MIGRATION PANORAMA

Schengen in the spotlight:
a Europe with or without borders?

Foreword by Herman Van Rompuy

Andreia Ghimis
Robert Goebbels
Sylvie Guillaume
Aleksej Heinze
Radko Hokovský
Nick Malkoutzis
Yves Pascouau

**EUROPEAN MIGRATION AND DIVERSITY
PROGRAMME**

King Baudouin
Foundation

European Migration and Diversity Programme

In the context of the ongoing refugee and migration crisis the new focus of the EPC's Migration and Diversity (EMD) Programme is to generate and develop policy recommendations, provide decision-makers and public opinion with expertise and independent information, as well as to promote a positive and constructive dialogue on the multidimensional consequences of Europe's migration crisis.

Therefore, in the following years, the EMD Programme will focus on the numerous policy process launched since the beginning of the crisis while providing qualitative analysis and recommending common European solutions to EU's most important existential test. We will do so by:

Creating a platform for discussion

Through a series of events with relevant decision makers, analysts, journalists, academics and civil society representatives, as well as the media, the EPC is bringing stakeholders together to have an open debate about the possible ways out of this crisis and suggest pathways to solutions.

Advising, warning and encouraging

EPC analysts are closely monitoring the work of the EU institutions, the intensive negotiations between governments, as well as the debates in the European and national parliaments. They react promptly to these developments with rapid analysis and publications.

Proposing long term solutions

The EPC continues to seek innovative ways to reach the ultimate objective of a common European migration policy, particularly through the 'Forced Migration Project: how can the EU play a greater and more coordinated role'. Through this project, the EPC is exploring new ground by trying to understand how other EU policies (agriculture, fisheries, development, trade, common foreign and security policy) influence the obligation or willingness of third country nationals to migrate to the EU.

Table of Contents

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EUROPEAN POLICY CENTRE

About the authors

Andreia Ghimis, Junior Policy Analyst, European Policy Centre

Robert Goebbels, Former Luxembourg Minister and Former Member of the European Parliament, Signatory of the Schengen agreement

Sylvie Guillaume, Member of the European Parliament

Aleksej Heinze, Co-Director, Centre for Digital Business, Salford Business School

Radko Hokovský, Executive Director, European Values think tank

Nick Malkoutzis, Editor, MacroPolis

Yves Pascouau, Director of Migration and Mobility Policies, European Policy Centre

Herman Van Rompuy, President of the European Policy Centre, President Emeritus of the European Council and Former Prime Minister of Belgium

Foreword

The European Union is going through a time of multiple crises. The banking and eurozone crises shocked the trust of Europeans in key pillars of our economic system. Overcoming the existential challenge to the euro necessitated solidarity and discipline. Keeping the eurozone together took a lot of effort. The time when the EU seemed to be a win-win for all is over. The following economic crisis, causing widespread unemployment, tested the social cohesion of the member states and of the Union.

The massive influx of war refugees since last summer created distrust in another pillar of the Union; the benefits of free movement of people and of secure external borders. Every 'state' needs secure borders and has to protect its citizens. Solidarity is again under pressure, as is the Schengen *acquis*. European citizens, and young people especially, have become used to traveling freely across Europe and mostly using the same currency. This opportunity all of a sudden became a threat!

The crisis of the Schengen zone came on top of a polycrisis. The differences between the crises of the eurozone and the Schengen zone are obvious but there are also similarities.

In both cases it is about people. In the first crisis it was people's jobs, income and savings that were at stake. In the refugee crisis it is about human beings desperately fleeing war and terror. The influx created a wave of generosity, but the huge numbers rapidly turned these positive feelings into fear and even panic. Our identity and way of life seem to be in danger.

In both cases Europeans are depending on third parties for a solution. We were at the mercy of the volatile and often irrational financial markets in the years 2010-2012. Now, we cannot stem the massive influx of refugees without the cooperation of Turkey and a restoration of peace in Syria. We were able to tame the financial markets because we took the necessary but painful measures at the member state and European level. We practiced responsibility and solidarity; putting our national houses in order and helping those countries in need. In the Schengen crisis, we have to do the same: apply the rules (including the Dublin Regulation) and help countries in need, such as Greece and Italy.

In both cases only a European solution works. It took time in the period 2010-2012 to convince the member states that the currency area was more than the sum of its members. We also need a Banking Union, a Fiscal Union and an Economic Union. The crisis was over once we acknowledged and implemented this. We are not there yet in the current difficulties. The impact of this flow of migration on public opinion is narrowing the room for manoeuvre for national leaders. Political courage has become scarce. The common will to find a European way out is lacking.

It is clear that full control of national borders is not possible anymore along our 45,000 km of maritime and 11,000 km of land borders; that national protection creates problems elsewhere; and that refugees are not impressed by national restrictions. In the meantime the Commission is right to use all the flexibility enshrined in the Schengen agreement. But the temporary exceptions will come to an end. The moment of truth is coming closer. At the same time the influx has to be

stemmed to let societies breathe again. Joint efforts to prevent dangerous crossings of the Aegean Sea and allowing legal immigration of war refugees can solve the humanitarian and political crises. Economic migration is a totally different issue and is not on the agenda now.

