



THE EU RESPONSE TO MIGRATORY PRESSURES: THE CHALLENGE OF GETTING BACK TO SCHENGEN, THE FUTURE MANAGEMENT OF THE EU’S EXTERNAL BORDERS AND TURKEY’S ROLE

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

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Abstract: “The European Union faces an unprecedented migratory and humanitarian crisis. In this paper the impact of the measures being carried out by the European Union through its institutions and Member States in response to migratory pressures are analyzed to see if they are able to have a positive effect on the reestablishment of Schengen or whether they continue to threaten its stability. Furthermore, the relocation is investigated, focusing on the actions carried out by Spain as acts of solidarity and responsibility. In the second section, the importance of reinforcing the EU’s external borders to manage migration flows is looked at. The intention is to analyze whether the new European Border and Coast Guard would have the ability to impact illegal migration flows and European stability. The agreement between the EU and Turkey is examined, as it could have a positive or negative effect on the reestablishment of the Schengen area and the fair and humanitarian relocation of refugees between Member States”.

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Table of contents

I. Introduction. II. The Schengen area before the reintroduction of controls. III. Where do immigrants go?. IV. Spain and its responsibility in regard to the relocation. V. European Border Guard's future development. VI. Turkey's role in the management of EU's migratory pressures. VII. Implications for Spain of the measures taken by the EU. VIII. Conclusion

I. Introduction

The European Union, its institutions and Member States face several challenges. Undoubtedly, one of the most significant challenges is the unprecedented migratory and humanitarian crisis that we are currently experiencing within the borders of the European Union. The surveillance of migration flows within the Schengen area has become very important within the challenges to the Union's internal security. The Schengen area, one of the greatest European integration achievements where European citizens can travel freely is at stake. Over the past months several countries that are part of this agreement have temporarily reintroduced internal controls as a means of protection and to control illegal migration flows. These measures which are within the Schengen Borders Code must be applied as a last resort in exceptional cases. Their possible permanence over time could seriously affect the stability of the Schengen area.

For free movement within the EU to function well, it is essential to have effective management of the EU's external borders. This should be a shared responsibility, so on 15 December 2015, the European Commission proposed the creation of a European Border and Coast Guard. The aim of this measure is to ensure shared and consistent management of the external borders and the integrity of the Schengen area.

The EU cannot exist without taking into account the need to reinforce internal solidarity and responsibility. To this end, the EU has taken measures such as the relocation of migrants to help frontline Member States. Spain is aware of this need and it has shown its willingness to continue receiving refugees. At the same time, it is discussing the agreement between the EU and



Turkey, which is generating political tensions in the EU. At a national level, this may affect Spain as it is in a prime geographical location to be the alternative refugee route after the closure of the Western Balkans route.

We will analyze therefore, the impact of the measures being carried out by the European Union, particularly in Spain, in response to migratory pressures, in order to determine whether the actions the EU intends to carry out in response to the migration flows and in order to reinforce internal solidarity are able to have a positive effect on the reestablishment of Schengen or whether they continue to threaten its stability.

II. The Schengen area before the reintroduction of controls

With the Schengen Agreement signed in 1985, several European countries decided to remove controls at internal borders and had them transferred to external borders. Due to this agreement, people who live or have legally entered one of these countries can move freely among the other countries. Therefore, one of the achievements of the Schengen area is the elimination of internal borders. A citizen of any of these countries can travel freely without controls, as they would within their own country. This allows for free, fast and convenient circulation within the area, but its most important aspect is that the Schengen area is a symbol of European integration.

The Schengen area is composed of 26 countries, 22 of which are Member States of the EU (Austria, Belgium, Denmark, Slovakia, Slovenia, Spain, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, The Czech Republic and Sweden) and the remaining 4 (Iceland, Liechtenstein, Norway and Switzerland) which are not Member States. All these countries are committed to the rights and obligations acquired by the agreement. This area of free movement is supported by law in the Treaty on European Union and the Treaty on the Functioning of the European Union: *“The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of*

crime.”¹, “Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States...”², “...It shall ensure the absence of internal border controls...”³, “...The Union shall develop a policy with a view to ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;...”⁴.

What this regulation stands for is important. The emphasis is that the signing of this agreement means the abolition of controls at internal borders for everyone; accompanied by the adoption of reinforcing and coordinating measures at the external border controls. Among other relevant aspects are the common visa policy, police and judicial cooperation and the Schengen Information System (SIS).

But this freedom of movement and circulation offered in the Schengen area also makes it possible for illegal immigrants to move freely among Member States and therefore raises some security questions. The conflict and crisis in Syria and elsewhere in the region have caused record numbers of refugees and migrants to arrive in the EU. In reaction, several Member States have resorted to reintroducing temporary internal border controls⁵. By the middle of 2016, seven countries from the Schengen area had reintroduced temporary controls at their borders, referring to Article 23 of the Schengen Borders Code. *France* decided to close its borders on 13 November 2015, after the terrorist attacks in Paris. During the same month, before the arrival of a huge, continuous flow of people seeking international protection, *Germany* and *Austria* closed all their borders, deciding on specific control on certain sections. In January 2016, faced with an unexpected wave of immigrants and the persistent threat of the arrival of a great number of people seeking international protection, *Sweden* and *Norway* responded with the closure of their borders. Lastly, during February and March, with the continual arrival of immigrants from the refugee camps, *Denmark* and *Belgium* also adopted the same measures of control⁶. All these countries currently have these provisional measures in place.

¹ TEU, Art. 3.2.

² TFEU, Art. 21.1.

³ *Ibid.*, Art. 67.2.

⁴ *Ibid.*, Art. 77.1.

⁵ For more information see: GHIMIS, A. (2015), <<The refugee crisis: Schengen’s slippery slope>>, European Policy Center –EPC-, 22 September 2015.

⁶ See “Member States’ notifications of the temporary reintroduction of border control at internal borders pursuant to Article 23 et seq. of the Schengen Borders Code” (<http://ec.europa.eu/>).

