

**Towards more security? Defending the national interests: the involvement of the national parliaments in the reform of the Schengen Agreements**

**First draft, comments welcome**

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Paper presented at the EUSA Fourteenth Biennial Conference, Boston,  
March 5-7, 2015

## **Introduction**

The European Justice and Home Affairs area touches upon two fundamental issues: on the one hand the national sovereignty and the State's capacity to control and to manage its territory and its population, and on the other hand the protection of fundamental human rights and civil liberties. Thus, the balance between **liberty** and **security** is the core of the Area of Freedom, Security and Justice (AFSJ).

Because until the Treaty of Lisbon, most of the policies in this area were adopted as primary legislation, with no parliamentary debate, the third pillar's decision-making procedures were considered to lack of both transparency and democracy. This parliamentary absence had "a serious impact on the fundamental rights and civil liberties" (Ludford, 2004) and had led to an insufficient standard of human protection (Peers, 2011). Policy outcomes in this area have involved an extension of state capacities for control over the individuals and a reduction of civil liberties (Bendel et al., 2011). Since 9/11, security would have become the dominant force of the AFSJ (Huysmans, 2000; Bigo, 1992; Bigo, 1996; Guiraudon, 2001; Bendel et al., 2011; Guiraudon, 2000). Moreover, national governments would have gone European in order to escape domestic pressures and obstacles, notably those of the legislatures (Boswell, 2003; Boswell, 2008; Guiraudon, 2001; Guiraudon, 2000) and to be able to achieve control oriented policy-objectives that wouldn't have been achievable at the domestic level alone (Kaunert, 2010; Bendel et al., 2011; Joppke, 1998). Scholars have thus equated parliamentary absence and security oriented policy.

However, the Lisbon Treaty, also called "the treaty of parliaments", transforms, at least on paper, national parliaments into the 'winners' of the institutional reshaping of the EU's decision-making process (Capitani, 2010). National parliaments shall actively contribute to the "good functioning of the Union" by being informed by the European institutions about European policies, by controlling the respect of the subsidiarity and of proportionality principle, by taking part in the evaluations mechanisms of the AFSJ, by taking part in the Treaties revisions and participating at the interparliamentary cooperation (Europe, 2007). Moreover, national parliaments shall be involved in the evaluation of implementation of Justice and Home Affairs measures by national authorities in Member States. Consequently, the Treaty of Lisbon offers to national parliaments the possibility to keep accountable both Interior and Justice ministers before the negotiations in the Council, but also to play a direct

autonomous role in the EU decision-making process through instruments like the Early Warning Mechanism<sup>1</sup>. Recent developments in the European Union have thus granted national parliaments the capacities to bring a more human oriented approach to a security-oriented policy. But are they really eager to use those capacities? Is their activity slowing down the securitisation of the AFSJ by bringing a more human rights and civil liberties oriented perspective?

By bringing together two literatures that rarely communicate one to the other, the first one dealing with national parliaments and the European integration and the second one with the European policies of Justice and Home Affairs, this paper aims to explain the activity of national parliaments in the Area of Freedom, Security and Justice by testing whether, in line with scholars' expectations, the involvement of national parliaments in European policies brings a more humanitarian approach to the AFSJ.

To do so, we rely on two theoretical concepts: that of parliamentary **scrutiny** and that of **frame** and one case study: the reform of the Schengen agreement proposed by the European Commission in September 2011<sup>2</sup>. The justification of our case choice is twofold: firstly, the reform of the Schengen agreement has been a salient issue for national parliaments, consequently we expect a high parliamentary mobilisation; secondly, the Schengen governance makes reference to a broader area of security issues: border control, immigration, asylum, which allows us a moderate generation to the AFSJ field. Based on a most similar cases approach, which allows us to control for many alternative explanations, we analyse in a comparative perspective how the French and the Italian parliamentarians scrutinized the reform mentioned above and what role do they play in the decision-making process. The two countries have similar parliamentary institutional settings: both have committee and document based scrutiny systems. Their parliamentary involvement in EU affairs is considered to be weak in terms of 'control' of the government in comparison to other European parliaments

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<sup>1</sup> The 'Early Warning Mechanism' entitles national parliaments within a period of eight weeks to contest draft legislative act they feel in breach of the principle of subsidiarity. Each parliament is assigned two votes divided between the two chambers in bicameral systems. Where reasoned opinions, the instrument through which national parliaments express their disagreement, on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national parliaments, then the draft must be reviewed or if it is maintained the author shall justify the reasons for maintenance ("yellow card"). If the reasoned opinions represent at least a simple majority of the votes allocated to the national Parliaments the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal ("orange card"). In the Area of Freedom, Security and Justice this threshold is set at one quarter of the votes.

<sup>2</sup> COM/2011/559 and COM/2011/560.

and EU affairs are dealt with in a consensual manner. Moreover, at the moment of the scrutiny of the reform of the Schengen governance, both countries had right wing governments. This paper is structured as follows: the first section discusses the literature on parliamentary adaptation to European integration and their involvement in the AFSJ. Section two presents our theoretical model and advances our working hypothesis, which will be tested in the sections three and four of this paper. Section five concludes.

### **‘Bringing back’ the lost sovereignty: parliamentary scrutiny of the Area of Freedom, Security and Justice**

The role of national parliaments in the European decision-making process, but also the Area of Freedom, Security and Justice have attracted increasing attention in recent years. Several studies were dedicated to single European parliaments or to groups of parliaments (like the Nordic or the new member states), analyzing the impact of the European integration on those structures (Bergman and Damgaard, 2000; Karlas, 2011). More recently a series of theoretical and comparative empirical studies classified national parliaments according to their institutional position in European affairs and explained their institutional variation (Maurer, 2001a; Bergmann, 1997; Bergman, 2000; Winzen, 2012; Karlas, 2012; Raunio, 2011; Winzen, 2013; Auel et al., 2015b; Auel et al., 2015a). The same is true for the study of the Area of Freedom, Security and Justice, which has been studied both from a political science perspective (Monar, 2010b; Monar, 2010a; Bendel et al., 2011; Kaunert, 2010; Trauner and Lavenex, 2015) and from a legal perspective (Peers, 2011). Studies have focused both on the AFSJ as a whole, but also on individual policy sectors like immigration (Guiraudon, 2000), asylum (Boswell, 2003; Bendel, 2010; Reneman, 2014), police cooperation (Bigo, 1996; Fijnaut and Ouwerkerk, 2010; Brown, 2010), data protection (Cammilleri-Subrenat and Levallois-Barth, 2007; Brouwer, 2009; Boehm, 2012)etc. However, very few studies were dedicated to the involvement of national parliaments in the Area of Freedom, Security and Justice (Mitsilegas, 2007; Garibay, 2010). Given the importance of national parliaments for the democratic legitimacy of EU policies and the progressive constitutionalisation of the AFSJ, we consider that national parliaments are important actors of this policy field and special attention should be given to their activity in this area.