Crises such as the eurozone issue show that the great political projects were neither logistically nor legally underpinned in any proper way. The euro was not equipped to tackle the biggest banking crisis since the thirties and Schengen was not prepared for a massive non-European immigration, not seen in centuries. We need genuine European instruments. The EMU is an answer. We already did a lot but not enough. In today's crisis we are nowhere. Let's hope European leaders find the courage to create a European border guard and deepen the common asylum and migration policy. I hope that the proverb 'never waste a good crisis' is still valid. I reiterate: I hope. Let's also hope that terror attacks can be prevented in the future; for the dramatic suffering they create but also because they pollute the refugee problem.

In the long term, immigration is inevitable in our ageing and shrinking European societies. Even in numbers going far beyond what we are experiencing today. Integration around the core values of our civilisation and living together with various cultures will be the biggest challenges for the upcoming decades.

Herman Van Rompuy
President European Council Emeritus
President of the European Policy Centre, Brussels

A plea to those who pretend to be governing us: apply the treaty, the whole treaty, nothing but the treaty!

While following the recent developments in European politics, it is hard not to notice – irrespective of how knowledgeable one is of the treaties' progress towards 'an ever closer union' (paragraph 13, preamble of the Treaty on European Union) – that a large number of political players are unaware of the EU treaties' legal provisions. The same holds true for the heads of state and government, whose 'summits' are sinking into the deep mud of surreal bargaining!

The refugee crisis, the tensions inside the Schengen area and the return to national frontiers made up out of barbed wire, the difficult progress towards the ideal of a social Europe and the possibility of a 'Brexit' – all these crises show that European leaders are in constant denial of the much needed European solidarity. Unfortunately, they prefer a frantic race to protectionist, shamefully nationalistic measures.

In 1985, in my capacity as Luxembourg Junior Foreign Minister, I had the honour to welcome the representatives of four other states (Belgium, France, Germany and the Netherlands) to the signature ceremony of what is now known as the Schengen agreement. Later on I followed the negotiations around the Schengen Implementing Convention adopted in 1990. Today I am stunned by the number of politicians and journalists who seem to ignore the fact that the policy aiming to abolish controls at internal borders has become part of the *acquis communautaire*.

Legally, Schengen does not exist anymore since the Treaty of Amsterdam incorporated the Schengen *acquis* into the framework of the European Union, in 1997. This is how the freedom of movement became a community policy (*politique communautaire*). All the subsequent treaties (Nice, Lisbon) confirmed this trend to the satisfaction of the European peoples. (Protocol 19, integrating the *Schengen acquis* into the framework of the EU, takes into account Denmark's special position and Ireland's and UK's possibility to opt-in for specific dispositions of the *Schengen acquis*).

Leaving 'Schengen' means leaving the European Union!

A careful reading of the consolidated version of the Treaty on European Union (TEU) and of the Treaty on the Functioning of the European Union (TFEU) clearly reveals that the countries threatening to 'leave Schengen' must leave the European Union altogether if they wish to reintroduce permanent internal border controls.

Article 3 TEU, paragraph 2, establishes the following principle (the author underlines): "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 (…)." Once the principle enunciated, Article 3.2 mentions that the free movement of people shall be ensured in conjunction with "appropriate measures

with respect to external border controls, asylum, immigration and the prevention and combating of crime."

Although it places the area of freedom, security and justice amongst the shared competences of the EU with the member states, the TFEU is even more straightforward on this issue. European citizenship is enshrined in Article 20 TFEU, which gives European citizens "the right to move and reside freely within the territory of the member states."

Article 77 TFEU, included in Chapter 2 TFEU, dedicated to policies on border checks, asylum and immigration states that: "The Union shall develop a policy with a view to: (a) ensuring <u>the absence of any controls on persons, whatever their nationality</u>, when crossing internal borders; (b) carrying out checks on persons and efficient monitoring of the crossing of external borders; (c) the gradual introduction of an integrated management system for external borders."

The second part of Article 77 TFEU authorises the adoption of measures considered to be necessary to that effect. One of these measures concerns the "gradual establishment of an integrated management system for external borders' while ensuring "the absence of any controls on persons, whatever their nationality, when crossing internal borders."

Article 78 TFEU states that the Union "shall develop a common policy on asylum"; "a uniform status of asylum for nationals of third countries, valid throughout the Union"; even "a common system of temporary protection for displaced persons <u>in the event of a massive inflow</u>."

Article 78.3 TFEU affirms: "In the event of one or more member states being confronted by <u>an emergency situation characterised by a sudden inflow of nationals of third countries</u>, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the member state(s) concerned. It shall act after consulting the European Parliament."

The treaty vs national selfishness

In the current challenging political situation it is vital to go back to the essence of the treaties. The European Union is a community with a common destiny. If a member state wishes to withdraw from this community, it must follow the procedure outlined in Article 50 of the TEU. Nevertheless, the treaty does not allow the exclusion of a member state (Greece in this case) from the Schengen area, as one can read in the press.

Blaming Greece for not being able to completely seal the borders of its 1,200 main islands is also a proof of astounding hypocrisy. Greece is part of the Schengen area but does not have common borders with another Schengen state. So, each third country national reaching the territory of another Schengen country than Greece must cross an external frontier and could therefore be subject to border checks.

Faced with this massive influx of desperate people fleeing war, Europe must rediscover itself by going back to the principles set out in the treaties. Schengen is not the reason why Europe is currently in such a difficult situation. The real reason is the lack of cooperation, solidarity and political will to put in place, for instance, an integrated system of external border management as enounced in the EU treaties.

Robert Goebbels
Former Luxembourg Minister (1984-1999)
Former Member of the European Parliament (1999-2014)
Signatory of the Schengen agreement, Luxembourg

Supplique à ceux qui prétendent nous gouverner: Appliquez le traité, tout le traité, rien que le traité!