The Schengen Borders Code provides the absence of border control of persons crossing the internal borders between the Member States of the European Union⁷. Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out⁸. However, Articles 23, 24 and 25 of the same code regulate temporary reintroduction of controls at internal borders, allowing these countries to exceptionally reintroduce controls on their internal borders over a period that shall not exceed thirty days, in case of a serious threat to public order and internal security. Moreover, this 30-day limit can be exceeded if a serious threat is expected to persist, but requires that this temporary measure is limited to the time strictly necessary to respond to that threat⁹.

These control measures have a provisional duration, but there is still the worrying possibility of its permanence in time that undoubtedly places the Schengen area in a situation of uncertainty. This is not the first time that the Schengen area has been at risk¹⁰, but the current situation is very complex. We are facing an unprecedented migratory crisis and the measures adopted up to now, both at the European and at the international levels do not seem to predict a satisfying short-term outcome. European institutions and various important figures have discussed their concerns about the effects of these measures on the stability of Schengen¹¹. The unilateral decision of each country has jeopardized the well functioning of this area and the benefits associated for its citizens and the economy of its Member States. It is predicted that the end of Schengen would entail not only economic costs, but also far-reaching social and political

⁷ Schengen Borders Code. Art. 1.

⁸ *Ibid.*, Art. 20.

⁹ GUILD, E., BROUWER E., GROENENDIJK K., CARRERA S. (2015), <<What is happening to the Schengen borders?>>, CEPS, 16.12.2015., pp.3-5.

¹⁰ On August 24th 2015, *the economist* explained “*This is not the first time that the Schengen agreement has appeared to be in danger of fraying. In 2011, fearing an influx of North African refugees, Italy and France pushed for a review of the agreement*”. (<http://www.economist.com/blogs/economist-explains/2015/08/economist-explains-18>).

¹¹ On March 2016, when the Commission presented a detailed Roadmap of the concrete steps needed to return order to the management of the EU's external and internal borders, first Vice-President Frans Timmermans said: “*Schengen is one of the most cherished achievements of European integration, and the costs of losing it would be huge. Our aim is to lift all internal border controls as quickly as possible, and by December 2016 at the latest. For this purpose, we need a coordinated European approach to temporary border controls within the framework of the Schengen rules instead of the current patchwork of unilateral decisions. In the meantime, we must fully implement the measures set out in our roadmap in order to strengthen control of our external border and improve the functioning of our asylum system. We must also continue to work with Turkey to fully implement the Joint Action Plan and substantially reduce the flow of arrivals*”. (http://europa.eu/rapid/press-release_IP-16-585_en.htm).

consequences. Even in terms of economic costs, only a portion can be quantified¹². The European Council has stressed the importance of restoring the normal functioning of Schengen as soon as possible and of continuing to support Member States to deal with the migratory crisis through other strategies¹³.

But in practice we see some Member States continuing to decide unilaterally to establish measures in an apparent wave of fear about the large influx of immigrants. To such a degree, on 27 April the possibility of Austria building a fence along the border with Italy to prevent illegal arrivals was announced¹⁴, at the same time the Austrian Parliament adopted a new law that will allow it to declare a state of emergency regarding immigration and where asylum law is further limited. It seems that the synergy in practice shows that EU leaders intend to take measures to protect the Schengen area while some Member States take measures addressed to self-protection, implying an increasing danger to the stability of free movement and to European integration.

III. Where do immigrants go?

The European Council held a special meeting on 23 April 2015, because of the tragedy that month in the Mediterranean Sea¹⁵. At this meeting it was agreed that all efforts be mobilized to prevent more people from dying at sea and to address the root causes of migration. On 13 May 2015, the European Commission adopted a European Agenda on Migration¹⁶. It underlined the need for better management of migration and stressed that it is a shared responsibility. It also defined specific actions and measures in four areas: reducing the incentives for irregular

¹² See BÖHMER, Michael (2016) <<Departure from the Schengen Agreement. Macroeconomic impacts on Germany and the countries of the European Union>>. GED Study. Bertelsmann-Stiftung. February 2016, p.13-14.

¹³ This was recognized by the European Council of 18/19 February: Paragraph 8 e): *"The Council adopted a Recommendation on 12 February 2016. It is important to restore, in a concerted manner, the normal functioning of the Schengen area, with full support for Member States which face difficult circumstances. We need to get back to a situation where all Members of the Schengen area fully apply the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions or who have not made an asylum application despite having had the opportunity to do so, while taking into account the specificities of maritime borders, including by implementing the EU-Turkey agenda"*.

European Council (2016), Meeting 18 and 19 February 2016, Conclusions, EUCO 1/16, Brussels, 19 February.

¹⁴ <http://www.europapress.es/internacional/noticia-austria-estudia-construir-valla-frontera-italia-20160427164758.html> 27/04/2016

¹⁵ Special meeting of the European Council, 23 April 2015 – statement.

¹⁶ European Commission (2015), Communication, A European Agenda on Migration, COM(2015) 240 final, Brussels, 13.5.2015.

migration, saving lives and securing the external borders, strengthening the common asylum policy and developing a new policy on legal migration. Two weeks later, the Commission adopted the first proposals of its comprehensive approach to improving the management of migration. Included among them was an emergency relocation proposal for 40,000 people in need of international protection, from Italy and Greece to other Member States¹⁷. As well as a recommendation asking Member States to resettle 20,000 people in need of international protection from outside the EU¹⁸.

On 22 September 2015, the Council of the European Union, gathered in the Justice and Home Affairs Council, adopted a decision establishing provisional measures in the area of international protections for the benefit of Italy and Greece. It was established that for two years a temporary and uncustomary relocation mechanism would be applied. 120,000 persons in clear need of international protection would be relocated from Italy and Greece to other Member States¹⁹. For each relocated person, the Member State participating would receive a lump sum of 6000 €. The next day, EU Heads of State or Government met in an informal meeting to deal with the unprecedented migration and refugee crisis Europe is facing. They concluded with the immediate need to act on the requests for assistance from Member States frontlines in order to ensure identification, registration and fingerprinting of migrants and ensure relocation and returns²⁰. In the latest European Council Conclusions²¹ regarding Migration, the Council called

¹⁷ “Relocation: Emergency response mechanism to assist Italy and Greece: The European Commission is proposing to use the emergency response mechanism under Article 78(3) of the Treaty on the Functioning of the European Union. This provision, which is being activated for the first time, will be used to set up an emergency relocation scheme to assist Italy and Greece. This scheme will apply to Syrian and Eritrean nationals in need of international protection that arrived in either Italy or Greece after 15 April 2015 or that arrive after the mechanism is launched. A total of 40 000 persons should be relocated from Italy and Greece to other EU Member States based on a distribution key (see Annex 1 and 2) over the next 2 years – corresponding to approximately 40% of the total number of asylum seekers in clear need of international protection who entered these countries in 2014. The Commission is ready to do the same if other Member States – such as Malta – also face a sudden influx of migrants. Member States will receive €6,000 for each person relocated on their territory”.