The first decade of the European integration was characterized by the absence of national parliaments from the European decision-making. Scholars who have studied the role of

national parliaments in the European Union at the beginning of the '90s testified a loss of power and sovereignty and even feared a “de-parliamentarisation” of the European governance (Norton, 1996a). National parliaments have lost on a double level: constitutionally, by the transfer of their sovereignty to the European institutions and politically, as the executives and the bureaucrats dominate the European decision-making process (Raunio and Hix, 2000: 147). This trend was even more striking in the AFSJ, which until the abolition of pillarization remained in most of the cases intergovernmental, allowing “national executives to agree on AFSJ measures without the usual level of control exercised by national parliaments and national courts”(Peers, 2011). The role of national parliaments in the third pillar’s measures was limited to that of ratifiers; the ratification of conventions in the field of justice and home affairs being one of the few mentions of national parliaments in the European treaties. Although, slight variations are registered across the countries, generally, if national parliaments could indeed veto a convention or an inter-governmental agreement, they had no say before that stage, or even worse they had no right in scrutinizing the third pillar measures. This long intergovernmental policy-making approach had deep consequences over the policy outcomes in ASFJ. Instead of liberalizing the substance of this policy field, like some scholars have predicted (Favell, 2001), the AFSJ development translated into attempts to build an inclusive and tolerant Europe and extended the capacities of the state to control individuals and generated a reduction of civil liberties (Bendel et al., 2011), leading towards “Fortress Europe”(Geddes, 2000).

However, national parliaments have progressively started to regain their lost powers. Several institutional reforms were undertaken and European affairs committees started to be institutionalized (Norton, 1996b; Maurer, 2001b). Moreover, in some cases standing committees, including Law and Home affaires committees, started to show an interest in European affairs and to scrutinize European draft legislation in their area of competence (Raunio, 2005). National parliaments have gained formal rights (the right to information, the right to issue formal opinions on EU documents, the right to prevent ministers to vote in the Council until the parliamentary scrutiny has not been completed or even the right to bind the ministers to the Parliament’s position). Parliaments have thus begun to play a more active role (Auel and Benz, 2005; Maurer, 2001b; O'Brennan and Raunio, 2007). With the Lisbon Treaty the validity of intergovernmental explanations in the AFSJ field started to be questioned. AFSJ has gone from the “black market” of the European integration where secret meetings of interior ministers escaped parliamentary accountability to an important area of EC law subject

to the Community method (Peers, 2006: 19). Indeed, after the Treaty of Lisbon (2009) and the removal of the pillarization, the “community method” is extended to a large area of justice and home affairs policies. Sectors like police, crime and borders control became subject of European competence. Beyond the pure accountability of their governments, the Treaty of Lisbon expanded the opportunity of national parliaments to act as European actors in the AFSJ. A lower threshold in the Early Warning Mechanism (Article 61 C of the Lisbon Treaty) was established and the Europol and Eurojust activities are submitted to parliamentary scrutiny (Article 69G and 69D of the Lisbon Treaty). Those provisions should, at least in theory reduce the predominance of national executives (Bendel et al., 2011: 24), and should trigger a higher protection of fundamental human rights.

Based on this quick overview two observations can be drawn: first of all national parliaments play (at least in theory) an important role in the decision making process in the Area of Freedom, Security and Justice; second, the securitization of the AFSJ has been explained by the long absence of national parliaments from the policy-making in Brussels. Therefore, to understand how national parliaments act in the AFSJ field and if the new developments that accompanied the Treaty of Lisbon have resulted into a “humanitarisation” of the AFSJ we develop a new approach based on the type of parliamentary scrutiny and on the partisan framing of security issues. Our analysis is based on interviews with parliamentary actors (MPs, rapporteurs, committee chairmen and administrative staff) and qualitative analysis on parliamentary debates. A systematic inductive coding using AtlasTi has been conducted.

#### *Consensual Intra-partisan mode of Parliamentary scrutiny*

Parliamentary scrutiny is defined as “the exercise of power by the legislative branch to control, influence, or monitor government decision-making.”(Holzhacker, 2002: 462) This definition sets a clear cut between the legislative, which has a “negative” role (Divellec, 2011) of “controlling, influencing or monitoring” the government and the executive, in charge of the elaboration of the decision-making. However, as it has been proven by the academic literature this executive-legislative relation is more complex than a pure two-dimensional separation (King, 1976). Most of the European parliamentary democracies are based on party government (Blondel, Cotta, 2000), thus it would be mistaken to talk about “parliaments” as an individual actor. The main line of contestation is usually placed between opposition parties and governing parties together with the government and not between the parliament and the

