders at risk, 2023 (op. cit, page 1) and interviews with civil society actors.
[171] This information was derived during the authors' interview with a Professor from the University of Prague.
[172] This information was derived during the authors' interview with a Professor from the University of Prague.
[173] This includes: (1) Scholarship under international agreements implemented by the Ministry of Education, Youth and Sports; (2) a scholarship programme of the Ministry of Education, Youth and Sports; (3) an EU scholarship programme; or (4) a scholarship based on a decision of the Government of the Czech Republic.

Following the Russian invasion of Ukraine in February 2022, Estonia adopted a policy of issuing visas or temporary residence permits to enable journalists from Russia and Belarus to work in the country. However, there is limited information regarding this programme's beneficiaries[174].

In Finland, a programme called 'Artists at Risk' which was founded in 2013 provides funding and networking opportunities for HRDs, with a focus on journalists and artists[175]. This initiative is run by the NGO Perpetuum Mobile and assists, relocates and funds artists who are at risk of persecution or fleeing war. Artists at Risk supported artists in 26 venues across 19 nations prior to Russia's invasion of Ukraine. Since then, around 570 hosting institutions across Europe have joined Artists at Risk, relocating and assisting nearly 2 100 Ukrainian applicants[176]. The initiative continues to place a major premium on assisting at-risk Afghan artists. Although the Ministry of Foreign Affairs does not directly refer to visas for HRDs, it mentions the possibility of issuing visas with limited territorial validity according to Article 25 of the Visa Code[177].

In France, the Marianne Initiative for HRDs was launched in December 2021 and provides HRDs with temporary long stay-visas (six months), accommodation in Paris, a monthly stipend to cover their living expenses and psychological support[178]. However, there are no arrangements for family members to accompany defenders when they take part in the programme and there is limited capacity (15 defenders in the yearly cohort)[179].

In June 2020, Germany started implementing the Elisabeth-Selbert-Initiative for HRDs at risk[180]. This programme allows HRDs to stay in Germany for four to six months, during which time they receive health insurance, travel expenses and a monthly grant to cover living costs. While in Germany, they are hosted by a CSO active in the field of human rights.

In Ireland, the Irish Special Humanitarian Visa System for HRDs at risk offers short-notice national visas on humanitarian grounds to defenders at extreme risk or under prolonged pressure. This scheme is focused on short-term visas (up to three months)[181].

Latvia has no formal procedure, but HRDs at risk from Belarus and Russia have been provided with long-term visas and residence permits on humanitarian grounds.

In Lithuania, the state, in cooperation with civil society actors, facilitates the temporary relocation of HRDs from Belarus and Russia. However, the programme's capacity is limited[182].

In the Netherlands, the Shelter City initiative was launched in 2012 as a temporary relocation programme for HRDs during which they can benefit from a holistic integration and training programme led by local organisations[183]. The programme covers accommodation, monthly grants for living expenses and one-

[174] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[175] See Home | Artists at Risk (AR) | A Perpetuum Mobilɛzation website.
[176] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[177] Article 25 (1) of the Visa Code obliges Member States to issue Schengen limited territoriality visas either on humanitarian grounds, for reasons of national interest or because of international obligations.
[178] For more information, see in the Initiative Marianne, 'The Marianne Initiative for Human Rights Defenders', webpage, nd.
[179] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[180] See Institute für Auslandsbeiziehungen, 'Elisabeth-Selbert-Initiative', webpage, nd.
[181] For more information, see the example of Ireland. Sessiz Kalma, 'Ireland: Humanitarian Visa Scheme for HRDs', *Hafiza Merkezi*, nd.
[182] See also in Ministry of Foreign Affairs of the Republic of Lithuania, 'Joint Statement by the Estonian, Latvian, Lithuanian and Polish Foreign ministers on the third anniversary of illegitimate presidential elections in Belarus', August 2023.
[183] See Justice&Peace, 'Shelter City', webpage, nd.

week's holistic security training organised by Justice & Peace in The Hague. The initiative also extends to HRDs' family members, providing cultural and integration support.

In Poland, HRDs may apply for permission on humanitarian grounds under a visa scheme coordinated by the Ministry of Foreign Affairs in collaboration with civil society partners; they are also able to take up employment without a work permit and be covered by public health insurance[184]. Moreover, HRDs have access to education, Polish language courses and psychological assistance. There is also an option for HRDs to obtain visas through the Warsaw-based Helsinki Foundation for Human Rights and they are provided with individual support such as accommodation as well as coverage of living costs during the first three months of their stay with the possibility of extension[185].

Spain has launched its TP programme for HRDs, which is the oldest EU practice having operated since 1995. Under this programme, HRDs are welcomed in Spain with their family members. They have access to healthcare and education, although they do not have the right to work, hence making ProtectDefenders.eu an essential mechanism for their funding[186]. Also, a host organisation is responsible for providing capacity-building and advocacy assistance to HRDs in Spain.

Additionally, there is an increasing number of local government efforts around the world for temporary relocation of HRDs in the EU[187]. There are two main initiatives at local level, the International Cities of Refuge Network (ICORN) and Shelter City. ICORN was founded in Stavanger, Norway, during 2006 and provides temporary long-term residencies to at-risk writers, artists and journalists in 11 EU Member States[188]. The programme's main objective is to enhance conditions for freedom of expression worldwide. It provides participants with access to housing and grants covering living expenses, as well as access to public services[189]. As described above, the Shelter City is a Dutch programme with 21 cities, which offers holistic integration support[190]. Finally, various universities around the world have also implemented programmes to support HRDs and refugees, particularly in response to crises such as the 2015 refugee influx and events in Afghanistan following the 2021 coup in Kabul. These programmes aim to provide education, training and support to individuals at risk[191].

4.2.2 Initiatives in third countries

In the context of this study's primary focus on the EU, international human rights programmes are briefly mentioned here to provide a broader perspective and context. There are currently two international programmes, which have been also mentioned in the FRA report[192].

Firstly, there is the Canadian resettlement scheme which many NGOs interviewed referred to as a 'good example to be followed by EU Member States'. Canada has established a specialised refugee resettlement programme for at-risk human rights HRDs who cannot return to their home country. This is part of Canada's larger government-assisted refugees initiative, aiming to resettle up to 250 defenders and their families annually[193]. Eligible individuals must be referred by UNHCR, Front Line Defenders, or ProtectDefenders.eu,

[184] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[185] See on Liberties, 'Polish Helsinki Foundation for Human Rights', webpage, nd.
[186] The Spanish programme aimed at providing temporary shelter for HRDs at risk, because of their work in defence of universally recognised human rights was launched in 1998. See further details, International Dalit Solidarity Network, 'The Spanish Program for Support and Protection of Human Rights Defenders at risk', nd.
[187] For more information, see OHCHR, Local Governments protecting Human Rights Defenders, 2022.
[188] For more information, see ICORN, 'ICORN Cities of Refuge', webpage, nd.
[189] See ICORN, 'ICORN Cities of Refuge', webpage, nd.
[190] See Shelter City, 'We are Shelter City', website, nd.
[191] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[192] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[193] For more information, see Government of Canada, 'Providing protection to human rights defenders at risk', webpage, nd.

as direct applications are not accepted. While not suitable for emergency situations, it does offer transportation loans and support from Canadian CSOs to aid defenders with integrating into Canadian society and continuing their human rights work. While the Canadian example assists HRDs and relies on a trusted third-party system, as this study suggests, it is primarily quota-based and lacks any legal basis. Instead, it operates on a policy basis, making it legally fragile.

The other scheme is a city-based temporary relocation scheme for HRDs at risk across Africa titled the 'Ubuntu Hub Cities Initiative'. Administered by the Pan-African Human Rights Defenders Network, it operates in eight strategic hub cities, providing individualised support[194]. This initiative has aided 118 defenders, allowing flexible, up to one-year relocation without visa requirements[195]. It offers financial support, integration, training and even psychological support. If risks persist, it assists with asylum or resettlement, including family members and uniquely supports the families of relocated defenders. As with the above-mentioned Canada's scheme, the African initiative also faces legal fragility as it is a local programme that does not have a legal basis.

4.2.3 EU policy recommendations to promote national initiatives

The FRA report has already extensively analysed existing programmes at national level. However, replicating its findings in this study was indispensable for exploring potential EU policy measures that could encourage Member States to develop and enhance their HRD initiatives.

Firstly, it was mentioned that in many national programmes there is an existing quota or maximum number of defenders' applications they can support. In some cases, there is also a limited personal scope (e.g., artists, academics and journalists) or ability to support HRDs from specific countries (e.g., Belarus and Russia). This may be due to the lack of funding to support more defenders or extend the programmes' specific scope.

Consequently, there is a proposal to establish an EU Support Fund for HRDs, which would be dedicated to providing financial assistance for specific HRD programmes that are already operating in Member States. This fund could serve as an incentive for Member States to establish new programmes and motivate those without existing national relocation programmes to initiate such practices. In either scenario, new national initiatives could secure funding from this dedicated support fund. Additionally, as many existing programmes depend on the capacity or availability of sponsors, an EU Sponsorship Fund could be created to financially support sponsors who assist HRDs. This could help sponsors to cover living expenses, healthcare, and other necessities for HRDs and their families who are eligible for one of the above-mentioned programmes. Further funding could be provided to the NGOs or ministries that implement the national programmes, for capacity-building activities, training and the development of awareness-raising campaigns. If a dedicated fund is not established, then programmes for HRDs need to be funded under the Neighbourhood, Development and International Cooperation Instrument (NDICI) thematic programme on human rights and democracy[196], including ProtectDefenders and the European Endowment for Democracy[197], which should be sufficient and flexible enough to respond to today's challenges[198].

Secondly, to support Member States further in implementing such initiatives, it is recommended that EU-level guidelines and recommendations should be developed that will help states design and implement

[194] For more information, AfricanDefenders, 'Ubuntu Hub Cities', webpage, nd.
[195] AfricanDefenders, 'Ubuntu Hub Cities', webpage, nd.
[196] For more information about the programme see European Commission, 'Global Europe: Neighbourhood, Development and International Cooperation Instrument', webpage, nd.
[197] See European Endowment for Democracy, website, nd.
[198] See I. Zamfir, 'EU support for human rights defenders around the world', European Parliamentary Research Service, PE 733.529, June 2022, page 38.

national HRD programmes. Moreover, it is important for the EU not only to facilitate networking and collaboration among Member States, but also to create dedicated EU platforms where best practices can be shared and exchanged.