European Commission (2015), Press release, Package of proposals to address the migration crisis, 27 May 2015.

¹⁸ “Resettlement: The Commission has adopted a Recommendation asking Member States to resettle 20 000 people from outside the EU, in clear need of international protection as identified by the UNHCR, over 2 years, based on a distribution key (see Annex 3). Member States who participate in the scheme will be entitled to financial support, with the EU making €50 million available in 2015-16.”

Ibid.

¹⁹ Council (2015), “Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece”, OJ L 248, 24.9.2015.

²⁰ Informal meeting of EU Heads of State or Government on migration, 23 September 2015 – statement.

for the acceleration of the relocation from Greece and announced that work will be taken forward on the future structure of the EU's migration policy, including the Dublin Regulation.

The European Agenda on Migration's objectives include achieving a strong common asylum policy and evaluating the Dublin system by the middle of this year, the Commission having recognized that the system has not worked as it should²². The EU needs to acknowledge that the Dublin system should be modified²³, and that it requires a new approach. The European Commission has already announced proposals to reform the Common European Asylum System²⁴ by creating a fairer, more efficient and more sustainable system for allocating asylum applications among Member States²⁵. The proposal, among other measures, is committed to introducing a corrective allocation mechanism. With this fairness mechanism the new system will automatically be established when a country is handling a disproportionate number of asylum applications. A reference number will be created based on the size and wealth of each country. When one country receives in excess of 150% of the reference number, new applicants in that country will be relocated across the EU until the number of applications drops back below that level. In addition, there will be a solidarity contribution for Member States that do not want to participate in the relocation. They will have to pay 250.000 € for each applicant for whom it

²¹ European Council (2016), Meeting 17 and 18 March 2016, Conclusions, Brussels, 18, March.

²² "Though the recent legal improvements date only from 2014, the mechanism for allocating responsibilities to examine asylum applications (the "Dublin system") is not working as it should" (...) "When the Dublin system was designed, Europe was at a different stage of cooperation in the field of asylum. The inflows it was facing were of a different nature and scale. When the Commission undertakes its evaluation of the Dublin system in 2016, it will also be able to draw on the experience from the relocation and resettlement mechanisms. This will help to determine whether a revision of the legal parameters of Dublin will be needed to achieve a fairer distribution of asylum seekers in Europe."

European Commission (2015), A European Agenda on Migration... *Doc.cit.* p.13.

²³ For more information, see: GUILD, E; Costello, C., Garlick M., MORENO-LAX V., (2015), <<The 2015 refugee crisis in the European Union>>, CEPS, 04.09.2015.

²⁴ European Commission (2016), Communication, Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM (2016) 197 final, Brussels, 6.4.2016.

²⁵ Commissioner for Migration and Home Affairs, Dimitris Avramopoulos, said: "If the current refugee crisis has shown one thing, it is that the status quo of our Common European Asylum System is not an option. The time has come for a reformed and more equitable system, based on common rules and a fairer sharing of responsibility. With the proposed reform of the Dublin system, the reinforcement of Eurodac and the transformation of EASO into a true European Agency for Asylum, today we are taking a major step in the right direction and putting in place the European-level structures and tools necessary for a future-proof comprehensive system. We will now put all our efforts into working side-by-side with the European Parliament and Member States. We must turn these proposals into reality as swiftly as possible."

European Commission – Press release. Towards a sustainable and fair Common European Asylum System. Brussels, 4 May 2016.

would have been responsible to the Member State that is relocated the person instead. The principle on which the Common European Asylum System is based will not change. Asylum seekers should apply for asylum in the first country they enter (unless they have family elsewhere). The novelty is that with this new mechanism no Member State should face a disproportionate pressure on its asylum system. Also highlighted among the Commission's proposals is the transformation of the current European Asylum Support Office (EASO) into a fully-fledged European Union Agency for Asylum, enhancing its tasks and improving its ability to address any structural deficiencies that arise in the application of the EU's asylum system. The new agency should strengthen the practical cooperation and information exchange between Member States, it should operate the reference key to apply the aforementioned fairness mechanism, and promote Union law and operational standards regarding asylum procedures, reception conditions and protection needs²⁶²⁷.

Unfortunately, relocation forecasts have not been carried out with the agility required by the gravity of the situation. Italy and Greece are still overwhelmed and problems such as the origin of asylum seekers, the Dublin system application²⁸ or discrimination between refugees and migrants worsen the day by day situation of these people and make the EU's relocation policy show visible deficiencies worldwide. Moreover, the unexpected turnaround of the agreement between the EU and Turkey has impacted this relocation, as many immigrants who were supposed to be relocated, are now being returned to Turkey.

IV. Spain and its responsibility in regard to the relocation

Spain has not been one of the main refugee receiving countries. According to the latest report by the Spanish Commission for Refugee Aid (Comisión Española de Ayuda al Refugiado -CEAR-) in 2014 Spain attended to only 0.95% of asylum seekers in the European Union²⁹,

²⁶ *Ibid.*

²⁷ For more information: European Commission. Factsheet: The reform of the Dublin System.

²⁸ For more information see SANAHUJA, J.A. (2016), <<La Unión Europea y la crisis de los refugiados: fallas de gobernanza, securitización y “diplomàcia de chequera”>>, en MANUELA M. (coord.), *Retos inaplazables en el sistema internacional*, Anuario CEIPAZ 2015-2016, Madrid, 2016, Pp.75-78.