government (Miklin, 2013: 26). Moreover, parliamentary actors have different motivations to engage in the scrutiny of EU affairs. While, government supporting majorities would rarely want to go against the government in the parliamentary arena (Auel, 2007), because this will be considered as a failure to reach a compromise between ministers and government backbenchers (Saalfeld, 2005: 247), opposition parties that lack of informal ties with the government need a closer oversight of the government (Winzen, 2013: 301). Opposition parties may have incentives to use parliament as “one of the several public arenas, in which they expose and criticize governments in a continuous attempt to become government parties themselves”, while governmental parties have more cooperative incentives and see themselves as part of the same team with the ministers (Saalfeld, 2005: 345; Tacea and Thomas, 2015). Thus, the conflict between the opposition and the governmental parties and the government will be expressed mainly at the plenary level. However, when it come to decision-making in European affairs, scholars show that they have been based on rather on “permissive consensus” (Lindberg and Scheingold., 1970) that did not generate a high level of contestation within the parliamentary arena. This idea is reinforced by the fact that EU matters rarely reach the plenary (Bergmann et al., 2003) with the exception of very salient issues like financial frameworks, treaty reforms or European Council Meetings (Auel and Raunio, 2014: 15). EU affairs are mainly dealt with at the committee level, where agreement is easier to reach. Although it might be argued that, when it comes to AFSJ measures, parliamentarians see themselves as representatives of the citizens and protectors of their rights against the executive (of whichever party) and their role of investigating the quality of the performance of the executive (King, 1976: 19), the intra-party mode could still play an important role when the issue under scrutiny is highly salient for the executive. In this context, we advance the hypothesis that:

*Hypothesis 1: The more the scrutiny is conducted behind the closed doors of the committee, the more a consensual decision will be adopted.*

*Partisan framing of AFSJ measures: between security and civil liberties*

Because policies are multi-dimensional, different policy actors focus their attention on different aspects of the policy (Baumgartner and Mahoney, 2008: 436) In this context, we define frames as interpretative constructions of policy that different actors adopt by “selecting and highlighting some features of the reality” while “omitting” or minimizing the importance

of the others. Schön and Reid consider policy positions rest on “underlying structures of beliefs, perception and appreciation” which they call frames (Schön and Rein, 1994: 23). Actors’ positions inside the parliament help us understand if actors make a strategic usage of a frame. Portraying an issue in a certain way, either by defining it or by redefining it along with different lines can be used as a strategy against opponents to gain political advantage.

Conflict over European justice and home affairs is ideologically structured. Mainstream right parties are often seen as promoters of issues like asylum, immigration, and race and the more to the right a party stands, the more sceptical its attitude towards immigration (Fischer, 2003: 25). Responses to those issues particularly in their connection with law and order appear to have more credibility in the manifestos of the right, while allowing them to promote those issues in their competition with the mainstream left (Alonso and Fonseca, 2011; Green-Pedersen and Krogstrup, 2008; Meguid, 2005). In the run against social democratic governments the mainstream right parties have often used anti-immigration feelings of the electorate as a mean of maximizing votes (Alonso and Fonseca, 2011: 3; Brug and Spanje, 2009). The electorate of the left wing parties is more divided on the issues of immigration than that of the right. Consequently, when immigration issues become “hot”, left wing parties prefer either to adopt a position close to the median voter or to ignore the debate issues or to reformulate it in order to emphasize its own values (Alonso and Fonseca, 2011: 4). Moreover, when radical right wing parties threaten the electoral stability on issues of immigration, law and order, it would be risky for social democratic parties to continue to make the case for tolerance of migration and multiculturalism (Alonso and Fonseca, 2011; Akkerman, 2012) and they will move towards a more restrictive stance on immigration. In this case the position the left wing parties will assimilate the position of his competitor following the logic of “if you can’t beat them, join them”(Bale et al., 2010: 413). However, as Bale et al. show this is not the only strategy left wing parties adopt when they are under the pressure of extreme right. They may as well diffuse the salience of the immigration and security issue, but they can as well simply hold on to their position. Based on these considerations, we expect that:

*Hypothesis 2: When the executive power is hold by right wing parties, the outcome of the parliamentary scrutiny in AFSJ area will be security oriented. The position of the left wing parties will depend on the level of conflict between the opposition and the majority parliamentary parties.*



## **Telling the story of the proposal for reform of the Schengen governance**

The reform of the Schengen governance is the direct consequence of the Franco-Italian conflict of spring 2011 following the North African immigration in Italy and the reintroduction of border controls by Paris. Gatekeeper of the EU external frontiers, Italy has most visibly faced the influx of uncontrolled migration from North Africa towards Europe. In April 2011 when around 25.867 (Maroni, 2011) Tunisian migrants arrived on the Italian island of Lampedusa, the Italian Northern League, Minister of Interior, Roberto Maroni, after calling for the 'European solidarity' and asking to share the burden of illegal immigration at the EU level, decided to issue six-month temporary residence permits for humanitarian protection (Ministri, 2011) to North African immigrants arrived in Italy between the 1<sup>st</sup> and the 5<sup>th</sup> of April 2011, allowing them in this way to freely travel around the Schengen area (Maroni, 2011: 10). The French authorities responded by reintroducing border controls and by blocking the trains travelling from Ventimiglia, the last Italian town before the French border (Guéant, 2011).

Although the Franco-Italian affair was smoothly solved during the bilateral summit in Rome, on 26 April 2011, its political impact was higher than expected. Following the same summit, the Italian prime minister, Silvio Berlusconi and the French president, Nicolas Sarkozy asked in a joint letter addressed to the European Commission and to the European Council chiefs, for an "in-depth revision" of the European law regulating the passport-free travel urging for the amendment of the safeguard clauses. This initiative was afterwards integrated in the Council's conclusions of 9/10 June 2011 (Council, 2011) followed by the two European Commission's proposals of regulations aiming to strengthen the European Schengen governance. The proposals aim to introduce 'a Union-based mechanism for the reintroduction of control at internal borders where a Member State is persistently neglecting its obligation to control its section of the external border, and insofar as the circumstances would be such as to constitute a serious threat to public policy or to internal security at the Union or national level' (Commission, 2011a). In the same time the proposals transfer the competences of reintroduction of border control at internal borders from the Member States to the European Commission (Commission, 2011b).

