

# SCHENGEN'S STRESS TEST: POLITICAL ISSUES AND PERSPECTIVES

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## SUMMARY

### 1. Schengen under fire from opposing political visions

- While all of the Europeans agree on perceiving Islamist terrorism as a threat, some of them can perceive asylum-seekers as “victims” and others as a threat.
- “Schengen” is caught in a cross-fire between national political representations that overrate the real protective potential of borders, and pro-European representations that play down the original agreement’s security-related aspects and the popular dimension of free movement.
- “Schengen bashing” is used by national authorities eager to offload their own failings and responsibilities as regards the evolution of the refugee crisis and in the face of terrorist threats.

**“A RACE AGAINST TIME, TO END IN 2018, BETWEEN THE EUROPEANISATION OF EXTERNAL BORDER MONITORING AND THE TEMPORARY REINTRODUCTION OF NATIONAL BORDER CONTROLS”**

### 2. A crisis in solidarity, but primarily a crisis in trust, on the verge of being reduced?

- The construction of “hotspots” has the merit of responding at once to the lack of solidarity and to the lack of trust among the Schengen area’s member states - as will the “European Border and Coast Guard” project.
- The terror threat and terrorist attacks trigger a far more emotion-based solidarity among European countries, facilitating the adoption of security measures at the EU level, but how is it possible to achieve a fluid and fruitful exchange of information among European countries that continue to spy on one another?
- There is a race against time, to end in 2018, between the Europeanisation of external border monitoring and the temporary reintroduction of national border controls, which is an implementation and not a “suspension” of Schengen code (*see table 2 page 9 and table 3 page 11*);
- Are the Europeans going to hold to a position seeking to maintain the rights associated with Schengen’s membership (more freedom and police and judicial cooperation) while agreeing to shoulder more of the duties that go with that (in terms both of solidarity and of border control)?

### 3. More Europe on the borders, but also beyond: a sovereignty issue

- The creation of “hotspots” and the relocation of asylum-seekers (*see table 1 page 8*) must be presented as crisis-management tools justifying the shared exercise of sovereignty in order for them to be more effective and to enjoy greater legitimacy.
- There is a need to act within a “shared sovereignty” area in which everyone and everything moves about freely, including jihadist terrorists and human trafficking networks, but not police officers and not the intelligence that those officers possess.
- Pressure will continue to bear down on the Schengen area until the Europeans prove capable of preventing and controlling crises occurring in their neighbourhood: acting on our borders won’t be efficient, only “Europe power” can contribute to Schengen’s rescue.

It is way too soon to announce the death of “Schengen”, just as it proved way too soon to announce the “Grexit” in 2015, and it is even possible that the crisis in the Schengen area may have a similar outcome to the crisis in the euro area, then leading to more European solidarity and control.

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This Policy paper is a revised and augmented version of an article entitled “‘Schengen’ sous tension : bilan et perspectives” published in French by the *Revue socialiste* and available [here](#).

## INTRODUCTION

Initially launched by an agreement signed in 1985 but effectively kicking in only in 1995, the “Schengen area” is now twenty years old, but no one would dare say that these are the best years of its life. It is indeed currently facing two challenges, chiefly of external origin – a massive influx of asylum-seekers on the one hand, and a terrorist threat on the other – which the national and Community authorities have managed to “address” in such a way as to trigger an intra-European political crisis.

It is very important to understand the civic and diplomatic roots of this crisis in order to be able the better to diagnose its scale and to identify a potential way out over the coming months. With a view to achieving this, we will be taking a look here at:

- the key role played by political representation in the perception of the challenges facing the Schengen area and its ability to deal with them;
- the dual deficit in solidarity and trust among the member states underlying this crisis, which seems to be on the verge of being reduced;
- the sovereignty crisis also at work in connection with the protection of common borders and in terms of the Europeans’ ability to carry weight in their neighbourhood<sup>1</sup>.

## 1. Schengen under fire from opposing political visions

The first factor in the crisis rocking the Schengen area is the clout wielded by the very different political representations operating in the EU, both in terms of the way the challenges facing the Schengen area are perceived and of the very nature of the area, which is in fact often used as a scapegoat.

### 1.1. Migration challenge and terrorist threat: differing diagnoses in Europe

While all of the member states and people in the EU agree on perceiving Islamist terrorism as a threat, they are *de facto* exposed to that threat in differing degrees, with countries such as Portugal, Ireland and Estonia, for example, appearing in theory to be less concerned by it; and that difference can naturally have an impact both on people’s awareness of the threat and on their degree of mobilisation against it.

“COUNTRIES SUCH AS FRANCE, IN THE GRIP OF AN ECONOMIC, IDENTITY-RELATED AND POLITICAL CRISIS, ADOPT A FAR MORE RELUCTANT APPROACH V/S ASYLUM SEEKERS”