The EU can accomplish this by organising conferences, workshops and online platforms that encourage the dissemination of knowledge, as well as the exchange of experiences, successes and challenges pertaining to the implementation of national relocation programmes and other initiatives supporting HRDs. Further collaborations can be established between universities that could offer possibilities for the exchange of students and fellows HRDs between Member States, through programmes such as Erasmus[199]. Such opportunities would enable HRDs to benefit from educational and cultural exchanges while strengthening their networks and capacities.

Thirdly, the European Commission could further assist Member States by establishing an evaluation mechanism that monitors and assesses the impact and effectiveness of the existing national programmes supporting HRDs. This could include data collection, assessment of success rates and level of integration, primarily drawing from the experiences of HRDs themselves. This approach could lead to the identification of both strengths and weaknesses in the existing programmes, offering valuable insights that could inform future national initiatives. It is also important to launch public awareness campaigns at the EU level that will advocate for the need to establish national relocation programmes for HRDs by explaining their benefits and showcasing success stories. Furthermore, the campaigns should inform citizens about the risks and challenges faced by HRDs as well as their contribution and positive impact on advancing human rights. These campaigns should further counter misconceptions surrounding HRDs and their work.

Finally, it is important for the EU legislator to amend the Visa Code and Directives on long-term stays to facilitate HRDs' access into the EU (see Sections 2 and 3). In parallel, the European Commission should amend the Visa Handbook and develop streamlined procedures that will harmonise arrangements for issuing visas and residence permits to HRDs (see Section 2). Such harmonisation across EU Member States would contribute to a more coherent and coordinated approach for providing access and support to HRDs in the EU.

4.3 Establishing policy measures at the EU Level

Although all the above-mentioned national initiatives are of paramount importance and need to be strengthened and promoted by the EU, the following subsection aims to propose specific strategies, initiatives and policy measures that need to be undertaken at the EU level to enhance the Union's efforts in safeguarding HRDs and facilitating their stays here.

4.3.1 Better implementation of the EU guidelines on HRDs and recognition for HRDs support

What emerged during the interviews with civil society actors and other stakeholders was that the EU has already developed important policies and mechanisms. Hence, the focus needs rather to shift towards the proper implementation of existing HRD guidelines and this requires actively engaging EU Member States, EU delegations and other relevant actors to ensure their comprehensive, transparent and proper introduction[200]. There is certainly a need for further EU guidance on this.

The role of EU delegations also needs to be enhanced, as they can monitor the situation on the ground and offer timely assistance. Furthermore, they can operate as a bridge between HRDs and the EU[201]. By appointing HRD focal points, which serve as direct contacts for HRDs, they can better coordinate their

[199] For more information, see European Commission, Erasmus+, nd.
[200] Council, EU Guidelines on Human Rights Defenders, 2009, op.cit., page 1.
[201] See European Commission, 'EU delegations', webpage, nd.

protection, assistance and support. EU delegations' accountability and the transparency of EU actions should be strengthened at the EU level through regular reporting that will include HRD Focal Points, their role and actions. As mentioned earlier, to achieve this each EU delegation should include information on its webpage about its HRD programme and related work as well as an email address and phone number for HRDs to contact the delegation.

Additionally, there should be explicit reference to HRDs, their rights and the EU Guidelines on HRDs in the various strategies and frameworks developed by the EU, such as the EU Action Plan on Human Rights and Democracy[202]. Furthermore, it is important to involve HRDs in consultations as well as the design of EU human rights policies and programmes; their expertise is invaluable in contributing to better planning along with implementing policies and schemes.

Finally, both HRDs and NGOs as well as other actors that support HRDs and provide assistance to them, need to be recognised at the EU level. This could be achieved through certificates of recognition or prizes, such as the EP's Sakharov Prize which can serve as an inspiration[203]. These initiatives can be complemented by EU awareness-raising campaigns and advocacy efforts which will encourage Member states to welcome HRDs and offer them support recognising their vital role in defending human rights.

4.3.2 Temporary relocation

The EUTRP is a European Commission initiative coordinated by ProtectDefenders[204]. The EU's competence to initiate a relocation programme for HRDs comes not from treaty provisions[205], but from the EU Guidelines on HRDs which aim to provide assistance and protection by issuing emergency visas and facilitating temporary shelter in the EU. The relocation platform should be further promoted by the EU in various ways. Firstly, the Commission could provide additional funding and resources (e.g., NDICI, Asylum, Migration and Integration Fund and European Instrument for Democracy and Human Rights) to ensure that HRDs involved in this programme have access to the essential socio-economic assistance once they arrive in the EU. Additional funding could also result in extending the personal and geographical scope of this project to provide support to more HRDs. To communicate the existence of the relocation platform to HRDs in third countries effectively, the EU could establish online platforms and deploy other outreach methods to ensure that HRDs are well-informed about this programme. Lastly, the European Commission should amend legislation pertaining to extended stays (see Section 3) or issue recommendations that grant HRDs the ability to stay longer within the EU. This could facilitate the project's implementation and enhance its consistency across different contexts.

4.3.3 Access to socio-economic assistance

Once HRDs arrive in the EU, they need assistance with accessing their rights as envisaged in the EU Charter of Fundamental Rights[206]. Accordingly, the EU could consider supporting and adopting the following initiatives and practices to assist HRDs:

Facilitating access to support: A well-established referral pathway

To support HRDs effectively, ensuring their access to trusted third parties and other sponsors is of paramount importance. This access may sometimes depend on networking and contacts, underlining the

[202] See in EEAS, EU Action Plan on Human Rights and Democracy 2020-2024, 2020.
[203] See EP, 'Sakharov Price – what it is about', webpage, nd.
[204] See the EUTRP website, nd.
[205] Although providing visas and implementing national 'relocation' programmes for HRDs is mainly a priority for Member States, the EU has also competence in this area. This is derived from its commitment to protect human rights enshrined in Articles 2 and 3 of the Treaty on EU. Additionally, Article 21 foresees the obligation to protect human rights in its external policy.
[206] EU, Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, C 364/1, 18 December 2000.

need for a clearly defined referral pathway that is not only established at the EU level but also publicly available and communicated in third countries, particularly as guidance for visa officers. The EU should play a pivotal role with ProtectDefenders in creating and disseminating this pathway (e.g., email addresses and hotline phone numbers or WhatsApp numbers), enabling HRDs to connect easily with trusted third parties and other organisations dedicated to supporting them, such as sponsors or other host organisations. It is also important for the EU delegations to have a dedicated HRD email address for onward referral to trusted third parties and other sponsors. By establishing a standardised and accessible referral mechanism at the EU level, HRDs can more readily access the crucial assistance and support they require when they come to the EU.

Housing

Firstly, HRDs should have access to affordable and secure housing options. The EU can promote the establishment of housing programmes where housing authorities, NGOs and local communities will participate with the aim of providing shelter and housing options to HRDs who come to the EU either for a short or long-term stays. Allocation of EU funds needs also to be ensured to provide financial support to HRDs (or organisations supporting HRDs), such as subsidies for rental costs or other housing assistance grants[207]. When HRDs arrive in the EU facing emergency situations, it is crucial that they are able to reach a hotline which will operate at the EU level and refer HRDs to national support assistance including housing services. In every case, collaboration with civil society actors and ProtectDefenders is crucial in assessing HRDs' needs and providing them with housing solutions. Local initiatives such as ICORN, Shelter City and Eurocities should be enhanced and additional EU funding should be provided to them.

Healthcare and psychosocial support

Secondly, many defenders may be exhausted or traumatised and measures for physical and mental recovery, including trauma relief, are therefore vital[208]. Hence, it is crucial to develop comprehensive healthcare support programmes, which include access to physical and mental health services, ensuring not only the physical safety but also the emotional well-being of HRDs. This can be achieved by ensuring that they have access to national healthcare systems in the same manner as EU citizens or beneficiaries of a TP scheme. The European Commission could, with ProtectDefenders, facilitate the development of common guidelines or recommendations in this respect. Moreover, specialised health insurance coverage that includes medical services, mental health support and coverage for emergency medical care could be developed. Finally, an EU list with specialised healthcare and mental health providers can be established and published online that will include dedicated clinics, counselling services, psychologists, social workers and other actors or services that have experience in working with HRDs in each Member State. EU funding could be allocated to these specialised services to ensure the free-of-charge provision of healthcare and mental health services to HRDs in need of support.

Financial services

Thirdly, regarding financial support, an initiative could involve collaboration with financial institutions to ensure that HRDs have access to banking services without discrimination or undue scrutiny. This could involve issuing EU guidelines for financial institutions to prevent the freezing or closure of accounts solely based on individuals' human rights activities. Additionally, European Commission or Council recommendations could be issued to address the issue of excessive documentation required to open a bank account. These recommendations could propose the simplification of account-opening procedures, particularly for HRDs who may not have access to all the standard documentation due to the nature of their work or displacement. Furthermore, to ensure that HRDs have the necessary resources to sustain their work

[207] The funding can also be provided to organisations and trusted third-parties that support HRDs and who can act as sponsors.
[208] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

and protect themselves, it is important to establish dedicated funds, including grants for their living expenses, legal assistance and healthcare support. It is also imperative to allocate EU funds to support NGOs as well as human rights organisations that work directly with defenders and establish a dedicated fund to provide emergency financial support to at-risk HRDs[209].

Employment, education and training

Fourthly, HRDs may often face challenges accessing education and employment when they arrive in the EU. For this reason, as proposed in Section 3 on extended stays, the EU should amend existing Directives such as those covering the Blue Card as well as Students and Researchers, to facilitate the access of HRDs to work and education. A proposal for a Directive that will regulate extended stay in the EU, targeted to HRDs, would further strengthen this effort (see Section 3).