Although it has been argued that the standoff between France and Italy over the Tunisian migrants was only the pretext for the governments of the Schengen member states to emphasize their frustrations and to initiate the reform of the Schengen governance (Brady, 2012: 33), the proposals oppose very different actors with very different conceptions about the EU justice and security sector: firstly, countries like France, which has always been reluctant in yielding its sovereignty in matters of immigration, police and border checks, secondly countries like Italy, which are annoyed by the lack of solidarity from their Schengen partners and would be happy with the EU taking the lead on those issues. Those conceptions were reflected in the position the national governments of each country took during the negotiations over the reform of the Schengen government. Despite its will to reform the Schengen system, the French government received with horror the idea of transferring its power to install border check to the European Commission and considered that the proposal regarding the temporary reintroduction of controls at internal borders breached the principle of subsidiarity because national states are better placed to evaluate whether a situation is a threat to their national security or not. The Italian government appreciated the initiative of the European Commission as a positive initiative and supported the adoption of the two regulations. In other words, the Italian government wished for a complete transfer to the European Union of the decisions in the Schengen area, while the French government aimed at strengthening the Schengen governance without the communitisation of the reintroduction of border controls. Although the governments of the two countries wished for different outputs of the reform, they both framed it in security terms: focused mainly on law and order in the Italian case, and on selective immigration in the French one.

To what extent the French and the Italian parliaments followed the same security oriented approach of their governments concerning the reform of the Schengen governance?

### **The impact of the institutional setting on the politicisation of the reform of the Schengen governance**

Most of the parliamentary activities regarding the scrutiny of the proposal for the reform of the Schengen governance in the French and the Italian parliament took place at the committee level, although it will also reach the plenary in the French Assemblée nationale. From a theoretical point of view the analysis of committees is important because “parliamentary

procedures may affect political outcomes and that is therefore desirable to shed light on the organization and functioning rules of legislatures” (Neuhold and Settembri, 2009: 129)

The following section aims to show that both the European affairs committees and the Constitutional/ Law committees in charge of the scrutiny of the proposals favoured a consensual decision over a very highly politicized issue. The scrutiny of the proposals regarding the reform of the Schengen governance became politicised only when it reached the plenary of the house, which, for example, in the Italian case never happened. In the same time, the distribution of committee seats, chairmanship and rapporteurship show the limited role of the opposition parties. The consensual decision at the committee level is due firstly to the fact committees, although allowing minority parties proportional representation, are dominated by majority parties, which impose their views during the deliberation process and secondly, because the committee rapporteurs exercise a leadership role during the scrutiny of the proposals.

#### *Committee procedural aspects*

While, the size of the EACs and of the standing committees is not the same in our four chambers, the distribution of committee seats among the parties is proportional in all the four houses and it is based on the relative size of the party groups. The proportional allocation reinforces the consensus building both because it gives to minority parties the right to express their views, but also because the government strictly controls its committee majority and it tries to avoid any defeats at the committee stage. (Strøm and Mattson, 1995: 276). In the same time, dual membership of six MPs in the Assemblée Nationale and nine in the Sénat and of five Italian senators<sup>3</sup> concentrates the scrutiny around those MPs. In practice they will become the specialists of Europe in the Law Committees.

The European affairs and the Law/Constitutional committees in charge with the scrutiny of the Schengen reform proposal in the French and the Italian parliaments are the reflection of the house composition. The party that holds the majority in the house holds also the majority in the committee (Table 1). While a difference of party composition exists between the

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<sup>3</sup> Comparing to the French institutional rules, the Italian members of the Camera dei deputati cannot be in the same time members of the EAC and of another standing committee. On the contrary, the Senato's standing orders allow for double membership and five senators belong in the same time to both committees.

French lower and upper house because of the different timing of elections, in the Italian case, the legislative elections take place at the same moment. Consequently, the government party coalition in Italy dominates the composition of the parliamentary committees.

Table1: The distribution of committee seats, chairman and rapporteurship among the parties within the European Affairs and the Law Committees in 2011 in Italy and France

<b>France</b>								
Committee	Total <sup>4</sup>	Party		Chair		Rapporteur		
		Opposition (PS)	Majority (UMP)	Name	Party	Name	Expertise	Party
<b>Assemblée Nationale</b>								
EAC	48	17	27	Pierre Lequiller	UMP	Didier Quentin	Diplomatic councillor of two Interior Ministers	UMP
Law	70	26	38	Jean-Luc Warsmann	UMP			
<b>Sénat<sup>5</sup></b>								
EAC	36	14	18	Simon Sutour	PS	Catherine Tasca	No	PS
Law	49	25	23	Jean-Piere Sueur	PS			
<b>Italy</b>								
Committee	Total	Party		Chair		Rapporteur		
		Opposition (PD)	Majority (PdL, Lega Nord, MpA)	Name	Party	Name	Expertise	Party
<b>Camera dei deputati</b>								
XIV - EAC	44	14	19	Mario Pescante	PdL	Annagrazia Calabria and Donato Bruno	No	PdL
Ist- Constitutional Affairs	47	15	24	Donato Bruno	PdL	Isidoro Gotardo	no	PdL
<b>Senate</b>								
XIV- EAC	47	13	22	Rossana Boldi	Lega Nord	Irene Aderenti	no	PdL
Ist- Constitutional Affairs	39	10	20	Carlo Vizzini	PdL	Filippo Saltamartini	Police officer	Lega Nord

Source: Author's compilation- houses' websites

Within committees, both the proceedings and the substance or output are shaped by two major positions of authority: the chairman and the rapporteur (Neuhold, 2001; Mamadouh and

<sup>4</sup> Six MPs belong in the same time to the EAC and the Law Committee.

<sup>5</sup> At the moment of the scrutiny of the Schengen reform proposal, the opposition socialist party dominated the French Senate (senatorial elections took place in September 2011 and resulted in a reshuffle of the former UMP majority).