²⁹ Comisión Española de Ayuda al Refugiado –CEAR- (2015). “Informe 2015: Las personas refugiadas en España y Europa”. Madrid, 2015. p.59.

having registered 5,947 requests for international protection³⁰. There is no official report yet with figures from 2015, but late last year figures appeared with the new record of 13,000 asylum requests in Spain during that year³¹. Although the geographical position of Spain as part of the EU's external border could allow this country to be a large-scale receptor of people in need of international protection, throughout the years Spain has shown little commitment on asylum. The fact that such a small number of people apply for asylum in Spain is caused by the difficulties of access to the procedure and the obstacles faced in completing it³².

Annexes 1 and 2 of the European Commission's proposals for the European Agenda on Migration, assign a relocation quota to Spain of 10.72%, with 2,573 people to relocate from Italy and 1,715 from Greece³³. Regarding the resettlement, Spain received a quota of 7.75%, with 1,549 immigrants³⁴. With the EU minister's decision in September 2015 on relocation, Spain was assigned 8,023 immigrants (1,896 from Italy and 6,127 from Greece)³⁵. However, the acting president Mariano Rajoy acknowledged in March this year that only 18 refugees have reached Spain (the majority Eritreans)³⁶. In the same month, Interior Minister Jorge Fernandez Diaz, made public Spain's intention of receiving 450 refugees relocated from Italy, Greece and Turkey "with immediate effect", a commitment already reported to the European Commission³⁷.

³⁰ *Ibid.*, p.60.

³¹ See Diario El Mundo. 31/12/2015

(<http://www.elmundo.es/sociedad/2015/12/31/5684e51646163fce168b4602.html>).

³² Following this line, Carlos Berzosa, Spanish Commission for Refugee Aid president -CEAR-, pointed out that "...También España debe asumir un compromiso mucho mayor con las personas refugiadas. En 2014, solo 5.947 personas solicitaron aquí protección internacional, menos del 1% de las 625.000 que pidieron asilo en la Unión Europea. La historia y las estadísticas son contundentes: desde la aprobación en 1984 de la primera Ley de Asilo 180.580 personas han demandado protección internacional. En cambio, en Alemania solo en 2014 lo hicieron nada más y nada menos que 202.645 personas. El pasado año nuestro país concedió alguna forma de protección internacional a 1.585 personas, la cifra más elevada registrada hasta el momento, principalmente a personas originarias de Siria. También se completó la acogida en reasentamiento de 260 personas refugiadas de este país. Un dato positivo por la escasa participación histórica de España en este tipo de programas, pero que sin embargo no se extiende a otros países como Malí o Ucrania, a los que se aplica el mal denominado "criterio de prudencia"..."

Comisión Española de Ayuda al Refugiado –CEAR- (2015)... *Doc.cit.* p.12.

³³ European Commission (2015), Package of proposals to address the migration crisis... *Doc.cit.*, Annex 1 and 2 (Relocation: Distribution key).

³⁴ *Ibid.*, Annex 3 (Resettlement: Distribution key).

³⁵ Council (2015), Decision (EU) 2015/1601 of 22 September 2015..., *Doc.cit.* ANNEX I and ANNEX II.

³⁶ Spanish Congress of Deputies, Plenary session, 06/04/2016. Source: Canal Parlamento. (<http://www.congreso.es/portal>).

³⁷ See Diario El Mundo, 10/03/2016. "El ministro de Interior, Jorge Fernández Díaz, ha informado este jueves que España está dispuesta a recibir "con carácter inmediato" a unos 450 refugiados reubicados desde Italia, Grecia y

Despite the European Union's insistence on the urgency for Member States to make their relocation quotas effective, and despite the budget allocated, Spain still has not launched a real receiving and relocation mechanism. Nevertheless, Spain has spoken out about the responsibility and solidarity that Member States must demonstrate and expressed its intention to continue with the implementation, in collaboration with other member states, of the necessary actions for the effective relocation of persons seeking asylum or refuge, in view of the commitments it made in 2015 within the Union European. Such relocation should take place in solidarity between all Member States regardless of the refugee's nationality³⁸. Spain, as a Member State, is responsible for the application of the Dublin system. Member States should allocate the resources needed in order to increase the number of transfers and cut delays, proactively and consistently apply the clauses related to family reunification, and make broader and regular use of the discretionary clauses, allowing them to examine an asylum application and relieve the pressure on the frontline Member States³⁹.

This May, Spain received the first contingent of refugees to be resettled in compliance with the relocation program created to deal with the humanitarian consequences of the war in Syria. As part of this commitment by Spain, on Tuesday 24 May 2016, 20 refugees from Greece (13 Syrians and 7 Iraqis) arrived in Spain and on Wednesday 25, 22 other refugees from Italy (all Eritrean men)⁴⁰. These two groups are the first asylum seekers to arrive in Spain this year (in December 2015 Spain received 18 refugees who were previously in Italy). By June, 586 asylum seekers are expected to have arrived in Spain. 200 refugees are scheduled to arrive via relocation

Turquía, en el marco de los distintos programas europeos ya existentes para contener la crisis migratoria. Se trata de un compromiso ya notificado a la Comisión Europea y realizado con independencia del acuerdo en fase de negociación para deportar a Turquía a los demandantes de asilo sirios llegados a Grecia, a cambio de recibir en los Estados miembros a un número equivalente de refugiados instalados en este país.” (<http://www.elmundo.es/sociedad/2016/03/10/56e14631e2704e1e1d8b4626.html>)

Europa Press, 04/03/2016 “España se ha comprometido a acoger a unos 450 refugiados que se encuentran en Grecia, Italia y Turquía "a corto plazo" con el objetivo de agilizar los acuerdos en la UE para reubicar a 160.000 refugiados de Italia y Grecia y más de 20.000 de países como Turquía, Jordania y Líbano, según han avanzado fuentes del Ejecutivo comunitario”. (<http://www.europapress.es/internacional/noticia-espana-compromete-acoger-450-refugiados-grecia-italia-turquia-corto-plazo-20160304202901.html>).