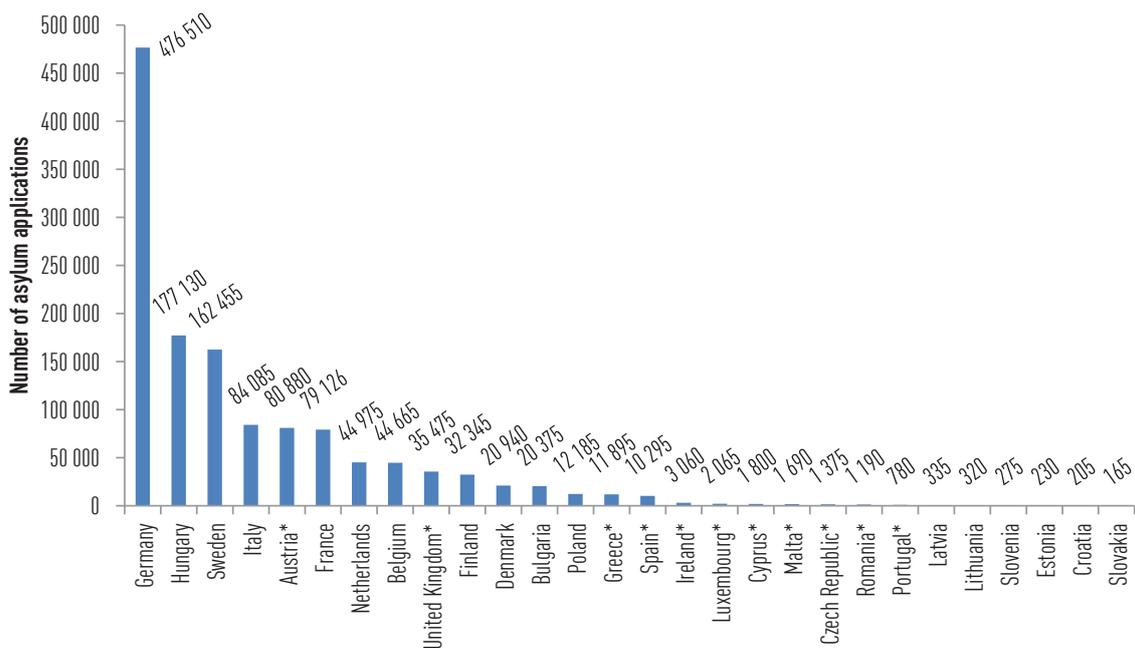
It is primarily people’s reactions to the massive influx of asylum-seekers that is moulded by decidedly more heterogeneous perceptions. Are these asylum-seekers “victims” whose applications must be examined before taking them in, and possibly even an “opportunity” for their host countries? Or on the contrary, are they a “threat” (to the economy, to our identity, to security, or even to health...) against which we need to take measures? Numerous factors help to forge the answers to those questions in each EU member state, whether they are structural (for instance, the pervasiveness of the Christian religion and

how it is interpreted, whether in a charity-based or a xenophobic light) or more circumstantial (in particular, the national authorities’ leadership capabilities and the political influence wielded by extremist parties). There

1. Our sincere gratitude to Yves Pascouau for his precious comments and suggestions on this piece.

can be no doubt that people's perception of asylum-seekers is also moulded by the manner in which their real or potential countries of destination perceive themselves: countries such as Germany consider themselves sufficiently strong to entertain the idea of taking the asylum-seekers in, or at least a certain number of them; while countries such as France, in the grip of an economic, identity-related and even political crisis, adopt a far more reluctant, not to say hostile, approach even though very few applications for asylum are actually addressed to them (see figure 1).

**FIGURE 1** ▶ Asylum applications in a selection of EU countries in 2015 (full year or January-November\*)



Sources: Y. Bertoincini & A. Vitorino, data Eurostat and INSEE (\*: data not available for December 2015).

The footage and pictures shown on television or on the social networks play such a strong role in the management of the asylum-seeker crisis that they boost the political representations' impact on that management: endless pictures of landings on tiny, impoverished islands (Lampedusa, Lesvos and so forth), when in fact Europe bears a greater resemblance to (large, rich) Germany; shocking pictures of a little boy dead on a Turkish beach, or others of tragic shipwrecks, endorsing the equation whereby "refugees = victims"; blurred pictures of asylum-seekers who are in fact terrorists in Paris or aggressors in Cologne, bolstering the equation whereby "asylum-seekers = a threat"... It clearly requires deep conviction and strong leadership skills to steer a clear and steady course in the face of this ongoing onslaught of images.

## 1.2. Schengen and mystique in politics: an area caught in a cross-fire

"Schengen" is also caught in the cross-fire between national political representations that overrate the protective potential of borders, and pro-European representations that play down the original agreement's security-related aspects.

The Elysée Palace rapidly nuanced the scope of the announcement made by François Hollande a few hours after the terrorist attacks on 13 November 2015 to the effect that he had decided to "seal France's borders". Short of erecting walls, it is physically impossible to "seal" France's land borders (just under 3,000 km in the metropolitan area, over 4,000 km overall), while sealing sea and air borders would entail simply halting every single arrival and departure by boat or by plane... At best, the French authorities can reintroduce systematic border monitoring by appealing to the "safeguard clauses" provided for in the "Schengen Code", which is in effect what they had just done ahead of the COP 21 conference...

So François Hollande had adopted a register that was not only emotional but also inspired by mythology, evoking the allegedly protective function of “good old national borders”; and this, at the very moment when the detection of Salah Abdeslam at the border crossing between France and Belgium totally failed to lead to his arrest, due to the absence of an adequate exchange of intelligence between the two countries’ authorities... A similar protective reflex focusing on national borders has also been seen in other European countries facing a massive influx of asylum-seekers, whether the borders in question go back centuries or are relatively recent and thus perceived as all the more sacred.