Raunio, 2003)<sup>6</sup>. When it comes to the appointment procedure of the chairman, although not specifically stated in the standing orders of the parliaments, majority parties control the committee's chair appointments. The chairs of the Committees belong to the group that holds the majority in the chamber, thus to the UMP in the Assemblée Nationale and to the Socialist group in the Sénat and to the government coalition in the Senato and Camera dei deputati. If in the French Senate, the committees' chairman distribution is proportional to the parliamentary party groups, in the Assemblée Nationale, they are monopolised by the majority parties.<sup>7</sup>

When it comes to rapporteurs<sup>8</sup>, although the policy expertise may constitute an asset for the appointment of the rapporteurs, in both the Italian and the French parliament the rapporteurs belong to the party that holds the majority in the committee (Table 1). Two rapporteurs, Didier Quentin for the Assemblée nationale and Hon Filippo Saltamartini for the Ist Committee of the Italian Senate have relevant expertise in the field of security. The first one trained as a diplomat at the Ecole Normale d'Administration (ENA) and he worked as diplomatic councillor of two Interior Ministers, Charles Pasqua and Robert Pandraud, both of them important personalities during the negotiations of the Schengen agreements and the implementation of the Schengen Convention. Hon Filippo Saltamartini was trained as a police officer; he is member of the *Comitato parlamentare Schengen, Europol e immigrazione* (Parliamentary Committee on Schengen, Europol and Immigration). The French rapporteurs in the Sénat and the Italian rapporteurs in the Camera dei deputati did not have any prior policy expertise neither in European affairs, nor in security issues.

From an institutional point of view, the committees are the instruments of coordination and leadership of majority parties (Strøm and Mattson, 1995: 254), both because majority parties dominate, as we have seen, the distribution of seats within the committee, but also because MPs belonging to the majority parties hold the positions of authority (in our case, the chair and the rapporteur). Although in general, policy expertise guide the distribution of

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<sup>6</sup> Other key players may be highly influential, as party coordinator or vice-presidents, but they are not relevant for our case studies.

<sup>7</sup> With one exception in 1988 and in 2007, Nicolas Sarkozy assigned the Finance Committee to the opposition party.

<sup>8</sup> A rapporteur is the MPs responsible for drafting the report on the issue handled by the committee. He/she plays an important role because he/she must compromise in order to accommodate the sometimes-divergent positions of the party groups in the committee Mamadouh V and Raunio T. (2003) The Committee System: Powers, Appointments and Report Allocation. *Journal of Common Market Studies* 41: 333–351..

rapporтерship on a specific European act, our analysis have shown that with the senators exception, MPs who are in charge of the report on the proposal of reform of the Schengen governance are rather party specialists. However, those institutional features could not be automatically equated with a consensual decision, where MPs acting as agents of their parties, manage to impose themselves and orient to policy outcome in the government's direction. Further analysis is needed.

### *Reaching consensus through committees*

We will analyse in the following the way the scrutiny of the reform of the Schengen governance was conducted at the committee and at the plenary level in order to show that where disagreement between majority and opposition emerge, committees facilitate the consensual decision. In the same time, we aim to show that committees act as agents of the government parties. We will focus primarily on the French Assemblée Nationale because it allows us to compare a consensual committee decision with a politicized plenary debate and on the Italian chambers, where a strategic use of the negotiations behind the closed doors was made in order to reach an agreement between parliamentary party groups.

The two proposals of the European Commission aiming at reforming the Schengen governance were submitted to the Assemblée Nationale in September 2011. Didier Quentin, the rapporteur, submitted to the house on the 27<sup>th</sup> of September, an information report showing that the proposal providing for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances breaches the subsidiarity principle, because “Member States **are better placed** to assess the need for the reintroduction of border controls and should be able to re-establish them, subject to a verification *a posteriori* of the European Commission.”(Quentin, 2011)<sup>9</sup> The European Affairs Committee approved with unanimity the proposal for a reasoned opinion. As the members of the Law Committee did not raise any objection, the reasoned opinion was considered as adopted on the 12<sup>th</sup> of October, before being debated on the 8<sup>th</sup> of November by the plenary of the house. It worth mentioning that the reform of the Schengen agreement was considered a very salient issue for the Assemblée Nationale and it is for the first time in the history of the French Fifth Republic that the floor of the house debates a reasoned opinion on a European document.

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<sup>9</sup> Our own translation of « *les Etats membres sont les mieux à même d'apprécier la nécessité du rétablissement des contrôles aux frontières et devraient pouvoir procéder au rétablissement, sous réserve d'un contrôle a posteriori de la Commission européenne, ce qui correspond au système actuel* ».

While, the reasoned opinion was adopted at the committee level with no contestation of the opposition, once it reached the plenary, the reasoned opinion and the attitude of the French government towards the Schengen governance received sharp criticism from the Socialist party members. It is stinking how the attitude of the same party can change from one stage to another of the legislative process and how a unanimity during committee debates can tumble into confrontation on the floor of the house.

Concretely, the attitude of the opposition socialist party could be explained firstly by the dominant position of the governing UMP majority party and secondly, by the importance of the plenary in the confrontation between the opposition and the majority parties in the parliament. The committee work is dominated by governing majority party that manage to impose its views. Although, the minutes of the debates at the committee stage do not provide sufficient information to capture the extent to which there was no real expressed opposition from the socialist party or simply a lack of interest or a pure acceptance, interviews with the actors reveal the resignation of the opposition parties in front of their impossibility to influence the final content of the opinion. Jérôme Lambert, co-rapporteur with Didier Quentin on a second report of information concerning the reform of the Schengen agreements in January 2012, reported during an interview that he didn't have the same position as the government and as his colleague. But due to the fact that he was in the opposition there was no real confrontation between the opposition and the majority party on the substance of the proposals.

*No, I was not on the same position as the government. But, at that time, I was in the opposition...It is true that the government had taken up on the reform of the Schengen agreements to wave the public opinion by mixing a lot of things: Roma issues etc. I had a more relaxed position, but ultimately nothing happened. We started to discuss the conditions and all that, but it remained at the same stage. We have not really had the chance of having a real confrontation.<sup>10</sup>*

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<sup>10</sup> Interview with Jérôme Lambert, member of the EAC of the Assemblée Nationale, Paris, 2 July 2013. Our own translation of « Non, moi en tant que rapporteur j'étais par forcément sur la même position que le gouvernement. Mais à l'époque j'étais dans l'opposition aussi. C'est vrai que le gouvernement s'est saisi du prétexte sur la réforme de Schengen pour agiter l'opinion en mélangeant plein de choses : les questions de Roms etc. Moi j'étais sur une position plus calme, mais au bout du compte il ne s'est pas fait grande chose d'ailleurs. (...) On a commencé à discuter des conditions tout ça, mais maintenant c'est resté toujours au même stade. On n'a pas eu vraiment l'occasion d'avoir un vrai affrontement. »

*When you are in the opposition your vote draws no consequence on the adoption or non-adoption of a text. When you are in the majority and you vote against or you abstain, this may have consequences.*<sup>11</sup>

It is commonly acknowledged that the antagonistic relation between majority and opposition parties take most of the time an oral and public expression (Cox and McCubbins, 1993) and thus, the expression of divergent views will be more expressed at the level of the plenary. Moreover, party leaders tend to politicize an issue when they see an appealing potential for their electorate (Hooghe and Marks, 2008). The socialist party not only openly criticized the position of the government, but also submitted, to the surprise of the rapporteur, during the plenary session three amendments that were not even mentioned during the committee discussions.