A suivre l'actualité politique européenne tout observateur tant soit peu informé de l'évolution des traités vers "une union sans cesse plus étroite" (13e alinéa du préambule du "Traité sur l'Union Européenne") est amené à constater que bon nombre des acteurs politiques actuels ne connaissent manifestement pas les traités européens. Cela vaut notamment pour les Chefs d'Etat et de Gouvernement, dont les "sommets" s'enfoncent dans une "morne pleine" faite de marchandages parfois surréalistes!

Que ce soit sur la crise des réfugiés, sur "Schengen" et le retour à des frontières faites de barbelés, sur l'Europe sociale ou sur un "Brexit" éventuel, c'est le déni permanent de la nécessaire solidarité européenne et le retour au galop de mesures peureusement protectionnistes et bassement nationalistes.

Ayant eu l'honneur d'inviter en 1985 à la signature de ce qui allait devenir l'accord de Schengen, et ayant accompagné les négociations par la convention Schengen de 1990, je suis effaré de constater que la plupart des hommes politiques et des journalistes semblent ignorer que la politique visant l'abolition des contrôles aux frontières intérieures, initiée par l'Allemagne, la France et les pays du Benelux, est devenue par la suite une partie intégrante de l'acquis communautaire.

Juridiquement, Schengen n'existe plus depuis que le traité d'Amsterdam a repris en 1997 l'essentiel de l'accord et de la convention "Schengen", faisant de la libre circulation une politique communautaire. Tous les traités subséquents, Nice et Lisbonne, ont confirmé cette politique européenne qui continue à avoir les faveurs des peuples européens. (Le Protocole N. 19 traite de la position particulière du Danemark ainsi que des possibilités offertes à l'Irlande et au Royaume Uni d'accepter certaines dispositions de "l'acquis de Schengen").

Sortir de "Schengen" signifie sortir de l'Union!

Une relecture de la version consolidée du "Traité sur l'Union Européenne" (TUE) et de celle du "Traité sur le Fonctionnement de l'Union Européenne" (TFEU) fait apparaître sans l'ombre d'un doute que les pays menaçant de "sortir de Schengen" doivent en fait sortir de l'Union Européenne s'ils entendent revenir à un contrôle permanent des frontières intérieures communes.

Ainsi l'article 3 TUE établit à l'alinéa 3.2 le principe suivant (l'auteur souligne): "L'Union offre à ses citoyens un espace de liberté, de sécurité et de justice sans frontières intérieures, au sein duquel est assurée la libre circulation des personnes (…)." Le principe ainsi posé, la suite de l'article 3.2. énumère des "mesures appropriées en matière de contrôle des frontières extérieures, d'asile, d'immigration ainsi que de prévention de la criminalité et de lutte contre ce phénomène".

Le Traité sur le Fonctionnement de l'UE, tout en reconnaissant une compétence partagée entre l'Union et les Etats membres pour l'espace de liberté, de sécurité et de justice, est encore plus clair:

L'art. 20 TFEU institue "une citoyenneté de l'Union" conférant "le droit de circuler et de séjourner librement sur le territoire des Etats membres."

Le chapitre relatif aux contrôles aux frontières, à l'asile et à l'immigration stipule à l'Article 77 (TFEU): "L'Union développe une politique visant: a) à assurer l'absence de tout contrôle des personnes, quelle que soit leur nationalité, lorsqu'elles franchissent les frontières intérieures; b) à assurer le contrôle des personnes et la surveillance efficace du franchissement des frontières extérieures; c) à mettre en place progressivement un système intégré de gestion des frontières extérieures."

La suite de l'article 77 traite de toutes les politiques estimés nécessaires lors de l'adoption des traités. Notamment cette mise en place progressive de la "gestion des frontières extérieures", tout en garantissant "l'absence de tout contrôle de personnes, quelle que soit leur nationalité, lorsqu'elles franchissent les frontières intérieures."

L'art. 78 stipule que l'Union "développe une politique commune en matière d'asile"; "un statut uniforme d'asile en faveur de ressortissants de pays tiers, valable dans toute l'Union"; même "un système commun visant, en cas d'afflux massif, une protection temporaire des personnes déplacées."

L'art. 78.3 dit: "Au cas où un ou plusieurs Etats membres se trouvent dans une situation d'urgence caractérisée par un afflux soudain de ressortissants de pays tiers, le Conseil, sur proposition de la Commission, peut adopter des mesures provisoires au profit du ou des Etats membres concernés. Il statue après consultation du Parlement européen."

Le traité contre les égoïsmes nationaux

Face à la situation politique actuelle il est impérieux de revenir aux traités. L'Union Européenne est une communauté de destin. Si un Etat veut en sortir, l'article 50 (TEU) en fixe les modalités. Par contre le traité ne permet pas l'éjection de la Grèce de l'espace Schengen, comme on peut notamment le lire dans la presse.

Il faut d'ailleurs être d'une hypocrisie absolue pour reprocher à la Grèce de ne pas arriver à fermer hermétiquement les frontières des 1.200 îles principales qui composent son territoire. La Grèce fait partie de l'espace Schengen, mais ne dispose d'aucune frontière commune avec un autre pays "Schengen". Tout ressortissant d'un pays tiers rejoignant à partir de la Grèce un autre pays de l'espace commun, doit nécessairement se présenter à une frontière extérieure et pourrait donc être contrôlé.