In terms of accessing education, a dedicated bursary system established at the EU level can alleviate financial barriers for HRD students and researchers as it could cover tuition fees, living expenses and other educational costs[210]. Existing scholarship schemes, such as Erasmus and Marie Skłodowska-Curie, should be extended to include HRDs[211]. Furthermore, when accessing EU universities, HRDs should have access to support offices that can offer guidance on administrative procedures, language courses and other cultural integration courses, to foster a protective environment for them. Within the Research Executive Agency's existing range of competences, it should issue guidelines and/or recommendations to universities and research institutes in this respect. Additionally, the EU should promote coordination among universities across EU Member States to maximise the impact of educational support initiatives. As many universities offer scholarships/fellowships to HRDs, a centralised platform should be established at the EU level where existing educational opportunities, bursaries, scholarships and support services available to HRDs will be published.

HRDs should be further empowered by having access to employment facilitated. Accordingly, this study recommends that the Council and Commission issue guidelines and/or suggestions applicable to the Blue Card Directive, designed for skilled HRDs. In this way, HRDs can receive work permits and have access to essential protections and benefits. Initiatives such as internships, fellowships or dedicated job placement programmes specifically designed for HRDs can further foster employment opportunities. This may be achieved through partnerships with NGOs, public institutions and private companies. Furthermore, it is important to organise networking events, conferences and workshops that bring together defenders as well as potential employers, to foster meaningful connections and job opportunities. Additional funding to ProtectDefenders and its affiliates should be made available for such activities. Moreover, enabling HRDs to register or establish organisations dedicated to human rights and advocacy is crucial. Finally, the education and experience of HRDs, which was acquired in the home country, should be recognised in the EU. Hence, the European Commission and Council should issue recommendations in this respect.

Supporting HRDs' safe return to their home countries should be the EU's top priority. Ensuring training opportunities for HRDs in the EU is essential to ensure their personal development, enhance their skills and provide them with sustainable knowledge. By offering tailored training and capacity-building programmes during their time in Europe, HRDs can enhance their skills, networks and advocacy tools. Designing and implementing specialised training programmes and e-learning platforms with the aim of equipping them with practical skills for their work is crucial. This will also enable them to access training materials, webinars

[209] The EU's financial instrument for supporting HRDs along with other Human Rights and Democracy objectives was until 2020 the European Instrument for Democracy and Human Rights (2014-2020), and has since then been replaced by the thematic component Democracy and Human Rights of the new Global Europe instrument. See in I. Zamfir, 'EU support for human rights defenders around the world', European Parliamentary Research Service, PE 733.529, June 2022, p. 38.
[210] For some ideas, see in European Commission, 'Scholarships, grants and financial support', webpage, nd.
[211] See in European Commission, 'Marie Skłodowska-Curie Actions', webpage, nd.

and virtual workshops remotely when they are safely back in their home countries. A mentorship programme could also be established which will pair experienced HRDs with others who come to the EU for the first time or are new in the human rights field. EU funds can be provided for HRDs to implement specific projects in their own countries.

4.3.4 Legal protection mechanism for HRDs

HRDs may need access to legal advice, representation and remedies in case of harassment, threats, or attacks. For this reason, an EU protection and legal assistance mechanism could be established for HRDs that will enable them to access legal support and free or low-cost legal services. It is important to develop a comprehensive legal protection mechanism specifically designed for defenders. This mechanism could include specialised legal teams, emergency legal assistance and advocacy support to address legal challenges, harassment and other issues faced by HRDs. Existing EU mechanisms such as SOLVIT ('Solutions to problems with your EU rights') could be funded for this purpose[212]. Another proposal could be to set up a legal hotline staffed by attorneys who can provide immediate legal advice and guidance to defenders at risk or in urgent situations.

4.3.5 Supporting civil society actors

CSOs have a pivotal role to play in ensuring the protection and access to HRDs' rights. They are also actors who may be considered trusted parties according to our proposal, which means they will have additional duties in identifying and issuing letters of support to HRDs. While funding for HRDs have experienced some growth over time, the availability of resources is still marked by volatility[213]. Public funds are not always available and NGOs cannot be based only on private funds, given that private donors constitute a minority of the overall HRD funding landscape[214]. For this reason, either existing funds, such as those from NDICI, should be provided to actors that support HRDs and/or the EU should establish a dedicated fund that supports NGOs which assist HRDs[215]. CSOs need to have adequate funding and resources to identify genuine HRDs so as to provide them with essential support. Initiatives such as ProtectDefenders or Front Line Defenders should be empowered and resources should be effectively allocated to such actors to ensure better protection and direct support for HRDs or national programmes that have been established for HRDs. Finally, the EU could facilitate the collaboration and cooperation of trusted third parties, other civil society actors, host organisations, donors and policy-makers to ensure a comprehensive and interconnected effort to provide assistance to HRDs.

4.3.6 Family members

Regarding the involvement of family members in programmes for HRDs, it is important to establish clear and streamlined family reunification policies and legislation at the EU level that will enable defenders' family members to join them in the EU. These policies should consider the unique circumstances and needs of HRDs and their families. For this reason, the processing of visa applications for family members of HRDs should be prioritised to minimise the time and uncertainty that families may experience during the visa application process. The issuing of short-stay visas or other long-term authorisations for the family members of HRDs should also be facilitated, granting them the right to reside and work in the EU as long as the HRD needs to stay (or has authorisation to stay). This would allow family members to have access to

[212] See European Commission, 'SOLVIT – EU rights problem solving when working, living or doing business in another EU country', website, nd.
[213] ProtectDefenders, 'Funding available for Human Rights Defenders', 2017.
[214] ProtectDefenders, 'Funding available for Human Rights Defenders', 2017.
[215] In December 2021, the EU launched a thematic programme on human rights and democracy under its 2021-2027 Global Europe Instrument. HRDs are covered by Priority 1 of the third axis of action of this programme: Support human rights defenders and counter shrinking space for civil society. See in I. Zamfir, 'EU support for human rights defenders around the world', European Parliamentary Research Service, PE 733.529, June 2022, p. 38.

essential services, including healthcare, education and employment. The European Commission should therefore propose legislative amendments and issue recommendations; Article 15 of the TPD could serve as the basis for the treatment of HRDs' family members in the EU.

Additionally, establishing support programmes such as orientation sessions, language classes, cultural integration support and access to social services to provide guidance to the family members upon their arrival in the EU is crucial. If HRDs have children, access to quality education should be ensured, including providing support for enrolment in schools, language support programmes and recognition of academic qualifications obtained in their home countries. Finally, EU funding of programmes that support HRDs should also include funding for their family members.

4.3.7 Closing considerations

While the above-mentioned practices offer a cohesive framework for HRDs' socio-economic support in the EU, in order to implement these measures, they must also align with the political realities of EU Member States. Clearly this study cannot provide an exhaustive feasibility analysis, as political realities in the EU can change frequently, with each state having its own unique political agenda. However, it is evident that within the realm of HRDs, nearly half of the EU countries are already implementing programmes for HRDs, as supported by the findings in the FRA report and insights from our civil society interviews. This demonstrates a collective willingness among many EU Member States to establish and maintain initiatives for the protection of HRDs, highlighting the momentum in this direction despite evolving political dynamics.

4.4 Coordination between Member States, EU delegations and liaison officers

An EU liaison officer on HRDs is appointed in every country where the EU is represented. The responsibilities of such officers include connecting regularly with and among HRDs, visiting HRDs at risk, visiting those in detention or under house arrest, becoming involved in trial observation and, as set out in the FRA report more generally, promoting an open civic space as well as a safe and enabling environment while strengthening monitoring and improving reporting[216]. A guidance note (not publicly available) calls on EU delegations to exchange information with Member States on the ground and raise awareness of HRDs' protection and relocation needs. Overall, there are 140 EU delegations around the world with coordination being provided by the EEAS headquarters in Brussels. However, according to an EP 2023 report, questions have been raised about the effective integration of HRD protection issues into EU external action[217].

There are structural issues which hamper close cooperation between EEAS officers in the field and visa officers. Firstly visa officers are part of national administrations, almost without exception interior ministries (often seconded to foreign ministries). Although they must adhere to EU law not only as detailed in the Visa Code (a regulation and therefore directly applicable, not requiring national implementing measures) but also on issuing visas for other purposes such as family reunification, study or work purposes (all directives therefore implemented in national law), they are appointed by and report to interior ministries. EEAS officers are EU officials of the EEAS, with links in national foreign affairs ministries, but are neither able to take nor receive instructions directly from national foreign ministries. Generally, national foreign ministries are similarly not in a position to give or take instructions directly from national interior ministries.

[216] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[217] EP, Report on the EU Guidelines of Human Rights Defenders, 2021/2204 (INI), 17 February 2023.

The EU established a network of Immigration Liaison Officers in 2004 by a regulation which was recast in 2019[218]. The emphasis here is on close cooperation with the host country to prevent any movement of unwanted people to the EU[219]. The recast included a duty on liaison officers to carry out their tasks in accordance with fundamental rights as general principles of Union law as well as international law, including human rights obligations. They must have consideration for vulnerable persons and consider the gender dimension of migration flows[220]. The interpretation of this duty must include attention to recital 4 which sets out the basis[221]. This human rights duty should include assistance to HRDs though this is not specified. More promisingly, liaison officers are charged with coordination among themselves and with relevant stakeholders regarding the provision of their capacity-building activities to authorities and other stakeholders in third countries. This includes confirming the identity of persons in need of international protection for the purposes of facilitating their resettlement in the Union, including where possible providing them with adequate pre-departure information and support[222].

This duty to coordinate with relevant stakeholders could include coordination with EEAS delegations which hold HRD obligations. Liaison officers are not necessarily the same as visa officers (though under the regulation's definition they could be)[223]. This definition is wide enough for EEAS HRD officers also to be designated as immigration liaison officers under the regulation. The widening of the immigration liaison officers network could be an option for enabling EEAS delegation members with HRD duties to work more closely with visa officers training and assisting them with definitional issues regarding HRDs.

Assuming that the approaches to certifying the status of individuals as HRDs as suggested above are favourably received, with the inclusion not only of official bodies such as accredited NHRIs, recognised bodies within the EU which have issued invitations such as universities, research institutes, EU NGOs and others, but also INGOs and local NGOs depending on the situation of the HRD, the liaison network might

[218] Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast), Official Journal of the EU, L 198/88, PE/50/2019/REV/1, 25 July 2019.