“ ‘SCHENGEN’ WAS SET UP TO SIMPLIFY THE LIVES OF LORRY DRIVERS AND CROSS-BORDER WORKERS”

“Schengen” is defended little and poorly in the face of these national reflexes because many of its zealous supporters subscribe, on the contrary, to a “free movement mystique” that tends to ignore its security dimension. This, because Schengen is often equated primarily with the additional freedom deriving from the elimination of systematic, fixed border controls at national borders, and those controls’ occasional reintroduction for specific reasons is often wrongly peddled as a “suspension” of the original agreement. While “Schengen” was set up to simplify the lives of lorry drivers and cross-border workers, and indeed its abolition would heavily penalise such people, it is often perceived as a tool that benefits the elites (businessmen, the Erasmus generation and so forth), which cuts it off even more from the “masses” who require protecting. As long as “Schengen” is perceived as an “Area” that eliminates controls rather than as a “Code” that reorganises those controls in order to make them more effective, it will be seen as a “Pandora’s Box” rather than as a toolbox<sup>2</sup>, and thus it will not be perceived as one of the tools making it possible to strengthen the European people’s protection. Even if its institutional or civil society supporters adopt a more security-based approach<sup>3</sup>, people’s perception of “Schengen” would in any case continue to be moulded by national political leaders, whose voice is infinitely louder with the electorate but who do not always have an immediate interest in defending it.

### 1.3. Europe, the usual “scapegoat”: why such Schengen bashing?

The third factor explaining the crisis that the Schengen agreement is going through is, in effect, the way in which it is used as a political resource by national authorities eager to offload their own failings and responsibilities onto it.

After all, is it not the national authorities’ inability to unite in order to carry weight in the EU’s immediate neighbourhood, in particular to prevent or to manage the crises in Syria and in Libya, that lies at the very root

“ SCHENGEN IS USED AS A POLITICAL RESOURCE BY NATIONAL AUTHORITIES EAGER TO OFFLOAD THEIR OWN FAILINGS AND RESPONSIBILITIES”

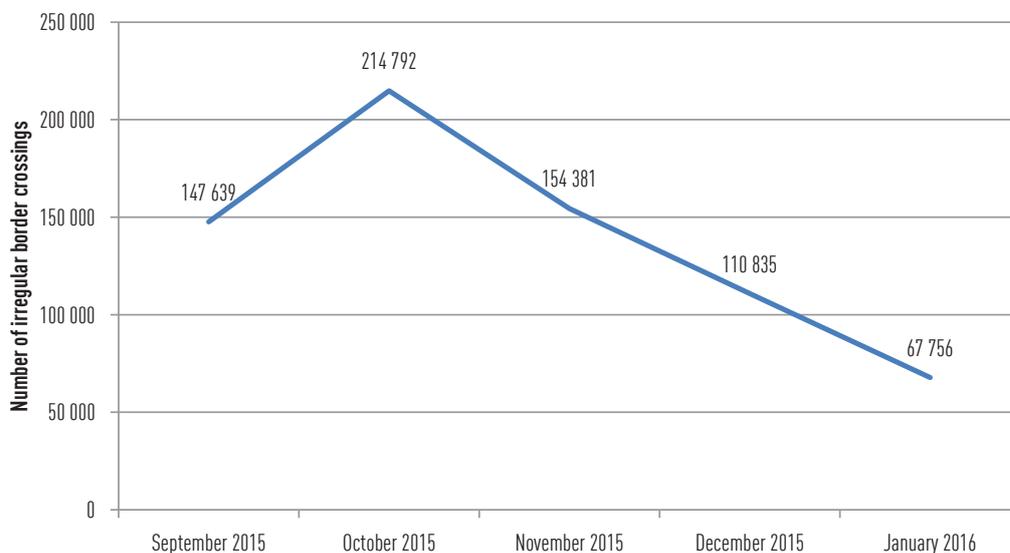
of the Islamic State’s spread and of the exodus of millions of asylum-seekers? Has countries’ inability to provide sufficient funding for the UNHCR or the World Food Programme in order to allow them to ensure that asylum-seekers stay in countries closer to their homelands (in this case Jordan, Lebanon and Turkey) not played a key role in prompting the refugees to head en masse for Europe? (see figure 2) And finally, how about the impact of the generous yet (to put it mildly) unilateral appeal launched by Angela Merkel in favour of taking in hundreds of thousands of them thanks to a very elastic interpretation of the “Dublin Regulation” measures<sup>4</sup>? The Schengen area is not so much the main cause of the asylum-seeker crisis as a collateral victim of that crisis...

2. A toolbox including the “Schengen Information System”, mobile customs patrols, border area controls, rights of observation and pursuit and so forth.

3. See for example Jacques Delors, António Vitorino, Yves Bertoncini and the members of the Jacques Delors Institute’s 2015 European Steering Committee, “Schengen Is Dead? Long Live Schengen!”, *Tribune – Viewpoint*, Jacques Delors Institute, November 2015, published by many European media.

4. Adopted by the European Union, the Dublin Regulation stipulates that asylum-seekers’ applications must be examined first in the country through which they enter the EU.”

FIGURE 2 ▶ Irregular border crossings from Turkey to Greece per month



Source: European Commission, [DG Migration and home affairs](#).