Face à cette déferlante d'humains désespérés fuyant la guerre, l'Europe doit se retrouver sur la base des traités. Ce n'est pas Schengen qui est cause, mais le manque de coopération, de solidarité, par exemple pour mettre en place le système intégré "de gestion des frontières extérieures" prévu par les traités.

Robert Goebbels
Ancien Ministre Luxembourgeois (1984-1999)
Ancien député européen (1999-2014)
Signataire luxembourgeois du traité de Schengen, Luxembourg

Europe's Digital Economy and Schengen: the impact of physical borders in the virtual world

Europeans love the Internet. Whilst still lagging behind North America in terms of Internet penetration rates (88%), Europe (whose internet penetration rate stands at 73.5% as of November 2015 according to Internet World Stats) is the second most connected part of the Digital Economy world. The Internet provides the technological infrastructure for the World Wide Web to function. Sending emails and social networking are some of the most popular activities online. Arguably, nothing will stop the growth of these digital communication activities, even if the growing refugee crisis prompts the re-instatement of the Schengen country borders. However, should the Schengen Agreement be rolled back? And if so, what would the effects of such a development be on the wider Digital Economy in Europe?

The World Wide Web principle is to enable open communication for all. Thus, those organisations and individuals that embrace it, develop a competitive advantage. In Europe, although the Digital Economy is growing, only a limited number of businesses are making the most of digital marketing tools to expand their business online to the wider European market and beyond. In particular, as highlighted by the European Commission, small and medium sized enterprises (SMEs) that could benefit from international trade facilitated through digital channels are lagging behind.

Digital Economy still relies on physical element(s)

Business Culture in Europe by and large still prefers traditional face-to-face meetings when developing business relationships and negotiating. Yet, the number of business models where physical interaction is not necessary is increasing. Examples of pure digital business models include search engines and online education in the form of massive open online courses (MOOCs).

In addition, online conferencing is a useful tool for international business development but is still not widely used. Indeed, younger generations of managers who have grown up with online conferencing are more comfortable and keen to use it, but they still do not have the authority to conclude business deals. So, re-instating borders controls could lead to a more frequent use of this type of tools. However, the value of face-to-face interactions – which would be affected by a collapse of the Schengen Agreement – is still very high, particularly in the case of intricate negotiations where body language plays a big part; this is unlikely to change.

The costs to European supply chains

Beyond conventional parcels bought by a single end user, digital business facilitates complex supply chains that have been developed in the Schengen countries. These chains would still exist, should borders go back up, but efficiency savings that are currently passed on to clients are likely to be reduced. For example, having to wait at border crossings for additional checks and security verifications can add hours to a cross-European journey. Each hour of delay adds costs to the journey of goods and therefore transportation services, which are ultimately going to be passed on to consumers.

In this sense, it must be noted that the estimation made by the French government think tank France Stratégie in February 2016 (also mentioned here below) of the economic consequences of rolling back Schengen does not take into consideration the impact on the Digital Economy, although it is an integral part of the overall economy, creating wealth and thus disposable income, which could be spent and re-invested.

The health of the single European market

Crossing country borders by air would have a limited impact on digital deals. There is the additional passport check, but the majority of air travellers would absorb this as part of the process. The same applies to parcels and other airmail items. However, supply chains via car traffic are likely to be affected the most. Checks at country borders could result in long waiting times that add no value to businesses, either for those travelling to a meeting or those delivering an online purchase of goods to a neighbouring country.

Estimating the costs for the European parcels industry is difficult. However, according to an evaluation made by the European Express Association, the Express parcels industry alone could be burdened with circa €80 million a year in additional costs, which would inevitably be passed on to the final consumer, indicating that business will suffer if the Schengen agreement was suspended. The quote below by Laura Lane, President of UPS Global Public Affairs department confirms that increasing waiting times can only hamper the cross border free movement of goods and services, which is at the heart of European digital trade.

"Putting borders back up within Europe would significantly affect the vitality of the European Single Market and the trading relationships for all of the member states with each other and the rest of the world. France Stratégie, the government think tank, recently estimated the cost to be €110 billion by 2025, and other estimates indicate that reinstating borders could diminish bilateral trade by more than 10%. The Schengen agreement not only facilitates the efficient transport of goods and services, but also supports increased collaboration and diversity of ideas – the foundation for continued growth of the global economy."

The Digital Economy spirit

Ultimately, the Digital Economy is based on open borders and thinking that allows creativity, and the exchange of ideas and goods.

The Digital Economy is still in its fledgling stage in Europe. Investment into cyber security and the data protection of European citizens online is a real challenge that has not yet been comprehensively addressed at European level. Also, the vulnerability of European businesses to online fraud is increasing. At the same time, there is a growing need for a better understanding of digital marketing opportunities and how they can encourage overall economic growth.

Europe offers the infrastructure for the Schengen agreement in the same way that the Internet offers the infrastructure for the World Wide Web. The World Wide Web was invented in Europe because people had to work with one another. Surely, with all the creativity and ingenuity in Europe, a more creative solution to the refugee crisis can be found which helps all concerned parties. The World Wide Web does not put up borders, it allows people to talk and work with one another free of obstructions. The Schengen agreement is the physical World Wide Web of Europe, which allows so much more than the free movement of people.