[219] Article 3 of the Regulation 2019/1240: 'Immigration liaison officers shall collect information, for use either at operational level, strategic level, or both. Information collected under this paragraph shall be collected in accordance with Article 1(2) and shall not contain personal data, without prejudice to Article 10(2). Such information shall cover the following issues in particular: (a) European integrated border management at the external borders, with a view to managing migration effectively; (b) migratory flows originating from or transiting through the third country, including where possible and relevant, the composition of migratory flows and migrants' intended destination; (c) routes used by migratory flows originating from or transiting through the third country in order to reach the territories of the Member States; (d) the existence, activities and modi operandi of criminal organisations involved in smuggling of migrants and trafficking in human beings along the migratory routes; (e) incidents and events that have the potential to be or to cause new developments with respect to migratory flows; (f) methods used for counterfeiting or falsifying identity documents and travel documents; (g) ways and means to assist the authorities in third countries in preventing illegal immigration flows originating from or transiting through their territories; (h) pre-departure measures available to immigrants in the country of origin or in host third countries that support successful integration upon legal arrival in Member States; (i) ways and means to facilitate return, readmission and reintegration; (j) effective access to protection that the third country has put in place, including in favour of vulnerable persons; (k) existing and possible future legal immigration strategies and channels between the Union and third countries, taking into account skills and labour market needs in Member States, as well as resettlement and other protection tools; (l) capacity, capability, political strategies, legislation and legal practices of third countries and stakeholders, including, where possible and relevant, regarding reception and detention centres and the conditions therein, as relevant to the issues referred to in points (a) to (k). 5. Immigration liaison officers shall coordinate among themselves and with relevant stakeholders regarding the provision of their capacity-building activities to authorities and other stakeholders in third countries'.

[220] Article 3(2) of the Regulation 2019/1240.

[221] Recital 4: 'Respect for human rights is a fundamental principle of the Union. The Union is committed to protecting the human rights and fundamental freedoms of all migrants, regardless of their migratory status, in full compliance with international law. As such, measures taken by immigration liaison officers when implementing this Regulation, in cases involving vulnerable people, should respect fundamental rights in accordance with relevant international and Union law, including Articles 2 and 6 of the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union'.

[222] Article 3(5)(b) of the Regulation 2019/1240.

[223] Article 2(1) of the Regulation 2019/1240 'immigration liaison officer' means a liaison officer designated and deployed abroad, by the competent authorities of a Member State, or by the Commission or by a Union agency, in accordance with the respective legal basis, to deal with immigration-related issues, also when that is only a part of their duties.

be a venue in which EEAS delegation members with HRD responsibilities could assist visa officers correctly to apply the guidance (and any changes of law).

Finally, the meeting's language of liaison officers is determined in advance and the EEAS officer, responsible for HRDs, will need to have relevant linguistic skills. Similarly, in their contacts with HRDs where there is no common language and interpreters need to be used, the duties of reliability and confidentiality of discussions must also apply to any interpreters used. Where HRDs approach the EEAS delegation for assistance, in the evaluation of their situations the necessary safeguards toward the validity of documentation need to be applied, but in a manner which does not place extreme obstacles in the way of HRDs to receive assistance.

5 Borders, digitalisation and databases

5.1 Borders

Not all HRDs are visa required nationals and so in practice, if not in law, entry to the EU is simpler. As FRONTEX has stated, on average a border guard at an external border of the EU has 12 seconds to decide whether to admit a passenger[224]. Again, according to FRONTEX statistics, only 0.0006 % of arriving passengers at EU external borders are refused admission[225]. However, HRDs will need to fulfil the requirements of the (Schengen) Borders Code for entry for 90 days or less out of 180[226]. These are:

(a) being in possession of a valid travel document entitling the holder to cross the border by satisfying the following criteria:

(i) validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;

(ii) issuance within the previous ten years;

(b) [this relates to visas]

(c) having justification for the purpose and conditions of the intended stay with sufficient means of subsistence, both for the duration of the intended stay and for return to the country of origin or transit to a third country into which admittance is certain, or are in a position to acquire such means lawfully;

(d) not featuring on an SIS alert for the purposes of refusing entry;

(e) not being considered as a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

From interviews that were held for this study, it seems that the requirement for a valid travel document is often an obstacle for HRDs who are under surveillance by their state of origin. A direction to border guards could be included in the Borders Handbook[227] that this requirement should be exercised flexibly when the person seeking entry is an HRD as attested by a trusted third party. As in respect of short-stay visas, border guards frequently give permission for HRDs to enter only for the exact days which are required for participation in the event to which they have been invited. The Borders Handbook should direct border guards always to grant a maximum of 90 days to passengers seeking entry as attested HRDs. An attestation from a trusted third party that the individual is an HRD should create a presumption that the person fulfils the requirements of subsection (c) without extensive further documentation and this should be included in the Borders Handbook. Regarding requirements (d), an HRD should not be refused admission if the reason for entry on the SIS is related to an unsuccessful asylum application in the EU or an irregular stay on the territory. An HRD seeking entry whose details appear on an SIS search should be given the opportunity to make representations regarding the relevance of entry before being removed from the territory. Regarding requirement (e), where there is a question of national security, an investigation into

[224] See in Frontex, 'Twelve Seconds to Decide: In Search of Excellence: Frontex and the Principle of Best Practice', Frontex Information and Transparency Team, 2014.
[225] E. Guild, 'Interrogating Europe's Borders: Reflections from an Academic Career', Valedictory Lecture, 6 September 2019.
[226] EU, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (hereinafter Schengen Borders Code) (codification), Official Journal of the EU, L 77/1, 23 March 2016.
[227] European Commission, Annex to the Commission Recommendation establishing a common 'Practical Handbook for Border Guards (Schengen Handbook)' to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C (2019) 7131 final), C(2022) 7591 final, 28 October 2022.

the correctness of the determination needs to be undertaken in view of the risk of fallacious negative information about the individual having been circulated by authorities in their country of origin which have affected his or her security rating or assessment.

An HRD who is refused entry for a short stay needs to have a right of appeal against that refusal of entry. The appeal right must have an automatic suspensive effect and hence an appropriate legislative amendment to Article 14(2) Borders Code is required.

5.2 Databases

As this study focuses on third country nationals HRDs, a key question that arises concerns the processing of their personal data in the EU large-scale IT systems (databases) and whether the regulation of HRDs in the Visa Code, the Temporary Protection Directive or via a separate HRDs directive may necessitate reforms in the legal instruments of these databases. These databases are:

1. **SIS (operational)**: The SIS stores alerts containing biometric and biographical information on various categories of persons[228], namely: those wanted for arrest and extradition[229]; those reported as missing; those deemed to be vulnerable and who need to be prevented from travelling[230]; those being sought to assist with a judicial procedure[231]; others or objects subject to discreet, inquiry or specific checks[232]; objects sought for the purpose of seizure or their use as evidence in criminal proceedings[233]; and unknown wanted individuals[234]. In addition, the SIS stores alerts on third country nationals who are: subject to return procedures[235]; to be refused entry or stay in the Schengen area[236]; and other general alerts [237].
2. **Eurodac (operational)**: Eurodac processes the fingerprints of asylum seekers and certain categories of irregular migrants (irregular migrants apprehended in connection with the irregular crossing of an external border or found illegally staying in a Member State) primarily with the purpose of assisting in implementation of the Dublin rules on allocating the Member State responsible to examine an

[228] EU, Regulation 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, Official Journal of the EU, L 312/1, 7 December 2018; EU, Regulation 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, Official Journal of the EU, L 312/14, 7 December 2018; EU, Regulation 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, Official Journal of the EU, L 312/56, 7 December 2018.

[229] Articles 26-31 of the Regulation 2018/1862.

[230] Articles 32-33 of the Regulation 2018/1862.

[231] Articles 34-35 of the Regulation 2018/1862.

[232] Articles 36-37 of the Regulation 2018/1862.

[233] Articles 38-39 of the Regulation 2018/1862.

[234] Articles 40-41 of the Regulation 2018/1862.

[235] Article 3 of the Regulation 2018/1860.

[236] Article 24 of the Regulation 2018/1861. Article 24 of Regulation 2018/1861. For a detailed overview of SIS see E. Brouwer, *Digital Borders and Real Rights. Effective Remedies for Third-Country Nationals in the Schengen Information System*, Vol 15, Martinus Nijhoff, Leiden, 2008. For a more recent analysis see E. Brouwer, 'Schengen's Undesirable Aliens' in P. Minderhoud, S. Mantu and K. Zwaan (eds), *Caught in between Borders – Citizens, Migrants, Humans: Liber Amicorum in honour of prof.dr. Elspeth Guild*, Wolf Legal Publishers, Oisterwijk, 2019.

[237] Regulation (EU) 2022/1190 of the European Parliament and of the Council of 6 July 2022 amending Regulation (EU) 2018/1862 as regards the entry of information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union, Official Journal of the EU, L 185/1, 12 July 2022.

application for international protection[238]. Following two proposals, the scope of Eurodac will expand to increase the personal data processed, decrease the fingerprinting age and increase the purposes for which Eurodac data may be used[239]. The Council has also proposed inclusion within the Eurodac scope of beneficiaries for temporary protection (except for Ukrainian nationals)[240].

3. **VIS (operational)**: The VIS is aimed at improving implementation of the common visa policy, by processing personal data of short-stay visa applicants. Following revision of its legal basis, its scope will be extended to long-term visa holders as well as holders of residence permits[241]. This will take place once the technical modifications have been completed, albeit no date for this is as yet available.

4. **Entry/Exit System** (**EES) (under construction and scheduled to become operational in 2024)**: The EES will register the border crossings, both at entry and exit, of all third country nationals admitted for short stays, irrespective of whether they are required to obtain a Schengen visas or not[242].

5. **European Travel Information and Authorisation System (ETIAS) (under construction and scheduled to become operational in 2025):** The ETIAS will process personal data of visa-exempt third country national with the aim of identifying whether their presence in the Member State territory would pose a security, irregular migration or high epidemic risk. To assess these risks, the

[238] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), Official Journal of the EU, L 180/1, 29 June 2013.

