

The European Union, Schengen and the so-called refugee crisis

Andreu Olesti Rayo
Professor of European Union Law at the UB

In 2015, more than a million people, mostly from war zones (Syria, Iraq, Afghanistan, Libya, etc.), travelled to the European Union seeking international protection. On the journey, in sub-human conditions, the travellers' lives were seriously compromised and they had to evade many obstacles. The flow has not been evenly distributed and has been particularly directed towards a group of States offering asylum seekers the best protection conditions, particularly Germany and Sweden.

On this issue, the EU's powers are shared with its States and, as a result, it lacks sole decision-making capacity to respond to the situation. Instead, it has to contend with the approaches put forward by its sovereign members. Their different sensitivities concerning how to deal with the situation lead to a joint response characterised by slowness, insufficiency and lack of coordination. The crisis has shown that the countries most receptive and responsible with refugees are taking a risk in terms of possible conflicts and internal tensions that can affect their political stability. By contrast, those appearing reluctant to accept any concessions are suffering hardly any strain of this kind. As a result, in 2015 fewer than 300 asylum applicants have been relocated, when the planned and agreed figure was 160,000. This situation is leading to a "Dutch auction" in the social benefits granted to applications and a toughening of the conditions for granting asylum in countries that have traditionally shown most generosity and solidarity.

This accumulation of circumstances has projected a pessimistic view of the maintenance of the free circulation of people and the possibility is looming that the application of the Schengen area could be suspended due to its members' clear incapability of managing the crisis. It is true that the impossibility of regulating the flows and proportionally accepting the volume of refugees has led some States to provisionally reinstate internal border controls, re-establishing the obstacles to people crossing borders between the Schengen countries that have been abolished in most EU countries since 1995 (currently all of them except the United Kingdom, Ireland, Cyprus, Croatia, Romania and Bulgaria). This possibility is established in the Schengen regulations and is subject to monitoring and verification by the European institutions, which require compliance with certain conditions. It is an exceptional measure which must be invoked as a last resort, when we are facing a serious threat to public order or for domestic State security, and there is a time limit on its imposition.

The European Union has begun to take steps to try to resolve the migratory pressure. To do so it has focused on strengthening its relationships with non-member States where the movement of people originates or through which they pass. Particularly important is the strengthening of relations with Turkey, which has taken the form of the approval of a Joint Action Plan. Among other issues, this will, in the immediate future, lead to the liberalisation of visas between the EU and Turkey and the full application of the readmission agreement between the two countries in June 2016. A set of actions has also been developed aimed at African countries specified in an Action Plan approved at the meeting of the heads of state or government of Africa and the European Union on migration held in La Valetta (Malta) on 12 November 2015. Among other aspects, these include the establishment of an emergency fund to finance projects in the most fragile and vulnerable African countries. All this should confirm that the best strategy for reducing the flow of migration includes dialogue and cooperation with the countries where it originates and passes through. The adoption of these measures is probably not sufficient and should be complemented with actions intended to reduce the causes leading to the movement of people. It will be necessary to implement various kinds of actions including European foreign policy interventions to promote the stability and development of the European Union's neighbour countries.