Are the failings of the national police and intelligence services not decisive in the face of a terrorist threat that is so difficult to counter? One has but to read the accounts of the police and intelligence services' "flops" in France in connection with the attacks both on 7 and 9 January 2015<sup>5</sup> and on 13 November 2015<sup>6</sup> to note the crushing weight of the responsibilities of those who have held power over the past ten years in terms of institutional mismanagement, suffocating red tape, the dearth of financial and human resources and so forth... But while the probes by the press reveal these things, the authorities responsible steer well clear of doing the same. They may well have a good reason for doing so: they do not want to undermine the morale of the troops, of the police forces at the coalface, or to further frighten a populace already battered and bruised by the terrorist attacks, by shining the limelight too much on the national failings reported in the probes. But then why on earth are they not afraid of pointing to the equally real and equally anxiety-inducing shortcomings in police cooperation between France and Belgium, holding "Europe" and "Schengen" up as a target for grass-roots anger?

5. "Attentats de Charlie Hebdo: l'histoire secrète d'une répétition générale" and "Des failles à pleurer", *Le Canard enchaîné*, 6 January 2016, "Charlie Hebdo: une faille béante dans le Renseignement", *Le Figaro*, 10 January 2016.

6. "L'antiterrorisme français en état de mort clinique", *Le Monde*, 28 November 2015; "Anti-terrorisme: l'histoire d'une faillite", *Médiapart*, 30 November 2015.

## 2. A crisis in solidarity, but primarily a crisis in trust on the verge of being reduced?

Distinguishing the Schengen area crisis from the representations moulding it allows us the better to identify its deeper nature and the conditions of its resolution, and to see that what we are looking at here is not merely a crisis in solidarity, but also, indeed primarily, a crisis in the trust between co-owners, yet co-owners who, for all that, have no wish to leave the area that they share.

### 2.1. Addressing the migrant crisis: enforced solidarity, ongoing mistrust

The deficit in solidarity among the Schengen area's member states is the aspect that has reared its head most crudely and most spectacularly since the migrant crisis began.

It is a deficit of financial solidarity, because despite help from European funds<sup>7</sup> and from the Frontex agency, countries in the front line such as Greece and Italy have not felt sufficiently supported in their efforts to control the ever-growing influx of migrants<sup>8</sup>. It was only when the situation began to be perceived as spinning out of control in the spring of 2015 that the other EU member states finally agreed to treble their financial contribution to the monitoring and rescue operations known as Triton and Hermes, even if several of them feared that they might be creating a "call effect" for migrants in doing so.

#### “ APPLICATIONS ARE FOCUSED IN THE PERIPHERAL COUNTRIES THROUGH WHICH THE ASYLUM-SEEKERS ENTER EUROPE ”

The deficit in European solidarity is also humanitarian, if we consider that implementation of the "Dublin Regulation" stipulates that asylum-seekers' applications have to be examined by their country of first arrival. This principle avoids a succession of steps from having to be made from one country to the other, but it also ends up focusing applications in the peripheral countries through which the asylum-seekers enter Europe, with Greece, Hungary and Italy situated in the front line. This flaw in principle is, of course, corrected in part by concrete events: if Germany registered one-third of all applications for asylum in the EU in 2014, it necessarily means that a large number of those applications had not been registered or examined in the seekers' country of first arrival<sup>9</sup>. It is in this same spirit of solidarity that Angela Merkel specified that she intended to suspend classical implementation of the Dublin Regulation when she announced her wish in August 2015 to open up Germany's gates to all asylum-seekers entering the country. It is also in a spirit of solidarity that the EU decided to come to the aid of such swamped countries as Greece and Italy by adopting a legal measure designed to correct the situation: it takes the form of a "relocation mechanism" applicable in times of crisis and, in the event, benefiting 160,000 asylum-seekers over two years (*see table 1*)<sup>10</sup>. Yet the fact that the measure had to be extracted by painful force with a qualified majority vote to overcome the opposition of four central European member states and its more than feeble subsequent implementation in concrete terms<sup>11</sup> have confirmed the dearth of instinctive solidarity – even if it is in fact self interested solidarity, displayed towards countries overwhelmed by an excessively massive influx.

7. The EU Asylum, Migration and Integration Fund (AMIF) can spend a total of EUR 3.137 billion for the period 2014-2020, the EU Internal Security Fund – Border, Visa (ISF) a total of EUR 3.8 billion for the seven years.

8. Launched by the Letta government, Operation Mare Nostrum cost Italy 9 million euro a month, without any direct financial contribution from the other EU member states.

9. All the asylum-seekers present in Germany were unable to reach the country by air or by sea, most of them got into the country after managing to enter the EU through some other member state.

10. This mechanism applies to all EU member states whether or not they are members of the Schengen area (for instance Romania) unless they have an opt-out in this connection (for instance the United Kingdom).

11. As the European Commission reports, fewer than 500 relocations (of which around 130 to France) had been recorded by the beginning of February 2016, as against the 160,000 relocations planned.