[239] European Commission, Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless persons], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast), COM(2016) 272 final, 04 May 2016; European Commission, Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818, COM(2020) 614 final, 23 September 2020.

[240] For an analysis see N. Vavoula, 'Focus on Eurodac: Disentangled from the "Package Approach" but Is It Fit to Fly?', ECRE, 2023.

[241] Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), Official Journal of the EU, L 218/60, 13 August 2008, as amended by Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System, Official Journal of the EU, L 248/11, 13 July 2021.

[242] Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, Official Journal of the EU, L 327/20, 09 December 2017.

ETIAS Regulation prescribes that all visa-exempt third country nationals will be required to apply online for travel authorisation prior to the date of their departure[243].

6. **European Criminal Records Information System–Third Country National (ECRIS-TCN) (under construction, but it has not been specified when the database will become operational)**: The ECRIS-TCN will enable the exchange of criminal records on convicted third country nationals and stateless persons[244].

The systems are intended to be 'interoperable', meaning that authorised officers will be able to search and see data stored on individuals across these systems, depending on their access rights laid down in EU law[245]. Currently, the lack of specific provisions on HRDs signifies that their personal data is processed by the databases without any differentiation, limitation or distinction given their status and particular risks they may face. In practice, all databases may process the personal data of HRDs for different purposes. In particular:

- HRDs who apply for international protection or are apprehended irregularly crossing the external borders of the EU are subject to Eurodac rules;
- HRDs who are irregular migrants are subject to SIS rules regarding the registration of an SIS alert for refusal of entry or stay;
- HRDs originating from visa-requiring counties and who apply for a short-stay visas are subject to VIS rules;
- HRDs who apply long stay visas, or residence permits will be subject to revised VIS rules;
- HRDs coming from visa-exempt countries will be required to apply for ETIAS travel authorisations;
- HRDs from third countries crossing the EU external borders for short-stay visits will be registered in the EES.

HRDs might be under surveillance in their country of origin and hence afraid to have their data stored in a centralised database accessible by different national and EU actors for various purposes. A particular concern is this regard may involve the possible sharing of their data with third countries, particularly since the legal instruments governing all databases except the ECRIS-TCN allow the transfer of personal data to third countries for the purposes of return or for the fight against terrorism and serious crime, subject to

[243] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, Official Journal of the EU, L 236/1, PE/21/2018/REV/1, 19 September 2018.

[244] Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726, Official Journal of the EU, L 135/1, PE/88/2018/REV/1, 22 May 2019.

[245] Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visas and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, Official Journal of the EU, L 135/27, PE/30/2019/REV/1, 22 May 2019; Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, Official Journal of the EU, L 135/85, PE/31/2019/REV/1, 22 May 2019.

specific conditions[246]. It is true that the conditions for allowing transfers to third countries could be more robust in some cases. For example, SIS transfers can take place without the need for approval by the Member State that entered the data or without the need for third country to have agreed *a priori* to use the data only for the purposes for which they were provided[247]. Nonetheless, several safeguards exist in the underlying legislation.

Data security and the potential for unauthorised access at national/EU level or a data breach may also be of grave concern, as flagged up by various interviewees. For instance, according to the FRA a data breach could expose them and/or their family members – including children – to retaliation measures in their country of origin[248]. In that regard, it must be stressed that the legal instruments of all databases and their interoperability prescribe data security provisions[249]. So far the European Agency for the Operational Management of Large-scale IT Systems, responsible for the operational management of the databases, has not reported incidents jeopardising the data security.

Taking into account the position of HRDs and given the possible introduction of rules specifically catered for them, the following sections will reflect on the need for any reforms and special rules concerning the processing of HRDs' personal data in the databases.

Visa exempt HRDs

Some HRDs who need to access the EU may be nationals of third countries for whom the EU does not require visas to visit the Schengen area for stays of up to 90 days within any 180-day period. According to September 2023 records, nationals from 61 countries – mainly in the Americas, including the Caribbean, in Europe and in the Asia-Pacific region – are exempted from visa requirements[250]. This means that if they hold a valid travel document and fulfil all other requirements enshrined in the Schengen Borders Code, they can enter the Schengen area without further formalities.

Whilst this is currently the case, ETIAS, a new database, will become operational in 2024, requiring all visa-exempt travellers to obtain travel authorisation prior to their departure. This authorisation will be requested through an online application in which visa-free travellers will have to disclose personal data including biographical data, travel arrangements, home and email addresses, phone numbers, levels of education and occupations[251]. Travel authorisations do not confer an automatic right to entry or stay and hence travellers will still be checked at the border[252]. From the personal scope perspective, third country nationals exercising their right to mobility in accordance with Directive 2014/66/EU (intra-corporate transferees) or Directive (EU) 2016/801 (researchers, students, trainees, volunteers, pupils and au pairs) are excluded from the ETIAS requirements[253]. However, HRDs are not exempted from this requirement.

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[246] See Article 15 of the Regulation 2018/1860; Article 31 of the VIS Regulation; Article 41 of the EES Regulation; Article 65 of the ETIAS Regulation. Currently the Eurodac rules do not allow for transfers, but the EU co-legislators have already agreed to allow transfers.

[247] Article 15 of the Regulation 2018/1860.

[248] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

[249] For example, see Article 43 of the EES Regulation; Article 59 of the ETIAS Regulation.

[250] Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, Official Journal of the EU, L 303/39, PE/50/2018/REV/1, 14 November 2018 as amended by Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union, Official Journal of the EU, L 103 I/1, PE/71/2019/REV/1, 12 April 2019, Annex II.

[251] Article 17 of the ETIAS Regulation.

[252] Article 36(6) of the ETIAS Regulation.

[253] Article 2 of the ETIAS Regulation.

The pre-screening and issuance of travel authorisations will be based on the automated processing of personal data provided by the ETIAS applicants against the following:

- Existing information contained in records, files or alerts registered in other immigration and law enforcement databases, namely the SIS, Eurodac, VIS, EES, ETIAS and ECRIS-TCN, the Europol databases and certain Interpol databases (in particular, the Stolen and Lost Travel Documents (SLTD) database and the Interpol Travel Documents Associated with Notices (TDAWN)[254]. This aims to identify whether the applicants are listed in any of these databases for public security, irregular migration or public health reason that merits further attention and can justify refusing the travel authorisation;
- Screening rules enabling algorithmic profiling based on risk indicators (to identify persons unknown to national authorities that could pose a security, irregular immigration or high epidemic risk)[255]; and
- A dedicated ETIAS watchlist containing information on individuals suspected of having participated in terrorism or other serious crimes or in respect of whom there are factual indications or reasonable grounds to believe they will commit such offences[256].

Where the automated processing does not report any 'hits', the travel authorisation will automatically be issued[257]. However, in the case of hit(s), competent national authorities (so-called ETIAS National Units) will review applications and determine if an ETIAS authorisation should be granted or rejected. Prior to boarding, airlines will verify that a visa-exempt traveller has a valid travel authorisation. If the travel authorisation is granted, any personal data provided will be held in the ETIAS for three years (or until the passport expires, whichever comes first) and will allow multiple trips to the Schengen areas without the traveller having to re-apply each time. In case of rejected applications, ETIAS data will be stored for five years[258].

HRDs may be discouraged from applying for ETIAS authorisations unless specific measures are in place to consider their status. At the heart of these concerns is the automated processing of ETIAS data and the manual examination of ETIAS applications by the responsible ETIAS National Units in the event of hits.

For example, depending on the algorithms used in screening rules, it is likely that HRDs might fall into a risk group for irregular migration signifying that their applications will be subject to manual examination. Human rights defenders might not be aware that they could match risk profiles in ETIAS which would delay or even prevent the issuing of their authorisations.

Furthermore, it may be that certain HRDs are targeted by their country of origin. For example, it is possible that some are subject to notices in the Interpol database TDAWN. It is important to stress that recent reports have unearthed abuse of the notices by certain countries in their pursuit of political objectives and as retaliation for HRDs' work, repressing freedom of expression or persecuting members of the political opposition beyond their borders[259]. It is likely that some HRDs are subject to such notices and therefore the ETIAS National Units manually examining an ETIAS application should enquire whether applicants are

[254] Article 20 of the ETIAS Regulation.
[255] Article 33 of the ETIAS Regulation.
[256] Article 34 of the ETIAS Regulation.
[257] Articles 21 and 36(1) of the ETIAS Regulation.
[258] Article 54 of the ETIAS Regulation.
[259] R. Wandall, D. Suter and G. Ivan-Cucu, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments' Policy Department for External Affairs, European Parliament, PE 603.472, 17 January 2019; see also Fair Trials, 'Interpol: New data reveals 1,000 Red Notices and Wanted Person diffusions rejected or deleted each year', 7 November 2022 and; Statewatch, 'Interpol must halt Turkey's use of databases to pursue dissidents', 6 June 2023, based on The Arrested Lawyers Initiative, Report on Turkey's abuse of Interpol's Stolen and Lost Travel Documents Database, 1 June 2023.

HRDs and if so to treat a hit against Interpol databases without blind trust considering that HRDs are being targeted by their countries of origin. This is particularly important considering that there is no consultation between the ETIAS National Unit and any third country that has entered the Interpol record. That said, there is also a safeguard for querying Interpol databases without revealing information to the state that issued the alert[260].

To ensure that HRDs are not disadvantaged by the ETIAS process, in case of a hit against data in EU or international databases or the screening rules, the responsible ETIAS National Unit must determine whether the application concerns an HRD. Looking into the categories of personal data provided by the ETIAS applicant, it is not easy for the ETIAS National Unit to determine whether the ETIAS applicant is an HRD, as there is no requirement to denote the purpose of travel, as is the case for visa-requiring travellers. One way in which the unit could do so is by looking into the job group to which the applicant belongs, which is one of the data fields that applicants must provide. The Commission Delegated Regulation (EU) 2021/916 concerns a predetermined list of job groups used in the application form[261]; however, a scrutiny of this list is not particularly helpful for the ETIAS National Units to determine whether the applicant is an HRD. In particular, an HRD may use the following job groups: 'senior government official', 'senior official of special interest organisation', 'legal or related associate professional' or 'social work associate professional', none of which are particularly specific to denote that the ETIAS applicant is an HRD. Hence, it is likely that the unit will not know that the person concerned is travelling to seek safety or to carry out human rights work in the EU and may not even be in a position to take such humanitarian considerations into account, resulting in a refusal of the travel authorisation.