Aleksej Heinze
Co-Director
Centre for Digital Business, Salford Business School, Salford

Schengen, the migration crisis and Visegrád countries

It is absolutely clear that the current migration crisis can only have a common European solution. National and unilateral steps may temporarily protect one country, but in the long run, cannot lead to a sustainable policy able to manage the new migration flows of the 21st century. The Visegrád countries – the Czech Republic, Hungary, Poland and Slovakia – do not question this fact; they even support most of the measures under the Commission's European Agenda on Migration. Yet, there are elements that the Visegrád Group criticises and has difficulties to accept. Above all, they will challenge any mandatory permanent mechanism for the relocation of asylum seekers. Why is that and are there any circumstances under which the Visegrád leaders would change their minds?

The main reason why Visegrád countries have, in some respects, a different approach towards the migration crisis is because of the way they understand the crisis, its causes and possible solutions. Primarily, they perceive migration waves as a result of concrete political decisions and events in countries of origin, transit and destination, which generate specific push and pull factors, and not as some unchangeable natural process that can only be accepted as it is. In other words, the number of migrants and refugees, the routes they choose and the timing of their travel are determined by certain political, social and economic factors, which can be identified and modified. That is why the Visegrád leaders, from the beginning of 2015, emphasised tackling the root causes and helping the refugees in the regions of their origin, and at the same time warned against prioritising relocations within the EU, which might be necessary to help the frontline countries, but in itself cannot be the solution to the crisis, because it does not affect the push factors.

If we look back, we can see that this approach was gradually adopted by the European Council. While the heads of states and governments in June 2015 concluded that the EU response will focus on relocations, return and cooperation with third countries, the order and emphasis have changed completely in the European Council Conclusions of February 2016. The objective now is to rapidly stem the flows, protect the external borders and reduce illegal migration in order to safeguard the integrity of the Schengen area, while the relocation process is overshadowed by a more urgent emphasis on cooperation with Turkey and readmissions.

This is understandable since "relocation does not work" as Commissioner Avramopoulos reported in January 2016 to the LIBE Committee of the European Parliament. As of 4 April 2016 only 1,111 asylum seekers had been relocated from Italy and Greece out of the agreed 160,000, while some countries have not made any places available. The slow progress of relocations was in stark contrast with the high number of immigrants arriving in Greece, reaching over 2,000 a day in January. The future of mandatory redistribution of asylum seekers within the EU is also questionable, as French Prime Minister Valls declared in February 2016 that his country is "not in favour of a permanent relocation mechanism".

Visegrád countries, the most visible critics of this policy, have so far refused to relocate a single refugee. But they are not alone. Austria, Croatia and Slovenia did not transfer any asylum seeker from Italy or Greece as part of the Emergency Relocation Mechanism; Spain has only relocated

18 individuals, as opposed to France, which is leading the list with 379 completed relocations as of 4 April 2016.

Regarding other measures to address the refugee crisis, such as contributions to trust funds for Africa and Syria, the Visegrád countries are not doing badly at all. For example, while the Czech Republic has pledged €5.74 million, the economically much stronger France has offered €6 million, Spain pledged to give €3 million and Portugal only €450 thousand. But it does not make much sense pointing fingers at individual member states. Everyone, including the Visegrád countries are contributing in some respect.

Visegrád states also provide substantial assistance to countries on the Balkan migration route, including dozens of policemen that were sent to Serbia and Macedonia; because they are not EU members, it is much more difficult for them to receive direct EU support. The government of Hungary has rightly been criticised for some of its questionable moves and illiberal tendencies, but it should not be overlooked that in 2015, the country took care of the highest number of asylum applications per capita in the EU (17,699 per million inhabitants), which, in absolute numbers, is the second largest share in the EU (13.9%), after Germany. All in all, Visegrád countries could indeed contribute more to the European efforts to address the migration crisis, but saying that they do not take any responsibility is not right.

Going back to the original question – under what circumstances would the Visegrád leaders agree to a permanent relocation system – we can infer from the statements of politicians that this concept would only be imaginable for them if there was a given and guaranteed threshold. But as long as there are no effective and credible tools for the regulation of irregular immigration, an automatic obligation to relocate a given percentage of asylum seekers regardless of the total amount – whether it is one, two or three million a year – would be difficult to accept. The societies of the Visegrád Group would most probably refuse to remain part of such a 'mandatory migrant re-distributional union'.

The concerns of the Visegrád populations about uncontrolled immigration and the risks of failed integration of migrants from Africa and the Middle East are so strong that even the reintroduction of border controls with the rest of the Schengen Area would seem tolerable. The political representation emphasises that ensuring the borderless union is a priority. Yet, if we look at public opinion polls, for example in the Czech Republic at the end of 2015, we find that a majority of the respondents agree that the reintroduction of checks at the internal borders would be a bearable price to pay for the regulation of mass immigration. Therefore, it does not look very likely that the Visegrád political representatives would accept a permanent, mandatory relocation system with an unforeseeable number of asylum seekers coming in annually, in order to prevent the threat of being excluded from the Schengen Area.

However, if we managed to agree on a European asylum and immigration system, which would be able to keep the number of refugees admissible in the EU to a few hundreds of thousand a year, the Visegrád states would become open to take care of their share. The key to such a system would be a strict application of the principle of the first country of asylum and the first safe country, which is now being applied in the EU-Turkey Agreement. This would also be a solution to reduce the pressure and ensure survival of the Schengen Area.