*This conflict revealed the image of a malleable Europe, controlled by the will and interests of some Member States. It is regrettable that the European Commission, the guardian of the treaties, has agreed to accept the French position rather than oppose it, as the European Parliament. (...) It is time for our government - like for others – to understand that the issue of immigration in its many facets deserves a real European policy, a policy, which is not limited to security measures, and do not designate the other as the enemy.*<sup>12</sup> (Braouezec, 2011)

The literature on legislative committees considers that allowing consensual committees to predetermine decisions by deliberation instead of a large plenary body could diffuse divided feelings about contentious issues (Strøm, 1997: 162). However, the French case shows that the opposition parties can make strategic use of the plenary because it knows its views won't be heard behind the closed doors of the committees. Although, the parliamentary opposition in France was criticized for its abdication of criticizing the government in the parliamentary arena when it feels threatened by the government majority and choosing other means like the TV sets to do it (Rozenberg, 2013: 208), the example of the reform of the Schengen governance shows that the avoidance of the parliamentary arena is not systematic. This

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<sup>11</sup> Mathias Fekl, socialist MP in the Assemblée Nationale, intervention during the radio debate « L'Atelier du politique », 20 August 2012 « Godillots ou frondeurs ; les élus de la majorité ont-ils le choix ? », France culture. Our own translation of: "*Quand vous êtes en opposition votre vote ne tire pas de conséquence parce qu'il n'a pas de résultat sur l'adoption ou non du texte. Quand vous êtes dans la majorité et vous votez contre un texte ou vous vous abstenez, ça peut avoir des conséquences*".

<sup>12</sup> Own translation of « *Ce contentieux aura révélé l'image d'une Europe malléable au gré de la volonté et des intérêts de certains États membres. Il est à regretter que la Commission européenne, pourtant gardienne des traités, ait accepté de se soumettre à la position française plutôt que de s'y opposer, comme le Parlement européen. (...) Il serait temps que notre gouvernement – comme d'autres, d'ailleurs – comprenne que la question de l'immigration, sous ses multiples facettes, mérite une vraie politique européenne, une politique qui ne se limite pas à des mesures sécuritaires et qui ne désigne pas l'autre comme étant l'ennemi* »



strategic use of the plenary is however not made in order to modify the output of the text, because as it was argued previously this is hardly possible, but rather to communicate to the electorate and publicly criticize the government. Immigration policies are highly salient for the French voters (Dehousse and Tacea, 2015), thus the criticism of the socialist party could be seen as a strategic partisan positioning aiming at showing to their electorate that they actually do what they say in their electoral manifestos. This strategic positioning is reinforced by the attitude of the socialist majority in the Senate, which, contrary to the Assemblée Nationale didn't go in the same direction of the government, but rather supported the proposals of the European Commission.

The scrutiny of proposals for the reform of the Schengen governance started in Italian Camera dei deputati on the 20<sup>th</sup> of October 2011 and in the Senato on the 27<sup>th</sup> of September 2014. The Ist Committees (Constitutional law) was responsible for the scrutiny and the EACs had a consultative role. The committees' deliberations were very consensual and except for some minor details, such as the duration of the autonomous reintroduction of border controls in case of emergency or the scope of the evaluation visit, the parties shared the same opinion regarding the proposals for the reform of the Schengen governance. This is due both to the working style of the Italian EACs, where "conflicts are normally very low-key and nonpartisan and they engage in dialogue with the executive in an informal and cooperative atmosphere" (Bindi, 2011: 95), but also to a strategic objective of the Italian parliament for triggering the solidarity of the other Schengen Member States towards the control of the external borders of the European Union.

The analysis of the parliamentary debates within the Ist Committees (Constitutional law) and the XIV Committees (European affairs) both in the Camera dei deputati and in the Senato reveals a broad partisan agreement over the issue of the reform of the Schengen governance.

*"Taking into account that the measures suggested in the proposal submitted for scrutiny are designed to address phenomena, such as illegal immigration and cross-border organised crime that exceed the scope and responsiveness capacity of the Member states; for reasons of effective control of the above-mentioned phenomena is required a coordinated action at the level of the European Union, which actively involves not only the national but especially the European institutions, so that Member States, such as Italy, which for geographical reasons are most exposed to migratory flows, may rely on the concrete solidarity of the European institutions and of a fair*

*sharing of responsibility, including financial responsibility,*<sup>13</sup> (Camera dei deputati, 2011)

Interviews reveal instead a strategic approach of MPs in both the Camera dei deputati and the Senato in the adoption of a favourable opinion. To prevent the achievement of the yellow card both chambers voted in favour of the regulation proposals:

*“We made our plans because we were very, very close to a blocking minority threshold [in the Council] ...there were two or three votes missing, so there was very easy for France and Germany to retrieve some countries”*<sup>14</sup>

What might be surprising is that the Northern League party group, well known for its anti-EU discourses (Ignazi, 2008: 99) did not publicly oppose the communitisation of the Schengen governance. The transfer of the capacity to reintroduce border checks to the European Commission was considered as the only way to “drain the bathtub and close the water tap”, as Umberto Bossi, the leader of the Northern League party states it (LaRepubblica, 2011).