There are additional possibilities offered by the ETIAS Regulation that must be made use of. According to Article 27(1) of the ETIAS Regulation, when the ETIAS National Unit deems the information provided by the applicant in the application form to be insufficient to arrive at a decision on whether to issue or refuse a travel authorisation, it may request additional information or documentation from the applicant. It is important to make use of this provision to determine whether an ETIAS applicant is an HRD. It is also possible in exceptional circumstances. As a last resort after processing the additional information or documentation, when serious doubts remain regarding the information or documentation provided by the applicant, the ETIAS National Unit of the Member State responsible may invite the applicant to an interview in his or her country of residence at its consulate located the nearest to the place of residence of the applicant[262]. In cases where the applicant has provided proof that they are an HRD, it could be useful to make use of this provision, especially when there are doubts regarding identity. Facilitating a remote interview should be a priority to protect an HRD's safety.

In addition, where the data provided by the HRD matches data in the EU databases, Articles 28 and 29 of the ETIAS Regulation require consultation with the Member State(s) and Europol respectively that provided that data. This is a particularly important provision that allows the ETIAS National Units to determine whether an ETIAS applicant who is an HRD should be granted a travel authorisation notwithstanding, for instance an alert in the SIS which is based on a previous failed asylum application or irregular residence.

Another possibility that could be made use of in the case of HRDs is the issuance of travel authorisations **on humanitarian grounds, for reasons of national interest or because of international obligations in accordance with Article 44 of the ETIAS Regulation.** Member States may exceptionally issue a travel authorisation for humanitarian reasons with limited territorial and temporal validity while the manual examination of the application is still ongoing and/or if a travel authorisation has been refused, annulled

[260] Article 12 of the ETIAS Regulation and Article 9(5) of the Interoperability Regulations (EU) 2019/817 and (EU) 2019/818.
[261] Commission Delegated Regulation (EU) 2021/916 of 12 March 2021 supplementing Regulation (EU) 2018/1240 of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) as regards the predetermined list of job groups used in the application form, Official Journal of the EU, L201/1, C/2021/1574, 08 June 2021.
[262] Article 27 (4) of the ETIAS Regulation.

or revoked. Such a travel authorisation will generally be valid only in the issuing Member State' territory. However, it could also exceptionally be issued with a territorial validity covering more than one Member State, subject to the consent of each such Member State through their ETIAS National Units. To make use of this option, according to Article 44(2) of the ETIAS Regulation, the applicant may contact the ETIAS Central Unit indicating the application number, the destination Member State and the travel purpose, including whether this application is based on humanitarian grounds or is linked to international obligations. Where such contact has been made, the Central Unit shall inform the National Unit of the Member State to which the third-country national intends to travel and shall record the information in the application file. Considering that this option may facilitate the issuance of a travel authorisation, it is important to promote awareness. Thus, it is recommended that this possibility be particularly highlighted in the ETIAS public website and in the mobile app, as noted in Article 44(2).

In addition, as noted by the FRA, any ETIAS application must meet basic admissibility criteria, which means that the applicant must complete all data fields of the online application form[263]. HRDs who do not possess valid travel documents (e.g., because their passport will expire in less than 3 months, because the authorities denied their passport applications, or because they are flagged in an Interpol database) will not be able to apply. This needs to be addressed so that HRDs have opportunities to apply for a travel authorisations even in such cases.

Finally, to make sure that HRDs' entry to the EU is facilitated as much as possible, it is important to insert such considerations into the practical handbook foreseen in Article 93 of the ETIAS Regulation, which is intended to contain guidelines, recommendations and best practices for ETIAS implementation.

Visa required-HRDs

Some HRDs who need access to the EU may originate from third countries whose nationals are subject to visa requirements. Any HRDs who apply for short-stay (Schengen) visas are subject to the VIS rules, the database that stores visa applicants' personal data, irrespective of whether the visa has been granted, refused or revoked. Currently, there exist no specific requirements regarding HRDs, whose personal data must be recorded in the same manner as other visa applicants. There is a distinct difference between the VIS and the ETIAS (and therefore between the visa and travel authorisation application) in that the former stores information regarding the purpose of travel, which may be useful for visa authorities to identify HRDs[264]. To examine a visa application and following the revision of the VIS rules, visa applicants' data will also be subject to automated processing against data stored in other EU databases, as well as the same Interpol databases (SLTD and TDAWN), the dedicated watchlist and the specific risk indicators (algorithms) to determine whether the applicant poses security[265], illegal immigration or high epidemic risks. However, there is no automatic issuance of a visa and applications are manually examined by the national competent authorities.

Considering that the automated processing of visa data will take place in a manner remarkably similar to that explained earlier regarding ETIAS applications, concerns regarding the reliability of an SIS alert (or Interpol) and the need for close consultation with the Member State that entered the alert is equally applicable here. Overall, it is necessary that the visa authorities have been trained appropriately to have in mind these challenges regarding the possible abuse of EU or international databases or that HRDs might be caught by algorithmic profiling. The presumption that HRDs are *bona fide* applicants should be taken into consideration to avoid visa applications being refused.

[263] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.
[264] Article 9 (4) (h) of the VIS Regulation.
[265] Article 9(a) and 9(j) of the VIS Regulation.

In addition, the VIS itself will also be cross-checked upon creation of an application in the system to determine any travel history. In this respect, an applicant's status as an HRD should be considered so that the person is not disadvantaged due to a previous refusal of a visa application, where it is clear that the circumstances of that person may have changed (e.g., if the previous application was not related to their status as an HRD).

HRDs who apply for a long-stay visa or a residence permit

These HRDs will also be subject to revised VIS rules and therefore the aforementioned concerns will also be relevant, except those relating to the use of specific risk indicators. This is because, according to the VIS rules applications, long-stay visas and residence permits will not be subject to automated processing against any algorithms[266].

HRDs who become beneficiaries of temporary protection or subject to a Human rights defenders Directive

As mentioned in Section 3.5, a possible way in which HRDs could receive protection is through the establishment of an EU-wide mechanism to designate HRDs entitled to TP. Currently, there are no requirements that beneficiaries' personal data regarding TP is stored in any of the databases (presumably because the TPD was activated only in 2022). However, in the Eurodac rules' ongoing reform, the Council has proposed an extension of the Eurodac scope to TP beneficiaries. Such reform has been resisted by the EP and therefore it remains to be seen how the future Eurodac rules will be formulated and whether this revision will be agreed upon. Certain challenges are envisaged as such a pool of information could become the target for third countries' cyber-attacks to acquire such valuable information and perhaps proceed to retaliation measures against HRDs and/or their family members. Hence, it is recommended that even in the case where beneficiaries of TP are brought within the scope of Eurodac, HRDs are excluded from that scope. For the same reason, where a Human Rights Directive is opted for, it should not be seen as an opportunity for creating a register for HRDs as a separate database.

HRDs subject to an SIS alert or an Interpol notice

In addition to challenges regarding the impact of an SIS alert or an Interpol notice in the processing of applications for visas and travel authorisations, which were highlighted above, HRDs may face challenges when travelling to the EU if they are the subjects of SIS alerts. For example, this could involve an unwelcome third country national being refused entry to the EU. The need for border authorities to balance the existence of an SIS alert and the need to facilitate mobility for HRDs must be highlighted. Accordingly, it is recommended that the alert should be reviewed by national authorities. Another important safeguard is the possibility of consultations whereby any Member State wanting to grant a residence permit or a long-stay visa to a third-country national who is the subject of an entry ban entered by another Member State, must engage in prior consultations with that other Member State, taking its concerns and interests into account[267].

Similarly, there have been instances in which renowned HRDs have been placed by their governments on an Interpol list, preventing them from entering the EU[268]. In addition to authorities deciding on visa and travel authorisation applications, border authorities should also be mindful of potential abuses by keeping in mind the *bona fide* status of HRDs.

[266] Article 22b of the VIS Regulation.
[267] Article 27 of the Regulation 2018/1861.
[268] FRA, Protecting Human Rights Defenders at risk, 2023, op. cit, page 1.

6 Conclusions and recommendations

This study has aimed to examine ways in which the EU institutions can provide greater access to the EU for HRDs. Considering numerous reports setting out the obstacles HRDs face when seeking to travel to the EU, EU legislators should seek to remedy these problems and make the EU a travel-friendly place for HRDs. The detailed work of the FRA and others has set out the reasons for the EU to act to assist HRDs, details of which will not be repeated here. Suffice it to note that the work of HRDs around the world is key to the protection of human rights and necessary to the well-functioning of democracies.

According to this research, including interviews with experts at international and EU institutions, the CoE, as well as academics and NGOs, the authors recommend that the existing 'piecemeal' approaches currently available to facilitate HRD mobility be formalised into a proper system which can be transparent and effective in achieving the desired aims.

There are three main situations where HRDs seek to come to the EU:

- The first is for short **stays of 90 days or less out of 180 days** – the situation covered by Schengen visas and entry under the EU Borders Code (for non-visa required nationals).
- The second is when **HRDs need to come to or stay in the EU for longer periods** due to the strain of their work and possible risks they are encountering.
- Thirdly is when some **HRDs are at such heightened risk of serious harm that they need extended stays in the EU**, but may be reluctant to seek asylum as they wish to continue their HRD work and return to their home countries as much as possible without endangering their lives.

For all three travel reasons, the key to facilitating HRD access to the EU is the correct identification of HRDs. Before visa officials or border guards can open facilitated access routes, they must be able to identify HRDs for each of these three purposes. This study recommends that the task of identifying and certifying that an individual is an HRD for the purposes of visa and border entry facilitation should rest with those experienced in HRD work. This could be by way of an Annex to the Visa and Borders Codes (or the Handbooks). Those bodies with the duty to identify and certify an individual's status as an HRD may vary depending on the three situations. For instance, the first includes a wide range of bodies such as educational institutions and research bodies, whilst the third requires a much more limited number, but includes acknowledged EU experts such as ProtectDefenders and its affiliated organisations. Furthermore, the 140 EEAS delegations could also play a role by becoming officially responsible for HRDs in the EU.