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Radko Hokovský
Executive Director
European Values think tank, Prague

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The rise of national borders and the fall of a symbol

Several member states of the European Union have reintroduced internal border checks since last year due to the 'refugee crisis' or, more recently, the closing of parts of the Calais 'jungle'. These decisions, while being required to comply with EU law, are contributing to the fall of a symbol.

The 'refugee crisis'

With the arrival of a significant number of refugees, asylum seekers and migrants, some states have reinstated temporary internal border checks in the Schengen area for public policy reasons. These decisions have been validated by the European Commission, which stated in December 2015 that "the uncontrolled influx of high numbers of undocumented or inadequately documented persons, not registered upon their first entry to the EU, may constitute a serious threat to public policy and internal security".

This phenomenon has seen the implementation of border checks along a road going from Slovenia to Sweden and passing through Austria, Germany and Denmark – in other words, the route taken by those who leave Greece to seek international protection, primarily in Germany and Sweden.

Closure of the Calais 'Jungle'

On 22 February 2016, Belgium decided to apply borders checks at its border with France, but for different reasons. Following the closure of parts of the Calais 'jungle', Belgian authorities feared an influx of migrants and consequently a threat to public policy.

The Belgian Minister of Interior has indicated to the press: "We want to avoid at all costs 'Calais-style' camps in Belgium. It is an issue of public policy." However, he added that the reintroduction of border checks aims to avoid camps on the Belgian coast and in the neighbourhood of Zeebrugge harbour given the economic impact this would have as "the tourist season is to start soon." (Source *Le Monde)*.

The Belgian decision is therefore grounded on two concerns, one being security and the other being economic. Yet according to current EU rules, economic reasons cannot justify the reintroduction of internal border checks. The justification of border controls must be assessed against the background of the threat to public policy.

The duty to make this assessment pertains to the European Commission, which must examine whether the potential arrival of 1,000 to 3,000 migrants from Calais (provided that all of them decided to enter Belgium) constitutes a serious threat to public policy. While the number of arrivals does not in itself suffice to measure this threat, these figures will nevertheless be taken into consideration even more so when compared to the one million people who transited in 2015 from Greece through the Western Balkans. In addition, the Commission will have to assess the necessity and proportionality of the border checks, i.e. which specific part of the border is concerned and

for how long the controls Calais will be maintained after the Calais 'jungle' is partly closed. This evaluation is expected to be tense, given the high political stakes involved.

The fall of a symbol

These incidents indicate that a symbol is falling. This symbol was strongly supported by the Parliament, which succeeded to include the following point in the Preamble to a text modifying EU law: "Migration and the crossing of external borders <u>by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security</u>."

"*Per se*" means that other elements should be taken into consideration to assess the threat to public policy. However, decisions taken in the current 'refugee crisis' – and the recent Belgian decision even more – show that the *per se* threat is deemed to stem precisely from the arrival of a significant number of refugees and migrants on the EU territory and the potential displacement of several thousand people from one country to another.

National decisions are therefore implementing exactly what the European Parliament sought to avoid. By considering the migratory phenomenon as a threat *per se*, such decisions are, by extension, assimilating a migrant, the "other", to a threat. Yet, beyond figures, beyond pictures, beyond fears, it is a human being who appears and who is, to quote François Crépeau, someone who undertook "a dignity seeking journey".

EU member states must overcome the challenge of the unprecedented humanitarian crisis hitting its immediate neighbourhood and which is now starting to take place on its territory. They should act together and rely on the common values, which include respect for human dignity and human rights. States should above all implement decisions already adopted in their symbolic dimension as well as their practical effects. Relocation, and the principle of solidarity involved in such a mechanism, is one such example.

Yves Pascouau
Director of Migration and Mobility Policies
European Policy Centre, Brussels

Sylvie Guillaume
Member of the European Parliament, Brussels

For Greece, Schengen is about belonging, not borders

There is nothing like limiting freedoms to make people value them even more. In this respect, it is no surprise that Greeks are showing an appreciation of being part of the Schengen area and concern about the possibility of their country being excluded from the passport-free area even though there is no legal process for doing so.

The tighter border restrictions implemented by countries north of Greece since the start of the year have underlined for Greeks the importance of being part of Schengen and a group of countries that – theoretically, at least – abides by a fixed and common set of rules on border controls.

A recent opinion poll by the Dianeosis research centre in Athens indicated that 60% of Greeks believe it is important for their country to remain part of the Schengen area. While this gives us an idea of the value that Greeks place in being part of such a network of states, and not at risk of unilateral actions, the fact that Greece's participation should be in any doubt is a cause for concern.

For a country that relies so heavily on tourism, which in Greece's case accounts for almost a fifth of the economy, the negative publicity surrounding a supposed 'Schexit', rather than any practical complications travellers would face, could prove deeply damaging. During his appearance before a parliamentary committee in February, Bank of Greece Governor Yannis Stournaras cited a French study on the economic impact of Schengen collapsing and estimated the annual cost to Greece at around €9 billion per year, or 5% of GDP.

Why an empty threat is taken seriously

Despite repeated assurances by Migration Commissioner Dimitris Avramopoulos and other European officials that there is no legal avenue for expelling Greece from Schengen, as well as the questionable value of such a move given the country does not border with other members of the passport-free area, the idea that it could happen is still prevalent in the public debate. The main reason for this seems to be that being part of Schengen helps provide Greeks with a sense of belonging that they are in such great need of after six years of economic crisis and adjustment during which their country has often seemed a pariah within Europe.