TABLE 1 ► Member States' Support to Emergency Relocation Mechanism (Communicated as of 10 February 2016)

Member States	National Contact Points Appointed	Liaison Officers Appointed		Reply to EASO call - Experts	Reply to Frontex call – Border guards (October 2015)	Reply to Frontex call – Border guards (January 2016)	Relocation			
		Italy	Greece				Places Made Available	Relocated from Italy	Relocated from Greece	Remaining Places from the 160,000
Austria	✓	✓	✗	45	26	✗	✗	✗	✗	1953
Belgium	✓	✓	✓	15	4	✗	30	14	✗	3798
Bulgaria	✓	✓	✓	1	✗	✗	1302	✗	✗	1302
Croatia	✓	✗	✗	2	11	✗	✗	✗	✗	968
Cyprus	✓	✓	✓	✗	✗	✗	30	✗	✗	320
Czech Republic	✓	✗	✗	35	8	✓	✗	✗	✗	2691
Denmark	N/A	N/A	N/A	5	50	✓	✗	✗	✗	N/A
Estonia	✓	✓	✓	1	1	✓	✗	✗	✗	329
Finland	✓	✓	✓	1	2	✗	220	96	44	1958
France	✓	✓	✓	6	59	✗	1100	41	94	19622
Germany	✓	✓	✓	13	50	✓	40	11	10	27515
Greece	✓	N/A	N/A	1	✗	✗	✗	✗	✗	N/A
Hungary	✓	✗	✗	1	4	✗	✗	✗	✗	1294
Ireland	✓	✓	✓	2	✗	✗	20	✗	10	590
Italy	✓	N/A	N/A	✗	4	✗	✗	✗	✗	N/A
Latvia	✓	✓	✓	✗	✗	✗	481	✗	6	475
Lithuania	✓	✓	✓	1	14	✗	100	✗	4	667
Luxembourg	✓	✓	✓	6	✗	✗	90	✗	30	527
Malta	✓	✓	✗	2	✗	✗	131	✗	✗	131
Netherlands	✓	✓	✓	6	23	✗	100	50	✗	5897
Poland	✓	✓	✓	✗	18	✗	100	✗	✗	6182
Portugal	✓	✓	✓	✗	12	✗	130	10	20	2921
Romania	✓	✓	✓	11	23	✗	315	✗	✗	4180
Slovakia	✓	✓	✓	2	20	✗	✗	✗	✗	902
Slovenia	✓	✓	✓	1	✗	✗	✗	✗	✗	567
Spain	✓	✓	✓	30	41	✓	50	18	✗	9305
Sweden	✓	✓	✗	2	6	✗	300	39	✗	3727
United Kingdom	N/A	N/A	N/A	10	29	✓	N/A	✗	✗	N/A
Norway	✗	✗	✗	2	3	✗	✗	✗	✗	tbc
Switzerland	✗	✗	✗	✗	2	✗	✗	✗	✗	tbc
Liechtenstein	✗	✗	✗	✗	✗	✗	43	✗	✗	tbc
Iceland	✗	✗	✗	✗	✗	✗	✗	✗	✗	tbc
<b>TOTAL</b>	<b>All concerned EU Member States have now notified</b>	<b>20</b>	<b>17</b>	<b>201 experts (of 374 requested)</b>	<b>447 border guards (of 775 requested)</b>	<b>106 border guards (of 1054 requested)</b>	<b>17 Member States 4582 places (of 160,000)</b>	<b>279 (out of 39,600)</b>	<b>218 (out of 66,400)</b>	<b>97,777 (of initial 98,256)<sup>1</sup></b>

1. 17,744 from the 40,000 decision still to be allocated. 54,000 from the 120,000 decision still to be allocated.

NB : Given the sudden influx of asylum seekers in these two countries, the Commission has proposed to suspend the application of the relocation scheme in Sweden in december 2015 (for one year) and in Austria in February 2016 (up to 30% of the contingent to be relocated).

Source: European Commission, [DG Migration and home affairs](#).

“MISTRUST IS INEVITABLE TOWARDS COUNTRIES WHOSE CAPABILITIES DO NOT ENJOY A SOLID REPUTATION, AND WHICH ARE ALSO PRIMARILY TRANSIT COUNTRIES”

Yet the tension undermining the Schengen area is a result first and foremost of a crisis in trust among the member states. It is because they suspect Greece and Italy of having neither the ability nor the will to effectively monitor the Union's external borders that the other countries consider them at least as much “culprits” to blame as “victims” to help. This mistrust is inevitable towards countries whose government and administrative capabilities do not enjoy a solid reputation, and which are also primarily transit countries for migrants whom, in actual fact, they have nothing to gain from registering and keeping on their soil, especially in the event of a massive influx.

For instance, this mistrust became apparent, at the time of the Arab spring, towards Silvio Berlusconi's Italy. This led, in particular, to a change in the Schengen Code specifying that systematic controls at national borders could now be reintroduced for reasons of public law and order “where serious deficiencies are identified in the carrying out of external border controls” in one of the countries responsible for those borders. And even greater mistrust was expressed throughout 2015, leading to the reintroduction of controls on national borders (see table 2) in fully nine of the twenty-six countries in the Schengen area – a reintroduction that is totally legal, but that was frequently adopted in a spirit of non-cooperation among the countries involved<sup>12</sup>.

12. To monitor the temporary reintroduction of systematic national border control, see the European Commission's [website](#).