The current Spanish presidency of the Council is committed to improving access to the EU for HRDs. As the FRA has shown, at least 12 Member States already have some HRD programmes in place and various supranational bodies are also coordinating this (such as ICORN and others).

This study has addressed the necessary changes which could be made to EU law and practice to achieve this end based on the nature of any travel needs.

- Firstly, the study examined the Visa and Borders Codes and how they could both be made HRD-friendly.
- Secondly, it looked at how to achieve stays longer than 90 days in the EU for HRDs who need respite or eventually temporary relocation.
- Thirdly, it looked at the socio-economic needs of HRDs staying in the EU and how the EU could achieve the necessary assistance for them, including cooperation among EEAS delegations and EU visa officials.
- Fourthly, it investigated the impact of digitalisation and the operation of EU databases on HRDs.

Accordingly, the study's conclusions are as follows.

6.1 Recommendations on visas

6.1.1 Visa Code

- Include the **definition of an HRD** (as proposed in the introduction) in Article 2 of the Visa Code to recognise HRDs as a category entitled to visa facilitations.
- Amend Article 10 of the Visa Code to promote **electronic visa application** systems for HRDs that cannot appear in person before a competent consulate or external service provider. An electronic identity-verification system would also make the application process safer and more accessible to HRDs.
- Amend Article 6 to allow HRDs to apply for visas **from outside** their country of residence when this is justified due to urgent or anticipated risks.
- Amend Article 16 to exempt HRDs from visa fees.
- Amend Articles 10 to 15 to **waive the requirement of submitting an abundance of documents** in visa applications as letters of support from trusted third parties should be considered sufficient evidence and/or presumption of HRDs' capacity and HRDs should be treated as ***bona fide*** applicants.
- Amend Article 35 to give states the discretion to issue visas to HRDs at **external borders** in exceptional cases.
- Amend Article 25a to ensure that HRDs are **exempt from the non-application** of specific provisions, even when their home countries are considered not to be cooperating sufficiently on **readmission.**
- Amend Articles 9, 19 and 23 to **expedite HRDs' visa applications** by setting shorter lodging and processing times and establishing an electronic priority application procedure.
- Amend Article 19 to ensure that HRDs' visa applications will **not be declared inadmissible** on formal grounds.
- Amend Article 21 to ensure that interviews (when required) can take place **remotely** through modern digital tools.
- Amend Article 24 to ensure that HRDs are eligible for **multiple-entry visas** and that all visas are issued for the **maximum time-period** (90 days).

6.1.2 Visa Code Handbook

The Visa Code Handbook should be amended to ensure that the discretion provided to Member States in the Visa Code is exercised to the benefit of defenders.

Amend the Handbook so as to:

- State explicitly that Member States may agree to examine visa applications from HRDs even when they are not the normally **competent Member State** (when the competent Member State is not represented).
- Allow HRDs to apply for visas from the countries where **they are present**, even if this is not their country of residence, in justified cases.
- Encourage Member States to establish **secure electronic visa application systems**, giving applicants the discretion to choose between in-person and electronic applications.

- Indicate that HRDs' applications may be accepted even if they are submitted later than the 15 days-foreseen deadlines. In such cases, they should **not be declared inadmissible.**
- Include HRDs explicitly as one of the categories eligible for **fast-track procedures** in visa processing.
- Provide the possibility of giving an appointment immediately or direct access for submitting a visa application to HRDs in **justified cases of urgency**.
- Specify that interviews with HRDs can take place **remotely** through video calls to accommodate their unique circumstances.
- Indicate that HRDs, **in justified cases of urgency**, can submit a travel document that has a shorter period of validity than the indicated period, and in such cases, the application should be admitted.
- Encourage Member States to **waive or reduce visa fees** for HRDs under Article 16 of the Visa Code.
- Highlight that HRDs should be treated as ***bona fide* applicants** and that a letter of support from a trusted third party should be sufficient. A new subchapter in the Handbook should specifically address the needs of HRD applicants.
- Emphasise that HRD applications should **not be declared inadmissible** on formal grounds and they should be examined thoroughly.
- Provide guidance to avoid refusing HRD applications on formal grounds, considering their unique status as ***bona fide*** applicants.
- Advise Member States to grant visas with **extended validity periods** to HRDs (90 days).
- Make HRDs explicitly a category eligible for **multiple-entry visas**.
- Clarify that visas for HRDs can be **extended** for serious personal reasons.
- Include specific examples involving HRDs applying for visas at **external borders** due to urgent circumstances.
- Encourage Member States to examine visas applied at the external borders when there are unforeseeable and imperative reasons for entry.

6.1.3 Visa facilitation agreements

- **Incorporate HRD-specific provisions** in existing visa facilitation agreements: These provisions should prioritise and expedite visa processing for HRDs, exempt them from visa fees, waive the requirement for supporting documents and ensure eligibility for multiple-entry visas.
- Explore **tailored visa facilitation agreements for HRDs** from specific countries: These agreements should offer simplified and expedited visa procedures, reduced documentation requirements, extended visa validity, multiple-entry visas, visa fee waivers, dedicated processing centres and continuous monitoring to assess their effectiveness in supporting HRDs.

6.2 Recommendations on extended stays

As discussed above, all these recommendations are based on provisions within the Directives which permit Member States to implement in specific ways. For this reason, this study recommends the **adoption of a joint recommendation by the Council and the European Commission** setting out the agreement of Member States to apply a common application of these powers in respect of HRDs. This would provide an extremely valuable way forward which does not require legislative amendment and could be dealt with in Section 3 by way of a proposal for a Directive dedicated to HRDs. Considering the complexity of the EU

legal migration *acquis*, the authors recommend that the EP commissions **a Handbook for use by NGOs** on how this body of law can be used to assist HRDs in need of intermediate stays.

6.2.1 General

- Member States should permit HRDs duly **attested to switch from any migration status to a longer-term residence status** irrespective of their existing immigration status;
- All applications in work and study-related categories should be accepted while the **HRD is on the territory**, irrespective of his or her immigration status.
- Where an HRD's travel document is close to expiry, has insufficient **validity** for the length of the stay applied for, or has already expired this should not be used as a ground for rejection of the application. Discretion should be exercised to receive and consider in a facilitated manner the substance of the application.
- Where **fees and costs** are payable for the submission of an application in any of these categories, these should be waived for HRDs.
- Requirements for comprehensive sickness insurance, accommodation and sufficient resources applicable in these categories **should be eased** where the application is made by an HRD.
- Where a visa or immigration officer is considering **public policy or national security**, including information on the SIS, particular care should be taken that the reputation of HRDs is not unjustifiably sullied by allegations made by their opponents in their country of origin. Where an application is refused on one of these grounds, the HRD must have a right of appeal not only against the refusal but also, if it is based on an entry in an EU database, a suspensive appeal right against the validity of the entry exercisable (where applicable) against the state which was responsible for the entry.
- Draft a Handbook for NGOs on how to use the **legal migration *acquis***.

6.2.2 Blue card

- Article 4 permits Member States to adopt or retain **more favourable provisions** concerning: (1) disregarding periods of unemployment for the purposes of renewing (or not withdrawing) Blue Card status; (2) procedural safeguards; (3) equal treatment rights; (4) admission and rights for family members; and (5) acquisition of long-term resident status notwithstanding absences from the state of more than 24 months. Member States should apply all these powers to make more favourable provisions for HRDs.
- The directive provides that Member States be able to provide for a lower salary threshold to benefit third country nationals during a certain period following their graduation. Where Member States apply this reduction, this could also be applied to HRDs without the link to graduation.

6.2.3 Intercorporate transferees

- The Council and the European Commission should **jointly make a recommendation** that Member States apply a very flexible approach to the relationship of employers which could include related NGOs in different countries where the proposed transferee is an HRD.
- All the powers to apply **more favourable provisions** under Article 4 Intercorporate Transferees Directive should be exercised in the case of HRDs.

6.2.4 Seasonal workers

- Article 4 of the Seasonal Workers Directive permits Member States to provide more favourable provisions regarding **procedural guarantees**, fees and costs, accommodation, equal treatment and facilitation of complaints. This provision should be used fully in respect of HRDs.

6.2.5 Students and researchers

- An application in respect of an HRD may be submitted by the individual or the host entity or family. As **regards minor HRDs**, where there is an indication that parents may be under undue pressure to require their child to return to the country of origin, the requirement for parental consent should be **disapplied**.
- The onerous requirements of a hosting agreement and/or contract under Article 10(2) can be relaxed according to Article 4. For HRDs this should always be fully exercised, thereby diminishing the administrative burden for HRDs and their **sponsors**. No additional requirements should be applied to sponsors of HRDs.
- Article 8(2) allows Member States to penalise **hosting institutions** if the applicant remains illegally in the territory of the Member State. The financial penalties can be substantial and thus a dissuasive measure for the hosting institution. As regards HRDs this potential threat should always be waived.
- The only mandatory requirement for HRDs seeking permission to stay as students should be **evidence of acceptance by a higher education institution** to follow a course of study.
- HRDs remaining as students should always be **permitted to work** more than 15 hours per week in a favourable exercise of Article 4. Similarly, researchers should be permitted to teach for payment in an exercise of discretion in Article 4. Furthermore, students and researchers should benefit from a wide application of the right to enter entrepreneurship or to undertake job searches (Article 4).
- The additional optional requirements regarding **trainees' qualifications** contained in the Article 13(2), (3) and (4) should **never be applied** where the applicant is an HRD.
- The additional optional requirements regarding **volunteers** contained in Article 14(1)(b) and (d) as well as Article 14(2) should **never be applied** where the applicant is an HRD. Relaxation of the requirement contained in Article 13(c) which applies to volunteers participating in the European Voluntary Service should be applied to HRDs irrespective of the service in which they are participating.
- The **approval procedure** set out in Article 15 for higher education institutions, education establishments and organisations responsible for a voluntary service scheme or entities hosting trainees should be applied wherever the applicant is an HRD with an **accelerated and simplified procedure** for the hosting institutions and entities.
- As regards the optional requirements for **au pairs** set out in Article 16(2)(a) and (b) as well as Article 16(3), (4) and (6) should **never be applied** where the applicant is an HRD.
- Where HRDs apply for **extensions of stay** under any of the categories covered by the Student and Researcher Directive, Member States should apply the flexibility permitted under Article 4.
- **None of the grounds for rejection** of an application contained in Article 20(2)(a)-(e) should be used to reject an application by an HRD until the HRD has been afforded sufficient time for the failure to be remedied or an alternative hosting entity to be found.