That is why the psychological impact of the speculation about Greece exiting Schengen, or practical measures to isolate it, such as the erection of border fences and tightening of controls by its neighbours, has a more significant impact than the economic factor. Even now, there is an overwhelming feeling among Greeks that their country has largely been isolated by its EU partners and left alone to deal with the refugee crisis. The Dianeosis poll indicates that 92% of Greeks feel the European Union has not supported their country in addressing this challenge. The discussion about excluding Greece from Schengen is a real blow to those who in difficult times have argued that Greece should not waver from seeing its future firmly within the EU. At the same time, it strengthens the growing euroscepticism fuelled by the grievances over the country's economic bailout.

Talk of Greece being segregated also sends a dangerous mixed message to the local population. During the fraught bailout negotiations last year, the line coming from Brussels, Berlin and other European capitals was that member states must keep to their commitments, otherwise the foundations of the Union will crack. However, this approach has appeared much more lax during the refugee crisis. The overwhelming view in Greece is that many member states are being allowed to get away with failing to live up to their pledges, such as to help relocate refugees. The incongruity between the small number of people that have been transferred from Greece and the high number of arrivals is a particularly sore point.

Greece found wanting in many ways

Of course, Greece has also been found wanting in terms of its duties as a Schengen member. After European Commission officials conducted a Schengen evaluation in Greece last November, Athens was provided with a list of fifty recommendations for improvements. These included general proposals, such as improving the quality of "temporary stay" documents for arrivals so they cannot be forged and providing better training for border guards so they speak more languages and can identify fake papers more easily. There were also much more detailed suggestions, such as increasing the number of people on duty at some border posts and acquiring heart beat monitors.

At the beginning of March, the European Commission provided Greece with a timeline to implement these improvements. A new Schengen evaluation will take place between 11 and 17 April, while the Greek government must submit its final report on the implementation of the recommendations by 12 May.

Clearly, for a country with a low administrative capacity this is an enormous challenge. It is made much more difficult by the fact that, as of the beginning of March, Greece finds itself dealing with a humanitarian crisis as well as a border management problem. State resources were almost exclusively focused on finding extra accommodation places for refugees due to the rising number of people stuck in the open at the Idomeni border crossing in northern Greece, but also as part of efforts to live up to Prime Minister Alexis Tsipras' pledge to create 50,000 spots for asylum seekers as they wait to be relocated to other EU countries.

Finding these places is a priority for the government as it does not want to leave the refugees exposed and create flashpoints within local communities, which could be exploited by extremists such as far-right Golden Dawn.

United action to reinstall belief

Despite seeing almost 900,000 people arrive last year, and tens of thousands more this year, Greek society has been mostly tolerant, patient and generous in its response to the refugees. According to the Dianeosis poll, 38% of Greeks said they felt 'compassion' for the arrivals compared to 16% who felt 'concern'. Also, 84% of respondents said they have a fondness for the refugees and 58% said they have tried to help them in some way, either by contributing their time, money or material possessions.

In order to safeguard this relatively positive disposition, while also banishing the threats of Schengen suspension, there must be a collective effort in Greece. Trying to correct its deficiencies as a Schengen member, while also dealing with a relentless influx of refugees and migrants has left the Greek state incredibly stretched. Its asylum service, for instance, numbers less than 250 people and around half of those are engaged in managing the relocation process.

In this respect, initiatives such as the creation of the European Border and Coast Guard could provide some much needed assistance and know-how, which is also difficult to amass when the focus is only on crisis management. Perhaps, though, the most significant impact that such moves can make is in re-instilling the belief in Greece that Schengen is indivisible and that it is in all member states' interests to keep it that way.

Nick Malkoutzis
Editor
MacroPolis, Athens

Schengen stuck between European responsibility and national sovereignty

Since mid-September 2015 several EU member states reintroduced temporary national border controls to regain control over the arrival of asylum seekers on their territory. Several possibilities of the Schengen Borders Code (SBC) have been exploited. At first, capitals triggered Article 25 SBC to justify the need for an <u>immediate</u> action allowing controls to be reinstated for a maximum period of two months. Later on, they used Articles 23 and 24 SBC covering situations in which border checks are needed for <u>foreseeable</u> events. The total period of temporary controls these provisions allow cannot exceed six months. So, several countries will be confronted with this temporal limit in the first half of 2016 (for instance, Germany cannot maintain internal checks beyond 13 May 2016).

While the European Commission is fighting to bring Europe 'back to Schengen', member states are worrying about costs in terms of national sovereignty. But saving Schengen is now a question of shared European responsibility. This should be the *leit motif* running through the entire process of rebuilding confidence between the Schengen partners.

As the dreaded deadline for the temporary border controls approaches, press articles announcing the 'collapse of the Schengen area' are multiplying and so are the studies analysing its possible consequences. For instance, the Bertelsmann Stiftung predicts Europe-wide growth losses of around €470 billion by 2025. Predictably, the first ones to experience these consequences will be cross-border workers, tourists and economic operators such as transport companies. Yet, an implosion of the Schengen area would have other impacts than the purely economic and financial ones: it could launch a negative spill-over effect leading to a fundamental existential crisis, putting into question the entire European integration *acquis*. So, the real costs of this dangerous implosion are not just economic, and thus, very difficult to evaluate.

In this context, European leaders are striving to find legal justifications to maintain border controls beyond the six-month limit. The only remaining option is Article 26 SBC, which allows border controls for maximum two years "in exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control." The procedure for activating this mechanism has been launched. Following the Commission's evaluation report on Greece, the Council adopted a recommendation in February proposing to Greece remedial action to address the deficiencies identified by the Commission.

