

Must EU Borders have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers' Sanctions with EU Member States' Obligations to Provide International Protection to Refugees

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Abstract

Whereas the EU is developing a highly protective Common European Asylum System in purported compliance with the Geneva Convention,¹ it is also displaying growing reluctance to provide unhindered access to it to those in need.² The question of *physical* access to protection is ambiguously dealt with within EU law. On the one hand, it appears that entry to the Schengen zone has been designed disregarding refugees'³ entitlement 'to special protection'.⁴ Prior to admission, refugees seem to have been assimilated to the broader class of (potentially illegal) immigrants and thus required to submit to general immigration conditions,⁵

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¹ Articles 63 and 307, EC Treaty and new Article 63(1), Treaty on the functioning of the Union (Lisbon Treaty).

² See the recently launched EU Border Management Package by the European Commission: 'A comprehensive vision for an integrated European border Management System for the 21st Century,' Press Release, IP/08/215, 13 February 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/215&format=HTML&aged=0&language=EN&guiLanguage=en>. For ECRE's reaction see: http://www.ecre.org/resources/press_releases/1028; for the Refugee Council's position see: <http://www.refugeecouncil.org.uk/news/press/2008/february/20080213.htm>.

³ Here the notion of *refugee* is to be read widely, as encompassing all kinds of asylum-seekers.

⁴ Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, unanimous recommendation 'D', *International co-operation in the field of asylum and resettlement*, Geneva, 28 July 1951.

⁵ In practice, refugees are distinguished from the immigrant mass only once the asylum request has been filed (Article 1, CISA: 'asylum seeker shall mean any alien *who has lodged an application for asylum* within the meaning of this Convention and in respect of which a final decision has not yet been taken) or the principle of *non-refoulement* (ex. Article 33 GC and Article 3 ECHR) has found territorial application. Access to the CEAS depends 'not on the refugee's need for protection, but on his or her own ability to