*“This proposal of the European Commission according to which the reintroduction of border controls would no longer depend on individual member states but it would be collectively decided at the EU level, was seen by some MPs as a possibility to send those migrants away from the Italian territory”*<sup>15</sup>

Moreover, the Northern League MPs involved in the scrutiny of the reform of the Schengen governance refused to speak about the negotiations in an interview because *“the negotiations took place behind the closed doors and too many details are delicate to tell and all was done informally”*<sup>16</sup> Negotiations behind the closed doors of the committees favour thus a consensual decision and the diffusion of partisan antagonists positions. Moreover, when sensitive issues are at stake, informal negotiations might take place even before the committee stage.

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<sup>13</sup> our own translation of « tenuto, peraltro, conto del fatto che i fenomeni che sono all'origine delle misure prospettate nelle proposte in esame, quali l'immigrazione clandestina e la criminalità organizzata transfrontaliera, eccedono le dimensioni e le capacità di risposta di ciascuno degli Stati membri; ai fini di un efficace contrasto dei predetti fenomeni non si può, pertanto, prescindere da un'azione coordinata a livello di Unione Europea che coinvolga attivamente le istituzioni e gli organismi competenti, non soltanto nazionali ma anche e soprattutto europei, in modo che gli Stati membri più esposti ai flussi migratori come, per ragioni geografiche, l'Italia, possano avvalersi della concreta solidarietà delle istituzioni europee e di una equa ripartizione della responsabilità, anche sul piano finanziario; »

<sup>14</sup> Interview with a clerk from the European Affairs Committee of the Italian Senate, Rome, November 8, 2012.

<sup>15</sup> Interview with a clerk from the European Affairs Committee of the Italian Senate, Rome, November 8, 2012.

<sup>16</sup> Discussion with one MP member of the Northern League, Rome, 12 November 2012.

## **Partisan identity of the executive and the balance between the freedom and security**

In the following section we will try to assess the extent to which right wing parties in the parliament adopt a more security oriented approach regarding the reform of the Schengen governance. In the same time, we will try to analyse if the left wing parties will reframe the reform in more humanitarian terms or if, pressured by the nationalistic discourse of the right wing parties and of the radical parties, they will either avoid the debate or adopt the same restrictive discourse. Right wing parties/coalitions dominate the political dynamics in both the Italian and the French systems.

In a context of a 'security crisis' generated by different mediated cases, the debates in the Italian chambers reveal that Berlusconi's coalition parties framed their position regarding the reform of the Schengen governance in terms of law and order. In other words, the restrictive immigration and border control policies implemented through legislation are meant to create safe and peaceful condition for the Italian society. Both the PdL and the Lega Nord have made of immigration a central issue of their electoral manifestos. The salience of immigration in the electoral manifestos was at 7.8% for the LN, 3.58% for the PdL and only 1.7% for PD (Carvalho, 2014: 155). Both parties argued for more restrictive immigration measures and equated new arrivals with illegal immigration with criminality: "...*this Pd [Democratic Party] is the party that supported Prodi's government. That government that has opened to illegal immigrants decreasing the security of citizens and increasing crime and that has denied funding to the police*" (LaRepubblica, 2008)<sup>17</sup>. During the parliamentary debates on the Schengen reform, words like: "tensions", "administrative difficulties", "safeguard of public order and internal security", "conflicts with the locals" are the main terms in which the PdL MPs frame the necessity for transferring the competences of border management to the European Commission. Moreover, both the rapporteur of the Ist Committee in the Camera dei deputati, Donato Bruno, and Hon Filippo Saltamartini, the rapporteur of the Ist Committee in the Senate framed the issue of border controls in terms of control of "illegal immigration" and "cross-border organised crime and terrorism". Taking into consideration that the rapporteur Hon Filippo Saltamartini is a police officer, his security framing appears natural and confirms Raunio and Mamadouh's statement that the rapporteur system means that individual MPs and not the committee chair are key actors for the adoption of a certain position on a European act

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<sup>17</sup> Our own translation of « ... *questo Pd è quel partito che ha sostenuto il governo di Romano Prodi. Il governo che ha aperto agli immigrati clandestini facendo diminuire la sicurezza dei cittadini e aumentare la criminalità e che ha negato il finanziamento alle forze di polizia* »

(Mamadouh and Raunio, 2003: 344) The choice of the criminalisation of illegal immigration by the PdL MPs is not random, but it follows the line the coalition government adopted regarding immigration. The PdL based on a previous LN initiative introduced the “crime of irregular migration” through the Law no. 94/2009 of July 2009, giving thus a legal justification to the criminalisation of immigration: “Illegal entry and stay in the territory of the State: is punished with a fine from 5000 up to 10000 euro. The crime is to be assessed by a justice of peace. An expulsion order will follow, unless the person applies for asylum” (Art.10-bis). Although the supreme judges of the Constitutional Court criticised some aspects of the law, they didn’t question the securitisation of illegal migration. It is consequently not surprising that the PdL and LN MPs involved in the scrutiny of the reform of the Schengen governance use the same line of the cross-border criminality to talk about migratory flows.

In comparison with the PdL- LN law and order frame, the centre-left party (PD) chose during the debates on the reform of the Schengen governance a more civil and human rights oriented frame. Words like “democratic control of fundamental human rights”, “free movement of persons”, “fundamental values of liberty and security” that are absent from the PdL- LN MPs discourses appear in that of PD MPs. In spite of this more balanced approach of security issues, the mainstream parties found a consensus “on the frame of the management of inflows as temporary social phenomenon and irregular immigration as law and order issues” (Carvalho, 2014: 157) and the final resolutions of the two chambers, although they include references to the protection of fundamental human rights and civil liberties are the reflect of the PdL- LN security oriented discourse. The organised crime and terrorism that come with the phenomenon of illegal migration should according to the Italian parliament trigger the European cooperation and solidarity. The two PdL rapporteurs for the scrutiny of the reform of the Schengen agreement of the Ist and the XIVth Committees defined the necessity for European solidarity between Member States as a need for countries, like Italy, that face a migratory pressure to rely on a common repose of all Schengen members. Italian external borders are the external borders of the European Union and they should be managed only at the national level. Independently of the partisan affiliation “European solidarity” is the *leitmotiv* of the parliamentary debates on the reform of the Schengen governance.