Is Greece being kicked out/suspended of Schengen?

While it could seem that a suspension or an exclusion of Greece from Schengen is in development, the objective of activating Article 26 SBC would be to justify the persistence of border controls between other member states. As Greece does not have borders with any other Schengen zone state, suspending Greece from the Schengen area would imply introducing controls at airports. As most of the refugees/migrants reach other Schengen states by land, this solution would be

inefficient and counterproductive. Concerning the possibility of Greece facing an expulsion of the Schengen area, currently there is no legal basis in the EU Treaties for this. In any case, this would not solve the refugee crisis either.

So, on the one hand, by triggering the Article 26 SBC mechanism, EU leaders are trying to stay within the legal limits of the Schengen agreement. This is a good thing; at least from the legal point of view, the agreement is not losing credibility. However, scapegoating Greece in such difficult times is not only showing the discrepancy between the concept of intra-European solidarity and the political realities, but is also adding an extra layer to the antagonism between capitals.

Emerging stronger from the crisis: yes, but how?

Crises have always piloted the EU towards more integration. If this has been the case in the past, more and more commentators agree on one point: this crisis is different. Its outcome could also be different from those of past crises: not leading to more integration, but on the contrary, to disintegration or even (more) fragmentation. Unlike the other ones, this crisis affects more member states (although differently according to their geographical situation) and it poses challenges to the highly sensitive topic of national/European identity. Against this challenging background disparities between national governments grow bigger by the day. In fact, communication and coordination seem so difficult between them, that discussions in the European Councils and the Justice and Home Affairs meetings seem to be going in circles, with very little progress.

It is thus time to inject a dose of pragmatism in this frenzied and impulsive debate. After all, the EU is currently in a crisis-management situation. Saving the Schengen *acquis* is no longer a question of showing intra-EU solidarity but a matter of assuming the responsibility for preserving a historic heritage and for ensuring the success of Europe's and its members' future economic, social and cultural development.

Undoubtedly the Schengen agreement – alongside the common currency – is one of the most far-reaching components of the European integration process. The controls at internal borders were gradually removed – at first between the Benelux countries, France and Germany. A success story other EU and non-EU member states wanted to become a part of: Austria, Italy, Portugal and Spain (1997); Greece (2000); Denmark, Finland, Sweden, Iceland, Norway (2001); Poland, the Czech Republic, Hungary, Slovenia, Slovakia, Lithuania, Estonia, Latvia, and Malta (2007).

But this achievement had to be compensated by other measures and this was clear from the very beginning. One of these was external border management. However, so far, the steps taken in this direction have been far less ambitious than the incredible integration jump that Schengen embodies. The refugee crisis shows this imbalance is unsustainable. So, clearly, a more integrated management of external border controls is compulsory to put more order into the arrival of refugees on EU territory. This will come with a price in terms of national sovereignty. A price some governments are understandably reluctant to pay. Yet, although to a lesser extent, abandoning the controls at internal borders was also costly from the point of view of national sovereignty.

Reducing the numbers and ensuring a more orderly arrival of refugees on EU territory via a more integrated border management should however not be mistaken for a real solution to the refugee crisis. It does have potential in that it would give the EU the necessary breathing space to develop a truly sustainable and long-term solution, i.e. a common asylum policy based on more responsibility sharing, but it will not reduce the number of people in need of protection. Meanwhile, setting up a common policy on external borders management should also help to rebuild the broken trust between Schengen countries.

Before this ambitious step is taken, a common understanding of what is at stake must be reached among national leaders. Although the refugee crisis is affecting EU states differently, a collapse of the Schengen area would affect all signatory countries in the same manner. Individually, none of the Schengen states is ready or willing to bear that cost. This should also be the message they send collectively.

Andreia Ghimis
Junior Policy Analyst
European Policy Centre, Brussels

MISSION STATEMENT

The European Policy Centre (EPC) is an independent, not-for-profit think tank dedicated to fostering European integration through analysis and debate, supporting and challenging European decision-makers at all levels to make informed decisions based on evidence and analysis, and providing a platform for engaging partners, stakeholders and citizens in EU policymaking and in the debate about the future of Europe.

Migration Panorama

The refugee crisis is increasingly being acknowledged as a pivotal moment for the European integration project. The unprecedented number of people asking for international protection in EU countries has been the source of tension, uncertainty, disunity, but also of innovative policy responses arising in record time.

Thus, the EU seems lost between the ambition to find new solutions and the determination to implement measures to which member states have not fully subscribed.

In this context, new voices need to be heard. New perspectives on the various dimensions of the crisis must be revealed. This is precisely what the European Policy Centre's Migration and Diversity Programme aims to achieve with this new publication entitled 'Migration Panorama'.

More specifically, our intention is to build a framework in which stakeholders can express their views and consolidate the debate around crucial issues emerging from the refugee crisis. Indeed, the goal is to put fresh and original perspectives into the spotlight and provide a platform for external authors with different profiles (academics, decision-makers, journalists, researchers, etc.) by enabling them to focus on the same topic but from different angles.

EPC
EUROPEAN POLICY CENTRE

European Policy Centre
14-16 Rue du Trône/Troonstraat
B-1000 Brussels
Belgium

Tel : +32 (0) 2 231 03 40 Fax : +32 (0) 2 231 07 04
Email : info@epc.eu
Twitter : @epc_eu
www.epc.eu