³⁸ “La Comisión Mixta para la UE se opone, con una declaración unánime, a la expulsión colectiva de refugiados a Turquía”. Press note, 16/03/2016, Spanish Congress of Deputies. (<http://www.congreso.es/portal/page/portal/Congreso/Congreso/SalaPrensa>).

³⁹ European Commission (2015), A European Agenda on Migration ..., *Doc.cit.* p.13.

⁴⁰ The host cities will be Sevilla, Barcelona, Zaragoza, Guipuzcoa, Madrid and Tarragona. Ministerio del Interior. Gobierno de España. Press room, 24 y 25.05.2016 (<http://www.interior.gob.es/>).

from Greece and Italy and 386 via resettlement from Lebanon and Turkey⁴¹. The arrival to Spanish territory of two more groups is expected shortly afterwards⁴².

According to the Spanish Interior Ministry, with these arrivals, Spain becomes the fourth European country to relocate refugees from Greece and Italy. Spain would have undertaken 11.8% of the 1,683 relocations carried out by European countries in compliance with the relocation program. Regarding the resettlement, Spain will become the fifth European country to receive refugees, 6.1% from 6,321 resettlements carried out in Europe to date⁴³. The Spanish Government, through its Reception and Integration System of applicants / beneficiaries of international protection, offers the beneficiaries accommodation, maintenance, legal assistance, psychological assistance, social care and counselling. Moreover it also offers accompaniment to schools, health and community centres as well as language learning and basic social skills⁴⁴.

On Monday 23 May 2016, while the first contingents of refugees were being received, the Federación Española de Municipios y Provincias –FEMP– (Spanish Federation of Municipalities and Provinces) signed a partnership agreement with non-governmental organizations CEAR (Spanish Commission for Refugee Aid), ACCEM and Cruz Roja (Red Cross) to facilitate reception and integration of refugees in Spain⁴⁵. In this agreement, these organizations commit to complying with the quota allocated by Europe⁴⁶. The joint action of these organizations is important in raising the awareness amongst the Spanish population of the

⁴¹ *Ibid.*

⁴² On 30 May, it is scheduled the arrival of 45 persons to be accommodated in Alava, Asturias, Balearic Islands, Guadalajara, Guipuzcoa, Madrid and Valladolid. These people have Syrian, Iraqi and Central African Republic nationality. On 1 June, 19 more refugees will arrive, they will be welcomed in Salamanca and Navarre. These have Syrian and Iraqi nationality.

Ministerio del Interior. Gobierno de España. Summary table of relocations from Greece and Italy. (Available at <http://www.interior.gob.es/>).

⁴³ Ministerio del Interior. Gobierno de España. Press room... *Op.cit.*

⁴⁴ For more information see: Ministerio de Empleo y Seguridad Social. Secretaría General de Inmigración y Emigración. Dirección General de Migraciones. “Sistema de Acogida e Integración para solicitantes y beneficiarios de protección internacional”. Madrid, 25.01.2016 (Available at <http://www.empleo.gob.es/>)

⁴⁵ Comisión Española de Ayuda al Refugiado (CEAR). News. 23.05.2016 (Available at: <http://www.cear.es/>)

⁴⁶ The president of the FEMP explained in the event that the signature of the agreements with ACCEM, CEAR and Spanish Red Cross is a response to the interest of local governments to provide a coordinated and effective action to thereby strengthen the processes of reception and integration of towns and cities. He also emphasized that “*Cada vez que los refugiados llaman a las puertas de Europa, esas puertas se tienen que abrir, porque el presente nos observa y el futuro nos va a juzgar*”.

Federación Española de Municipios y Provincias (FEMP). “Unidos y preparados para la acogida e integración de refugiados”. Communication. 23.05.2016

need for human rights to be defended, as well as promoting feelings of a united Europe and solidarity against racist and xenophobic movements that are steadily gaining strength. The intention of these agreements is to provide refugees arriving in Spain with better reception and integration, beyond the first emergency actions.

These have been the first measures carried out in Spain in response to the migratory crisis in Europe, at present approaching the middle of 2016. Spanish leaders have repeatedly stated their intention to comply with a commitment of solidarity with refugees, but we will have to wait over the course of the year to see if indeed Spain complies with the allocated quota.

V. European Border Guard's future development

The new European Border Guard proposal has been one of the latest responses to migratory pressures⁴⁷. In September 2015, in the aforementioned informal meeting of Heads of State or Government, the European Council was urged to make operational decisions about the most pressing issues, particularly on point 6 “*tackle the dramatic situation at our external borders and strengthen controls at those borders, including through additional resources for Frontex, EASO and Europol, and with personnel and equipment from Member States*”⁴⁸. A month later, in the conclusions on 15 October 2015, there were proposals to strengthen the EU's external borders (taking the Schengen acquis as its basis), and the creation of a “European Border and Coast Guard System”⁴⁹. On 15 December 2015 the European Commission presented a set of proposals designed to ensure the EU's external borders and to manage migration more effectively⁵⁰. It proposed to introduce a European Border and Coast Guard to ensure strong and shared management of the external borders and to increase security for Europe's citizens. This

⁴⁷ “Member states need to realise that they can be more secure without sacrificing liberty if they create a common institution to guard the external borders and reinforce the existing framework for internal security.” GROS, D. (2015) <<Can Schengen survive? >>, CEPS, 14.12.2015, p.2.

⁴⁸ Informal meeting of EU Heads of State or Governments on migration (2015)..., *Doc.cit.*

⁴⁹ “h) in accordance with the distribution of competences under the Treaty, in full respect of the national competence of the Member States, enhance the mandate of Frontex in the context of discussions over the development of a European Border and Coast Guard System, including as regards the deployment of Rapid Border Intervention Teams in cases where Schengen evaluations or risk analysis demonstrate the need for robust and prompt action, in cooperation with the Member State concerned”;

European Council (2015), Meeting 15 October 2015, Conclusions, EUCO 26/15, Brussels, 16, October.