Similar to the Italy, the debates on the reform of the Schengen agreements in the two chambers of the French parliament took place in a context of a hardening of the discourse of

the mainstream right regarding security. Since 2005, Nicolas Sarkozy appropriated himself issues that were commonly dealt by the FN leaders, adopting a security-oriented stance on immigration. But, contrary to Berlusconi and to the PdL-LN coalition, Sarkozy's and UMP's immigration policy was not framed in terms of law and order, but rather in terms of national identity and selected labour immigration (Carvalho, 2014; Carvalho and Geddes, 2012). The discussions in the Assemblée Nationale reveal that UMP MPs embrace a discourse framed in terms of national sovereignty and internal security. Terms as "national competences", "national sovereignty", "national security services", "border surveillance", "public order and internal security", "subsidiarity breach" are often present in the discourses of right wing MPs. Migration flows were portrayed by the Italian MPs as generators of public disorder and local tensions. French MPs express during parliamentary debates the will to control who enters on the French territory and who does not. While Italian MPs ask for European solidarity to manage those migration flows, the French MPs ask for complete discretion of Member states to choose their own migrants. The way UMP MPs frame the debate about the Schengen reform follows the same line as the governmental policy of a better balance between "unwanted inflows" and "selected immigration". This nationalisation of border controls opposes both the communitisation proposed by the European Commission and the "common European action" stressed by the Italian authorities.

The socialist party kept a low profile regarding immigration and security issues. While Ségolène Royale criticized Nicolas Sarkozy's association between immigration and national identity, the party lacked of a strategic positioning and of a distinct agenda on this topic (Carvalho, 2014: 117). Although, as it was argued in the previous section the opposition socialist party did not express any kind of opposition to the UMP majority at the committee level in the Assemblée Nationale, the way the socialist MPs reframed the debate about the Schengen reform during the floor debate in the Assemblée Nationale and in the Senate allows us to argue that contrary to the Italian case, where the PD aligned to the security frame of the right wing parties, in the French case, the PS preferred to reformulate the debate and to challenge the right wing majority and the government using arguments based on the free movement of persons and fundamental human rights. Patrick Braouezec, member of the Socialist group in the Assemblée Nationale accuses the government and its partisan majority of "restriction of the free movement of persons", of "fight against the immigration by police interpellation", of "irregular and discriminatory controls targeting a specific population:

Tunisian immigrants”. He considers that the securitisation of border controls is only an electoral strategy:

*“Let’s not be mistaken: this escalation of the migration policy of the Government aims, in essence, to allow a recurring display of strength vis-à-vis foreigners in an electioneering purpose. (...) From a value judgement, the responsibility of those who are the artisans of those measure is growing: sending a human being to a country at war or into poverty is not a trivial administrative act.”(Braouezec, 2011) <sup>18</sup>*

The socialist party reframed the debate in terms of “European solidarity”, of building a “real European immigration and asylum policy that shall not be limited only to security considerations”. Although, the centrist party group in the Assemblée Nationale supported the adoption of the reasoned opinion, they emphasized the creation of a Schengen area of social right and fundamental values and they did not follow the security and national oriented frame of the right wing majority. Moreover, they stressed the importance of the European solidarity and shared responsibility for the management of the external borders. But in spite of those rhetorical arguments and because the negotiations at the committee level resulted in a very consensual reasoned opinion framed by the right wing majority’s terms, the final reasoned opinion of the Assemblée nationale will reflect the nationalisation and securitisation of border controls. When the proposal for the Schengen reform was debated in the French parliament, the socialist party dominated the Senate. Consequently, the final resolution of the Senate will reflect a more human rights and civil liberties oriented approach, according to which “migration flows should not be assimilated to a threat to public order and internal security”. The resolution empathizes the principle of free movement of persons and European solidarity. The Senate did not issue a reasoned opinion, but only a European resolution considering “the reintroduction of border controls in case of migration flows pressure a non-respect of the Schengen acquis and senators strongly opposed the modification of the safeguard clause (Tasca, 2011). Moreover, the resolution considered a mistake to approach migration flows only from a border controls and illegal immigration oriented perspective without aiming for common European policies for immigration and asylum.

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<sup>18</sup> Our own translation of: « *Ne nous y trompons pas : cette escalade dans la politique migratoire du Gouvernement vise, pour l’essentiel, à permettre un affichage récurrent de fermeté vis-à-vis des étrangers dans un objectif électoraliste. (...) Du point de vue des valeurs, la responsabilité de ceux qui en sont les artisans est de plus en plus grande : renvoyer un être humain vers un pays en guerre ou vers la pauvreté n’est pas un acte administratif anodin.* »

## **Conclusions**

This paper tried to shed some light on the involvement of national parliaments in the scrutiny of AFSJ measures after the Treaty of Lisbon. It showed that contrary to scholars expectations national parliaments do not necessary limit the security-oriented policies of Interior ministers and do not necessary bring a more human rights oriented approach to policies dealing with police cooperation, border controls and immigration. The Italian and the French parliamentary scrutiny of the proposal for the reform of the Schengen agreements showed that governments can use the support of their parliaments to legitimize security-oriented policies rather than trying to escape parliamentary accountability. Governmental majorities in the parliament use the instruments granted to them by the treaty of Lisbon in a cooperative manner to support the executive and not to challenge it. On the contrary, opposition parties make strategic use of those instruments to publicly criticise the government.

In the two cases, consensual institutional parliamentary settings provided the opportunity for governmental right wing majority parties to impose their views and to avoid governmental policies defeats. This is accentuated by the leading role of certain MPs functions, like the committee chairman and rapporteurs.

Our analysis confirmed the findings of the literature on political parties and security issues. Right wing parties remain the main promoters of issues of law and order in their competition with left wing parties. Their security stand is reinforced by the presence of radical parties. Although left wing parties may reframe security policies using human rights and civil liberties arguments, due to their limited influence on the policy outcome, they didn't manage to substantially modify the final resolutions of the chambers.

While the Treaty of Lisbon may indeed have reduced the predominance of the executives by communitising large parts of justice and home affairs policies and by giving special rights to national parliaments, this has not automatically translated into a modification of the substance of policy outcomes.

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