- Article 21(6) (which applies only to students) requires the Member States to allow students to submit an application to be hosted by a different higher education institution for an equivalent course of study to enable the **completion of studies** where a negative decision is taken on one of four grounds: (i) the host entity failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions; (ii) it has been sanctioned in accordance with national law for undeclared work or illegal employment; (iii) it operates for the main purpose of facilitating the entry of third country nationals; or (iv) its business is being or has been wound up or is inactive. In such a case the student must be allowed to **stay on the territory** of the Member State until a decision is taken. This **flexibility** should be applied to all HRDs irrespective of the category under this Directive.
- Article 22 provides for **equal treatment** for persons staying in the EU under the categories covered by the Directive, but it also enables Member States to exclude categories under the Directive from many areas of equal treatment, for instance, procedures for obtaining housing and/or services provided by public employment offices. Where the individual is an HRD, the maximum equal treatment rights should be granted without exceptions.
- As regards **family reunification**, Member States are allowed to be more generous in this area under Article 4. This provision could be used to provide family reunification for HRDs in all categories covered by this directive which mirrors family reunification for mobile EU citizens under Directive 2004/38. This would allow a wider group of family members to join HRDs thus diminishing the potential consequences of risks for them in their home countries and providing them with access to socio-economic rights.
- Any refusal of an application from an HRD under the student and researcher directive should have an **automatic suspensive effect** where the HRD is already within the EU, irrespective of immigration status.
- All handling **fees** permitted under the student and research directive should be **waived** where the applicant is an HRD.

6.3 Recommendations on temporary protection

As recommended above, these proposals could be the subject of a Council and European Commission Recommendation to achieve consistent application across the Member States:

- The Member States agree to **disapply** the requirement of a mass influx in the application of the TPD to HRDs;
- The European Commission should be directed to propose **a set of standard criteria** which would form the basis on which the identification of HRDs entitled to benefit under a TP scheme should be carried out;
- The EEAS should include in its HRD guidance responsible members of delegations and **practical instructions** on how to apply this set of standard criteria;
- The Visa Handbook should include instructions to visa officers about facilitated visas for HRDs who come within a **TP scheme designated by the EEAS** or another competent authority.

6.4 Proposal for an HRDs directive

6.4.1 General provisions

- Define the subject matter of the Directive, which aims to regulate the entry and residence of third country national HRDs in the EU for a period **exceeding 90 days** as well as their rights associated with this status.

- Specify the **application scope and include HRDs** who seek to enter or are already in the EU for various purposes, such as human rights work, research, studies, training, or rest and respite.

6.4.2 Application procedure

- Ensure expedited and flexible application procedures for HRDs, allowing them to apply for **long-term authorisations** either in their country of residence or while they are in the EU.
- Establish a referral pathway for HRDs to ensure they all have access to **trusted third-parties.** Involve EU delegations in this respect.
- Grant **temporary status** to HRDs already present in the EU during the application process.

6.4.3 Authorisations and duration of residence

- Offer authorisations in the form of residence permits or long-stay visas, enabling HRDs to reside in the EU for a period **exceeding 90 days**.
- Set the duration of authorisations based on **the intended purpose of stay**, such as advocacy, research, studies, or voluntary service.
- Allow for the **renewal or extension** of authorisations when there is proof of a continued need for the HRD's presence in the EU.

6.4.4 Grounds of refusal, withdrawal, or non-renewal of authorisations

- **Define grounds for rejection**, **withdrawal, or non-renewal** of authorisations, balancing state interests and the need to protect HRDs.
- **Include potential grounds** such as presenting false information, insufficient justification for a long-term authorisation, or posing a threat to national security.
- Do **not use lack of financial documentation** as a reason to refuse authorisation.
- Ensure an **appeal procedure** is available to challenge authorisation refusals.

6.4.5 Rights

- Address the needs of HRDs during their **long-term stays** in the EU, including access to financial assistance, banking **services**, labour market, education, insurance, healthcare and support for their human rights work.
- Provide suitable **accommodation** or means to obtain housing.
- Enable access **to employment and vocational training**.
- Establish a dedicated fund to provide **financial support** to HRDs.
- Implement **mechanisms to protect** HRDs from threats, harassment and persecution.
- Allow family members of HRDs to join them in host countries and provide necessary support services.

6.4.6 Mobility between Member States

- Allow **intra-EU mobility** for HRDs for short-term purposes related to human rights work.
- Enable long-term mobility when there is evidence of an HRD's need to stay in another Member State.

6.4.7 Practical arrangements

- **Conduct training for immigration officials and law enforcement personnel** on recognising HRDs and their rights.
- Establish a **referral pathway** at the EU level for HRDs to contact trusted third-parties.
- Designate **national focal points** to assist with directive implementation.
- Create monitoring and reporting mechanisms to track directive implementation.
- Collaborate with **civil society actors and FRA** for expertise.
- Exchange **statistics and information** among consulates in local Schengen cooperation.
- Ensure a careful **data collection and analysis** related to HRDs.

6.5 Recommendations on socio-economic needs

6.5.1 EU policy recommendations to promote national initiatives

- Establish an **EU support fund** for HRDs to provide financial assistance with existing HRD programmes in Member States, encouraging the establishment of new initiatives.
- Create an **EU sponsorship fund** to provide financial support to sponsors who assist HRDs with living expenses, healthcare, and other necessities.
- Provide **funding to NGOs** or **ministries** for capacity-building activities, training and awareness-raising campaigns related to HRD programmes.
- Formulate **EU-level guidelines** to help Member States design and implement national programmes for HRDs.
- Facilitate **networking and collaboration** to organise conferences, workshopsand online platforms to promote the exchange of best practices among Member States and universities.
- Establish an **evaluation mechanism** to monitor and assess the impact and effectiveness of existing national HRD programmes, with a focus on HRD experiences.
- Launch **public awareness campaigns** to advocate for national relocation programmes by showcasing HRD success stories and educating citizens about HRD risks and contributions.
- Amend the Visa Code and EU Directives to facilitate access for HRDs to the EU.

6.5.2 Establishing policy measures at the EU Level

- Ensure comprehensive and transparent **implementation of existing guidelines** (EU Guidelines on HRDs), with enhanced roles for EU delegations.
- Incorporate HRDs in EU strategies by including **explicit references to HRDs** and their rights in EU strategies and frameworks.
- Recognise HRDs and supporting actors through **certificates, prizes** and EU awareness campaigns.
- Promote the **EUTRP**, including providing additional funding, expanding its scope and raising awareness about it.
- Ensure access to **socio-economic assistance** by implementing initiatives to provide housing, healthcare, financial services, and support for employment, education and training for HRDs.
- Establish **an EU protection and legal assistance mechanism** for HRDs.

- **Support civil society actors** by allocating funds to NGOs and actors supporting HRDs, empowering them to identify and assist genuine HRDs.
- Streamline **family reunification policies**, prioritise visa processing and provide support programmes for family members of HRDs.

6.6 Recommendations on borders, digitalisation and databases

6.6.1 Amendments to the Borders Handbook

- A **flexible approach** to the validity of travel documents should be directed to border guards when travellers are attested HRDs.
- Border guards should **always grant 90-day entry** to attested HRDs even where the reason for their entry is for a shorter period.

6.6.2 Amendments to the Borders Code

- An attested HRD should **not be refused admission** at an external border where an SIS entry to this effect is based on a **previous failed asylum application** or **irregular residence**.
- An attested HRD should **not be refused admission** at an external border on national security grounds without confirmation that the individual's risk rating has not been contaminated by fallacious negative rumours instigated by actors in their country of origin.
- Any HRD who is refused admission at an EU external border (covered by the Borders Code) should be entitled to the **automatic suspensive effect** of the exercise of his or her appeal right.

6.6.3 Amendments to databases

- An attested HRD originating from a **visa-exempt country** should not be refused an ETIAS authorisation without proper examination of his/her application, including requesting additional information and documents regarding status as well as an interview.
- An attested HRD should **not be refused an ETIAS authorisation,** or a visa application based solely on an SIS alert related to a previous failed asylum application or irregular residence.
- National authorities should make full use of the possibility of granting an **ETIAS travel authorisation on humanitarian grounds.**
- An attested HRD should **not be refused** an ETIAS authorisation, or a visa application based solely on **an Interpol notice.**
- Special guidance regarding the handling of ETIAS applications should be included in the **ETIAS Handbook.**

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Methodological annex

The study's methodology primarily revolved around a comprehensive literature review, an in-depth analysis of EU and international legislation as well as the examination of relevant case law. The authors also received extensive information on Member State practices from members of the Odysseus Network (Academic Network for Legal Studies on Immigration and Asylum in Europe) and they thank its coordinator, Professor Philippe de Bruycker, for the assistance provided.

Additionally, the authors conducted interviews with prominent individuals, institutions and organisations closely linked to the research topic. These stakeholders, whose names are detailed below, provided invaluable first-hand knowledge and perspectives that enriched the study, ensuring a well-informed approach to their analysis.

List of interviews (2023)
ICORN (26 September)
EEAS (20 September)
European Commission – DG HOME (13 September)
European Commission – DG INTPA (15 September)
OHCHR (04 September)
ProtectDefenders (24 August)
Front Line Defenders (14 August and 07 September)
Team of the Special Rapporteur on the situation of HRDs (10 August)
Amnesty International (08 August)
CoE (07 August)
Authors of the CEELI report (05 August)
FRA (03 August)
World Trade Institute, University of Bern (31 July)
University of Prague (27 July)

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