⁵⁰ European Commission (2015), Press Release. A European Border and Coast Guard to protect Europe's External Borders Strasbourg, 15 December 2015.



proposal should give the national authorities responsible for border management the opportunity to be more effective in their shared responsibilities and allow this new European body to enhance the protection and security of the EU's external borders. Recently, on 6 April 2016, the Council agreed its negotiating position on the proposed regulation concerning the European Border Guard (from this point on it was given this name)⁵¹. As soon as the European Parliament has adopted its position, the Council Presidency will start negotiations with them⁵².

The new European Border Guard's proposal is a challenge for the EU. With the creation of this body it intends to make use of a shared responsibility between Member States to ensure and implement an integrated management of EU's external borders. Protecting external borders in this way would be protecting and ensuring internal free movement, and therefore this measure would act to strengthen a response to the situation that has been a threat to the Schengen area.

The current Frontex⁵³ would then become the European Border Guard, expanding by joining operations with the national authorities responsible for border management. This is expressed in the following proposal, article 1 defines the purpose of the European Border Guard in the following manner: "*A European Border and coast Guard is hereby set up to ensure a European integrated border management at the external borders with a view to managing migration effectively and ensuring a high level of internal security within the Union, while*

⁵¹ The Permanent Representatives Committee agreed the Council's negotiating position on the proposed regulation on the European border guard. As soon as the European Parliament has adopted its position, the presidency will start negotiations with the aim to reach a political agreement by the end of June 2016.

Permanent Representatives Committee/Mixed Committee (2016). Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC - Mandate for negotiations with the European Parliament. Brussels, 8 April 2016.

⁵² Klaas Dijkhoff, Minister for Migration of the Netherlands and President of the Council welcomed the agreement: "*The European Border Guard is a useful and necessary means to improve controls at our common external borders. We need effective border controls to better manage migration flows and improve the security for our citizens. I'm pleased that the urgency of this measure has been recognized and that we have been able to come to a timely agreement.*"

06/04/2016. 13:10. Press release. 167/16. Home Affairs (<http://www.consilium.europa.eu/en/press/press-releases/2016/04/06-negotiations-european-border-guard/>).

⁵³ "*Reflecting the goals of the strategy, Frontex has been assigned the mission of improving 'the integrated management of the external borders of the Member States of the Union' in order to ensure both 'a uniform and high level of control and surveillance' and the 'efficient implementation of common rules' in accordance with the fundamental principles of EU law.*"

MORENO-LAX, V. (2011), <<Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea>> International Journal of Refugee Law, Vol. 0, No. 0. Published by Oxford University Press. March 31 2011, p.6.



safeguarding the free movement of persons therein.” And article 3 describes its composition: “The European Border and Coast Guard Agency and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, shall constitute the European Border and Coast Guard⁵⁴.”

This proposal is one of the most ambitious and controversial projects which has been presented in the context of the EU’s area of “freedom, security and justice”. It is important for Member States to be able to rely on a body that can harmonize control of the EU’s external borders. The migratory crisis we are experiencing is a tragic situation that has long term forecasts, so it is something that the EU needs to deal with effectively, efficiently and compassionately. International terrorism appears to be a real and severe threat to the Western world and it is demanding proper protection of the European Union for freedom and security in the Schengen area to survive these pressures.

Still, it is worth reflecting on whether the European Border Guard is a truly "European" Guard. According to the Commission proposals, we have a sort of reinforced Frontex. It is not establishing an agency with its own guards and equipment, separate to the Member States, also its action in cases of emergency would be very limited, and it would be unable to ensure common standards across all the EU’s external borders⁵⁵. There is no doubt that the new proposal faces many challenges and it is arguable whether the EU has the powers to send Frontex or its reserve forces to other Member States without their consent, or to require Member States to deploy those reserve forces without their consent either⁵⁶. Concerns have been raised regarding

⁵⁴ Permanent Representatives Committee/Mixed Committee. (2016) ... *Doc.cit.* pp.23 and 27.

⁵⁵ In this regard, Sergio Carrera, Senior Research Fellow and Head of the Justice and Home Affairs research unit at CEPS explains that: *We argue that the EBCG does not constitute a truly ‘European’ border and coast guard. If adopted under the current provisions, it would establish an emergency-driven Frontex+ agency, leaving aside central questions such as ways to systematically address and cover structural capacity challenges in all EU member states in complying with rule of law standards prescribed in the EU Schengen Borders Code. It would not establish an agency endowed with its own ‘European’ (non-nationally attached) border guards and tools. Moreover, the EBCG would take too narrow a focus to emergency situations, instead of ensuring EU standards across the common external borders in all member states. A Frontex+ agency may have more competences, personnel and technical tools, but if the conditions and willingness to cooperate on the ground are not adequately ensured, there is little that the agency can actually ‘do’.*

CARRERA, S.and L.DEN HERTOOG (2016) <<A European Border and Coast Guard: What’s in a name?>> CEPS Paper in Liberty and Security in Europe, n.88, CEPS, Brussels, March.p.2.

⁵⁶ See PEERS, S. (2015), <<The reform of Frontex: saving Schengen at refugees’ expense? >>, *EU Law Analysis Blog*, 16 December (<http://eulawanalysis.blogspot.be/2015/12/the-reform-of-frontex-saving-schengen.html>).

the compatibility of this proposal and the right to intervene, with the current legal competences of the EU as well as the negative political repercussions of replacing national with foreign border guards from other EU Member States⁵⁷.

VI. Turkey's role in the management of EU's migratory pressures

Another measure that stands out as a priority for action in migratory pressures is the course relations between the EU and Turkey have followed. After several meetings with the intention of strengthening these relations⁵⁸, the European Council has insisted on the efforts of the European Union and its Member States to establish an effective, humanitarian and safe European migration policy⁵⁹.

In November 2015, in the context of the management of migratory crisis, EU Heads of State or Government held a meeting with Turkey that marked an important step in developing EU-Turkey relations by reactivating the process of Turkey's accession and adopting a controversial Joint Action Plan contributing to managing the migration crisis caused by the situation in Syria⁶⁰. The Joint Action Plan was prepared to be applied from June 2016, and the

⁵⁷ See more in CARRERA, S. and L. DEN HERTOOG (2016) <<A European Border...>>., *Op.cit...* p.12.