**TABLE 2** ► Re-establishment of national border control in the Schengen Area 2014-2016 (as of 13.02.2016)

MEMBER STATE	DURATION	REASONS
Norway	15/01/2016 - 14/02/2016	Continues threat of big influx of persons seeking international protection All borders with focus on ports with ferry connections to Norway via internal borders
Sweden	10/01/2016-08/03/2016	Continuous big influx of persons seeking international protection All borders, with special focus on harbours in Police Region South and Police Region West as well as on the Öresund Bridge between Denmark and Sweden
Denmark	04/01/2016 - 23/02/2016	Big influx of persons seeking international protection All borders, with focus on ferries from Germany and land border with Germany.
France	14/12/2015- 27/03/2016	In relation to the emergency state as introduced further to Paris attacks Internal land borders and air borders
Norway	26/11/2015-15/01/2016	Unexpected migratory flow All borders with focus on ports with ferry connections to Norway via internal borders
Austria	16/11/2015 - 15/02/2016	Continuous big influx of persons seeking international protection All borders, with special focus on the Slovenian-Austrian land border, subject to possible changes The border can be crossed only at authorised border crossing points
Germany	14/11/2015 - 13/02/2016	Continuous big influx of persons seeking international protection All borders, with focus on the German-Austrian land border
France	13/11-13/12/2015	21st UN Conference on Climate Change from 30 November to 11 December 2015, internal land borders and air borders
Sweden	12/11 - 09/01/2016	Unprecedented influx of persons All borders, with special focus on harbours in Police Region South and Police Region West as well as on the Öresund Bridge between Denmark and Sweden.
Malta	9/11 - 31/12/2015	Valetta Conference on Migration and Commonwealth Heads of Government Meeting Terrorist threat and smuggling of illegal migrants Air and sea passenger terminal
Hungary	17-26/10/2015	Big influx of persons seeking international protection, land borders with Slovenia
Slovenia	17-26/9; 27/9-16/10/2015	Big influx of persons seeking international protection, land borders with Hungary
Austria	16-25/9; 26/9-15/10; 16/10-4/11/2015; 5/11/2015-15/11/2015	Big influx of persons seeking international protection, all borders, focus on land borders with Italy, Hungary, Slovenia and Slovakia
Germany	13-22/09; 23/09-12/10; 13/10-1/11/2015; 2/11-13/11/2015	Big influx of persons seeking international protection, all borders with focus on Austrian land borders
Germany	16/5-15/6/2015	G7 Summit
Estonia	31/8-3/9/2014	Visit of the US President
Norway	24-31/7/2014	terrorist threat
Belgium	1-6/2014	G7 Summit
Netherlands	14-28/3/2014	Netherlands on 14-28 March 2014 Nuclear Security Summit in the Hague

Source: European Commission, [DG Migrations and home affairs](#).

“ ‘HOTSPOTS’ IN GREECE AND IN ITALY HAVE THE MERIT OF RESPONDING TO THE LACK OF SOLIDARITY AND OF TRUST AMONG THE SCHENGEN AREA’S MEMBER STATES”

In this context, the construction of centres for hosting asylum-seekers and for processing their applications (“hotspots”) in Greece and in Italy has the merit of responding at once to the lack of solidarity and to the lack of trust among the Schengen area’s member states. On the pretext of helping the swamped countries in both financial and human terms, it is also a way of despatching national and European experts to areas where they can ensure that the Union’s external borders are effectively monitored and that the asylum-seekers really are registered<sup>13</sup>. The “European Border and Coast Guard” (see table 4) project is a product of the same rationale, and that is exactly why these projects have sparked such reticence on the part of the countries that could benefit from them, thus reflecting the difficulties involved in establishing shared sovereignty in the monitoring of borders which are, in effect, already shared (see § 3.1.)<sup>14</sup>.

## 2.2. Addressing the terror threat: a more instinctive solidarity, but a trust that has yet to be built

The terror threat and terrorist attacks trigger a far more instinctive form of solidarity among European countries, several of which have recently been targeted, whether members of the Schengen area or not<sup>15</sup>, and nine of which had nationals slain in the attacks in Paris on 13 November 2015. The numerous European heads of state and government and European institution presidents’ attendance at the march held in Paris on 11 January 2015 testified to this emotion-based solidarity, even if the French authorities subsequently had cause to note that that solidarity failed to translate into a sufficient number of concrete actions, their frustration focusing on the delay in the adoption of a Passenger Name Record (or PNR) for all airline passengers.

The 13 November 2015 attacks probably facilitated the final adoption of the PNR as well as the planning of several security measures at the European level, such as a stiffening of the law governing the sale of arms, a strengthening of the struggle against terror funding, a modification of the “Schengen Code” to allow the systematic monitoring of Europeans returning to our common soil, the first implementation of the solidarity clause envisaged under Article 42.7 of the TEU which allowed countries such as Germany to contribute to France’s military operations in Syria, and so forth...

“ HOW IS IT POSSIBLE TO ACHIEVE A FLUID AND FRUITFUL EXCHANGE OF INFORMATION AMONG EUROPEAN COUNTRIES THAT CONTINUE TO SPY ON ONE ANOTHER?”

While 2015 will mark a turning point in mobilisation against terrorism at the European level, that mobilisation can only become effective if the member states nurture sufficient trust in one another, which seems to be anything but a given right now. For instance, the announcement of the reintroduction of systematic border controls on the border between France and Belgium was accompanied by a mutual questioning of the two countries’ police services, when their cooperation is in fact crucial in ensuring the effectiveness of the struggle against the terrorist networks. But then, how is it possible to achieve a fluid and fruitful exchange of information among European countries that continue to spy on one another?

## 2.3. A crisis of co-owners who do not wish to move out of their shared abode

All in all, it is worth noting that a dual trend involving a reduction in the lack of trust and solidarity among the Schengen area’s member states is under way, and that it is likely to help consolidate that space. Despite all the prophecies predicting the “death of Schengen”, we can at least point out that a race against time has begun

13. On this sensitive issue, the European Commission underlined on 10 February 2016 that “the proportion of migrants whose fingerprints are included in the Eurodac database has risen in Greece from 8% in September 2015 to 78% in January 2016, and in Italy from 36% to 87% over the same period” (in Communication COM (2016) 85 Final on the [State of Play of Implementation of the Priority Actions under the European Agenda on Migration](#), 10 February 2016).