⁵⁸ Concern about strengthening relations with Turkey begins to stand out in the Informal meeting of heads of state or government, 23/09/2015, where the EU leaders agreed on a list of priorities, including: “reinforce the dialogue with Turkey at all levels, including at the upcoming visit of the Turkish President (5 October), in order to strengthen our cooperation on stemming and managing the migratory flows.”. Shortly after, in the Eastern Mediterranean - Western Balkans route conference, 08/10/2015, EU ministers for home affairs and ministers for foreign affairs met with their counterparts from Turkey, Lebanon, Jordan and the Western Balkans. The conference focused on the important increase in the number of migrants coming from the Middle East through the Western Balkan route, with the aim to enhance engagement among all partners, increasing solidarity and ensuring an orderly management of refugee and migration flows.

Informal meeting of EU heads of state or governments on migration (2015)..., *Doc.cit.*

⁵⁹ EU leaders welcomed the agreement on a EU-Turkey Joint Action Plan on the European Council Meeting (15/10/2015). “Today, the European Council set out the following further orientations: Cooperating with third countries to stem the flows a) welcomes the joint Action Plan with Turkey as part of a comprehensive cooperation agenda based on shared responsibility, mutual commitments and delivery. Successful implementation will contribute to accelerating the fulfilment of the visa liberalisation roadmap towards all participating Member States and the full implementation of the readmission agreement. Progress will be assessed in spring 2016. The EU and its Member States stand ready to increase cooperation with Turkey and step up their political and financial engagement substantially within the established framework. The accession process needs to be re-energized with a view to achieving progress in the negotiations in accordance with the negotiating framework and the relevant Council conclusions.”

European Council (2015), Meeting 15 October 2015, Conclusions, *Doc.cit.*

⁶⁰ Meeting of Heads of State or Government with Turkey - EU-Turkey statement, 29/11/2015
EU-Turkey Joint Action Plan. Brussels, 15 October 2015.

EU and Turkey are aiming to complete the visa liberalization process and the lifting of visa requirements for Turkish citizens in the Schengen zone by October 2016. In early 2016, Member States agreed on a Refugee Facility for Turkey⁶¹. With this agreement the EU showed its commitment to provide €3 billion additional resources to assist Turkey in addressing the immediate humanitarian and development needs of refugees and their host communities. The EU continued defending this agreement with Turkey as a vital part of the fight against the flow of migrants. Subsequently, at the following meeting of EU leaders with Turkey in March 2016 they disclosed Turkey's commitment to accept the rapid return of all migrants arriving in Greece from Turkey who are not in need of international protection. In this controversial meeting different proposals, equally contentious, were discussed with the aim of bringing the immigration crisis to an end, among them the return of all new irregular migrants crossing from Turkey into the Greek islands and the resettlement, for every Syrian readmitted by Turkey from Greek islands, of another Syrian from Turkey to the EU⁶². The purpose of this return mechanism would be to take decisive and swift action to enhance the fight against criminal smuggling networks⁶³.

The latest European Council meeting's conclusions⁶⁴ state that all means need to be used to support Greece in the return of irregular migrants to Turkey as of 1 June 2016 and it explained that the Commission together with the Member States and agencies will be responsible for coordinating and organising the necessary support structures to effectively implement the operative plan in the context of the Greek-Turkish readmission Protocol and the EU-Turkey Readmission Agreement. Against criticism from international organizations and several national governments, the EU reiterates the importance for Turkey to respect the highest standards when it comes to democracy, rule of law and respect of fundamental freedoms, including freedom of expression⁶⁵. After the adoption of the Joint Action Plan in November last year, unfortunately there have not been significant results. There have been countless visits in both directions by political figures and senior officials, but we cannot ensure the proposal's success, on the

⁶¹ Refugee facility for Turkey: Member states agree on details of financing (03/02/2016).

⁶² For more information see SANAHUJA, J.A. (2016), <<La Unión Europea y la crisis de los refugiados...>> *Op.cit.*, pp.94-99.

⁶³ "The return mechanism mentioned above (...) should eventually break the business model of human smugglers," said President Tusk. Meeting of the EU heads of state or government with Turkey, 07/03/2016

⁶⁴ European Council (2016), Meeting 17 an 18 March, Conclusions, *Doc.cit.*

⁶⁵ *Ibid.* Number 5.



contrary, conflict in Syria is worsening and Turkey continues with a tense domestic situation. It is concerning that Turkey has been reaping political benefits from the refugee deal. This country has made an apparent comeback on the EU stage, has received sky-high promises on visa liberalization and on Turkey's EU accession negotiations, and has been allocated €3 billion to deal with refugees. But worryingly, the country's rule of law and freedom of expression are in a situation that is worse than at any point since accession negotiations started in 2005⁶⁶.

VII. Implications for Spain of the measures taken by the EU

Spain, being a country that occupies an important position on the EU's external border, has been reticent with the transfer of sovereignty involved in proposals such as the European Border Guard. Together with other countries such as Greece, Italy and Malta, Spain is not ready to lose control of its borders. Furthermore, it remains to be seen whether the new European Border Guard will have its own border guards or instead will remain dependent on the national authorities. The European proposal has undergone certain amendments, and one of the points that Spain has opposed to most was granting a right of intervention to the coast guard, even if the country concerned objected. It is still a controversial possibility, which seems to have been watered down by the loss of national sovereignty it would entail⁶⁷. The geographical position of Spain is in a strategic position as well as a dangerous one. Wars and threats are still causing the citizens of Syria and other countries in the region to suffer and continue to endanger their lives with more and more violence. Victims of this humanitarian disaster desperately seek routes to Europe, running away from certain death.

The agreement with Turkey has closed the way to Greece for millions of people who yearn to reach Europe in search of international protection. But the closure of these borders will not stop these people from trying to reach Europe, as is to be expected, they will seek new alternative routes to reach their destination. After the closure of the Balkan route, the flow of refugees could move to the Western Mediterranean with Spain being the gateway to Europe for them. Before the signing of the Agreement between the EU and Turkey, the Spanish Mixed

⁶⁶ For more information see: PIERINI M., (2016), <<The EU-Turkey Refugee Deal Needs a Reset>>, Carnegie Europe, 16.02.2016. (<http://carnegieeurope.eu/strategieurope/?fa=62783>).