14. For an assessment of the implementation of EU decisions see Communication COM (2016) 85 Final on the [State of Play of Implementation of the Priority Actions under the European Agenda on Migration](#), 10 February 2016.

15. With, in particular, the terrorist attacks in Madrid in March 2004 and in London in July 2005.

between the Europeanisation of external border monitoring and the temporary reintroduction of national border controls, which can legally last for at least two years (see table 3)<sup>16</sup>.

**TABLE 3** ▶ Three safeguard clauses allowing the “temporary reintroduction of border control at internal borders”

MOTIVE	MODE	DURATION	DECISION MAKER
Specific threat to public law and order	Emergency	Up to 2 months	Member state (informing the EU)
Specific threat to public law and order	Planned	Up to 6 months	Member state (informing the EU)
Exceptional circumstances putting the overall functioning of the Schengen area at risk as a result of persistent serious deficiencies relating to external border control	Planned	Up to 24 months (6 months x 4)	Council of ministers (qualified majority vote) with Commission's proposal

Source : Y. Bertoncini & A. Vitorino, Data Schengen Border Code/Eurlex, Regulation 562/2006 as revised by Regulation 1051/2013.

“THERE ARE SEVERAL FACTORS AT WORK FORGING A POLITICAL DYNAMIC IN FAVOUR OF ITS CONSOLIDATION OF SCHENGEN”

It is also worth pointing out that this race against time is not directed against Schengen, because the contestants in it are co-owners forced to urgently review the rules governing their co-existence, yet without any wish to move out of their shared abode. This, because in actual fact no member state wishes to leave the Schengen area – and that includes the countries of central and eastern Europe – while there are several factors at work forging a political dynamic in favour of its consolidation of Schengen: the Juncker Commission's adoption of initiatives with the European Parliament's backing; Germany's leadership, in the forefront in addressing the issues raised by the refugees; France's leadership, in the forefront in addressing the terrorist threat; the absence of the United Kingdom's ability to obstruct anything, because it is not a member of the Schengen area, and so forth. At worst, the member states might entertain the *de facto* exclusion of one or other of the countries that are already members of the Schengen area if it displays long-term shortcomings (Greece, for example), although that would not resolve any of the basic underlying issues linked to the migrant crisis or to the terrorist crisis, while only making cooperation with the country thus sanctioned even more difficult<sup>17</sup>.

In political terms, three main questions have yet to be answered, and the answers to them are largely going to determine Schengen's future. The chief question is this: despite the current tension, are the member states and their people going to hold to a position seeking to maintain the rights associated with membership of the Schengen area (in terms both of freedom and of police and judicial cooperation) while agreeing to shoulder more of the duties that go with that (in terms both of solidarity and of border control)? The second question concerns the political impact of the emotional responses that the terrorist threat or incidents linked to the massive presence of asylum-seekers are going to continue to spark, particularly in an electoral context<sup>18</sup>: what changes in the balance between security and freedom will the people of the EU demand, including at the European level? And the third question concerns the effective awareness of the economic, financial and human cost of the long-term reintroduction of systematic border controls at member states' national borders<sup>19</sup> (time lost by truck drivers and daily commuters, tourists not coming, wages of the border police...). Until that cost has been sufficiently aired in the public debate<sup>20</sup>, especially since national authorities practice limited controls rather than the “systematic” ones they announce, that debate will naturally be asymmetrical and more favourable to a return to national border controls in view of their symbolic dimension – regardless of their very weak efficiency.

16. In its chapter 2 (articles 23 to 30), the EU Regulation 562/2006 adopted by the European Parliament and the Council (or « Schengen Border Code ») sets the conditions for the temporary reintroduction of border control at internal borders..

17. In Greece's case, it is also worth pointing out that there is no geographical continuity between it and the other member states in the Schengen area, because none of the countries that share direct borders with Greece are members.

18. A general election in Slovakia in March 2016, regional elections in Germany in March 2016 and beyond, a presidential election in France in the spring of 2017 and so forth.

19. In this connection, listen to “Les conséquences de la fin de Schengen”, Yves Pascaou, Euradionantes, July 2015.

20. On this issue, see Vincent Aussilloux, Boris Le Hir, “The Economic Cost of Rolling Back Schengen”, Policy Brief n°39, France Stratégie, February 2016.

### 3. More Europe on the borders, but also beyond: a sovereignty issue

If the crisis in the Schengen area is at once a crisis in solidarity and a crisis in trust, its resolution also, indeed perhaps primarily, involves sovereignty issues. Whether it proves possible to preserve “Schengen”, and even to strengthen it, is going to depend on the way those issues are addressed in the coming semesters.

#### 3.1. Shared sovereignty for an area already shared

The political crisis rocking “Schengen” is the product of a conceptual hiatus between the existence of an area for free movement that is already shared and an insufficiently shared exercise of national sovereignty. The borders between Greece and Turkey or between Italy and Libya are “our” borders, yet only Greece and Italy are tasked with monitoring them. The asylum-seekers want to get to “Europe”, they do not necessarily want to seek refuge in the first country the throw of the geographical dice happens to put in their path. The dearth of trust and solidarity that is currently undermining the management of the Schengen area may also lie in the folds of this very concrete hiatus.