⁶⁷ Source: http://www.elespanol.com/mundo/20160310/108489450_0.html

Commission for the European Union (Chamber of Deputies) met in Session No. 2 on 16 March 2016, and declared via press release that it opposes, unanimously, the collective expulsion of refugees to Turkey⁶⁸. Through this statement, Congress expressed its opposition to the draft agreement reached between the EU and Turkey a week earlier with the intention of strengthening their cooperation on the migration and refugee crisis. A significant number of Congress (all political parties except the Popular Party) emphasized their disagreement with any collective expulsion of refugees into Turkish territory or any state not a member of the EU, and requested that the norms of international law and respect for Human Rights be fulfilled⁶⁹. The acting president, Mariano Rajoy, had to go into the March meeting with the European Council without the support of the House and afterwards defend, before full Congress, Spain's ability to meet the challenge being faced by the European Union with the migratory crisis⁷⁰.

According to statements made by Mariano Rajoy at the Congress of Deputies, the position adopted by Spain in the last meeting of the European Council at the beginning was to oppose, considering that the EU-Turkey Declaration draft did not meet the Spanish requirements, in line with the declaration the Spanish Mixed Commission had adopted for the EU. Spain, therefore, expressed certain requirements deemed necessary for the agreement to be viable and to respect human rights. In this regard, Spain demanded that the prohibition of massive returns of refugees and an explicit reference to the individualized

⁶⁸ “*La Comisión Mixta para la UE se opone, con una declaración unánime, a la expulsión colectiva de refugiados a Turquía*”. Press note. 16/03/2016, Congress of Deputies. (<http://www.congreso.es/porta1/page/porta1/Congreso/Congreso/SalaPrensa>).

⁶⁹ “*1. Manifestamos nuestra oposición a la adopción de cualquier acuerdo con Turquía que establezca expresa o indirectamente la posibilidad de proceder a expulsiones colectivas a territorio turco, o a cualquier Estado no miembro de la Unión Europea. (...), 3. Solicitamos que los acuerdos sobre el control del flujo de refugiados hacia Grecia que se alcancen con Turquía contengan garantías del cumplimiento de la legalidad internacional y del respeto a los Derechos Humanos, incluidos los requisitos de la legislación europea de asilo. Dicha legislación exige, entre otros, que exista la certeza de que se respete el principio de no devolución, que las personas puedan solicitar el estatuto de refugiado, y en caso de ser refugiado, recibir protección con arreglo a la Convención de Ginebra o con garantías equivalentes mediante derecho interno, lo que incluye también el acceso a los derechos económicos y sociales garantizados por la Convención.*”

Ibid.

⁷⁰ On April 6, 2016, the acting president, Mariano Rajoy, appeared in plenary session in the Congress of Deputies to explain the European Council meeting last month, where the EU-Turkey Agreement was approved. In his declarations he defended that: “*Si hay algún país que está preparado para responder a este reto, es España. Porque ésa es la voluntad y el deseo de los españoles y porque ése será siempre el empeño de su Gobierno*”.

Ibid.



processing of cases of asylum be included, making it clear that asylum seekers arriving on the Greek islands would have an individualized and personalized procedure, and not collective, therefore respecting international humanitarian law and EU law.

Therefore, Spain endorses the agreement between the EU and Turkey and its future development, and it claims the merit of having introduced three guarantees to the agreement: respect for European and international law and expressed exclusion of any collective expulsion; individualized processing of cases of asylum and special attention to the most vulnerable people⁷¹.

VIII. Conclusion

The European Union is facing a European refugee crisis and there has never been a time when the need for a common European response to refugee arrivals has been more urgent. So far, measures carried out by both the European Union and by some Member States seem to be routed away from a return to normality in the Schengen area. The way the EU is responding to migratory pressures is causing the Member States to adopt measures to safeguard their internal security, jeopardizing the stability of the Schengen area.

The proposal for relocation of immigrants has remained in quotas and numbers written on paper, in guidelines that EU Member States have ignored, forgetting that behind each number there is a life, a person in a situation of extreme vulnerability. The creation of a new European Border Guard is generating scepticism and the proposal itself generates gaps and doubts that have not been resolved and that are showing the weakness of the Union. With the closure of borders in the Balkans and with the agreement signed between the EU and Turkey, the flow of arrivals through Greece has been reduced, and refugees are seeking other ways to enter. These measures are leading many of them to choose Italy as a gateway, causing Austria to threaten to close its border with that country, adding it to the number of countries that prioritize unilateral protection measures before a sense of solidarity and a desire for European integration.

⁷¹ Spanish Congress of Deputies. Plenary Session. 06/04/2016. *Op.cit.*



Amid this situation, xenophobic outbreaks are spreading through Europe distancing us more and more from the founding values of the Union. Fear of the real and objective threat of Islamic terrorism is clouding European states' thinking. They want to shield themselves against the arrival of refugees in need of international protection, protection which is a European, international and humanitarian duty, while opening the doors to negotiations with the Turkish government has shown very little respect for human rights and fundamental freedoms, pillars of democracy and European values.

The humanitarian seriousness, which involves both the adoption of certain measures and the omission of others, cannot be ignored by the European Union. European leaders cannot adopt responses that sacrifice the values that have given the European Union its reason for being since its foundation.

Meanwhile, it seems that Spain has been following the EU action lines, showing its support to the decision-making. But in practice, at a national level appropriate measures have not been taken to implement humanitarian protection of refugees. Spain is not receiving persons in need of international protection neither is it deploying all mechanisms at its disposal to show solidarity in the midst of this tragedy. In my opinion, Spain and other Member States in the European Union should be aware of the importance of joining in decision-making and carrying out practices to collaborate in relocating and welcoming immigrants. If there is no unity and solidarity among the countries of the Union and on the contrary, if each country makes decisions unilaterally to protect themselves, they are not going to find effective solutions to migratory pressures, and the Schengen area, a milestone of our European integration, may be doomed to extinction. Overcoming such transcendent challenges as free movement within the European Union has involved a lot of effort and it is the responsibility of all parties to preserve and protect them.