Subject to their becoming fully effective, the creation of “hotspots” and the adoption of a mechanism for the relocation of 160,000 asylum-seekers are two welcome responses to the current migrant crisis. Yet the very slow and incomplete construction of these “hotspots”<sup>21</sup>, Hungary’s refusal to benefit from the relocation mechanism and the will displayed by four other countries not to implement it while simultaneously dragging it before the Court of Justice, however, have revealed the extent to which these adjustments were sensitive in terms of sovereignty. This, because they force the member states to afford right of access and residence on their soil under the constraint of European regulations and mechanisms, and that is only conceivable if those member states agree to consider “their soil” to be the soil encompassed in the Schengen area...

**CRISIS-  
MANAGEMENT TOOLS  
LINKED TO EXCEPTIONAL  
CIRCUMSTANCES  
JUSTIFYING THE SHARED  
EXERCISE OF SOVEREIGNTY**

In this context, the plan to set up a “European Border and Coast Guard” and the planned review of the “Dublin Regulation” will be two new political tests for the EU, and their success is going to depend largely on symbolic issues. In that connection, it would be useful for these new adjustments, like their predecessors, to be presented as crisis-management tools linked to exceptional circumstances justifying the shared exercise of sovereignty in order for them to be more effective and to enjoy greater legitimacy. Member states can already individually invoke national “safeguard clauses” in order to reintroduce systematic controls at their borders: resorting to a “European Border and Coast Guard” (see table 4) would simply be a European “safeguard clause” that could be invoked on the basis of a collective decision in order the better to protect our common borders in the event of an acute crisis.

21. At the beginning of February 2016, only three out of eleven hotspots are considered as fully operational by the EU Commission : two out of six in Italy (Lampedusa and Pozzalo) and one out of five in Greece (Lesvos).

TABLE 4 ► The European Border and Coast Guard

MAIN CHANGES V/S FRONTEX	CONTENT OF THE CHANGES		
MONITORING AND SUPERVISORY ROLE	Monitoring and risk analysis centre to monitor migratory flows	Liaison officers seconded to Member States where the borders are at risk.	Require Member States to take measures to address the situation in case of vulnerabilities.
A STRONGER ROLE IN RETURNS	A European Return Office established within the Agency	Deployment of European Return Intervention Teams	A standard European travel document for return
MORE HUMAN AND TECHNICAL MEANS	At least 1,500 experts to be deployed in under 3 days : « Reserve pool of border guards »	Ability to acquire equipment itself and to draw on a pool of technical equipment	Human resources more than double that of Frontex to reach 1,000 permanent staff by 2020
EASIER INTERVENTIONS ON THE GROUND	Member States can request joint operations and rapid border interventions	EU ability to adopt an implementing decision if Member State unable or unwilling to take the necessary measures	No need for unanimity voting / decision maker body proposed at this stage : Commission under comitology procedure

Source: Y. Bertoncini & A. Vitorino, data EU Commission.

It would also be useful to point out that member states will always have their say in the matter even if the tools in question are European: the relocation mechanism may oblige them to examine a given number of applications for asylum, but it does not force them to accept all of them (and sure enough, acceptance rates vary widely from one country to the next); likewise, the European Border and Coast Guard would only intervene in the wake of a collective decision adopted at the political level and it would spark a joint border monitoring exercise on the Schengen area's external borders between the country concerned and its European partners and supporters.

“A 'SHARED SOVEREIGNTY' AREA IN WHICH EVERYONE AND EVERYTHING MOVES ABOUT FREELY, INCLUDING TERRORISTS, BUT NOT POLICE OFFICERS AND NOT THE INTELLIGENCE THAT THOSE OFFICERS POSSESS.”

In addition, a sharing of sovereignty equally necessary and equally sensitive also needs to be achieved in the sphere of police and judicial cooperation, both by making better use of the tools already available and by devising the creation of new tools such as a “European prosecution office”. Symbols aside, it is a matter of promoting far more intense cooperation among the police forces, which need to act as a network in order to struggle effectively against organised crime, whether it be in the shape of human trafficking networks or of jihadist terrorists, given that they certainly are not going to stop them at the borders, even if they are external borders. This Copernican revolution presupposes an awareness of the need to act within a “shared sovereignty” area in which everyone and everything moves about freely, including terrorists, but not police officers and not the intelligence that those officers possess. Such a revolution would certainly be facilitated by a change in the way national sovereignty is perceived – as more of a tool and less of a monument. That also entails greater cooperation at the industrial and military levels, given that intelligence services are instinctively inclined to serve their country's higher strategic interests<sup>22</sup>.

### 3.2. Being effective across borders: “Europe power” to Schengen's rescue?

And lastly, pressure will continue to bear down on the Schengen area until the Europeans prove capable of preventing and controlling crises occurring in their more or less immediate neighbourhood, because it is these crises that spawn massive influxes of asylum-seekers and hotbeds of terrorism. Acting solely on our borders would inevitably cause those borders to carry on suffering from the negative impact of wars taking place only a few hours' plane ride away...

22. In this connection, see Jean-Dominique Giuliani, “The defence of Europe before European Defence”, *European Issues* n° 377, Fondation Schuman, January 2016.

“ACTING SOLELY ON OUR BORDERS WOULD INEVITABLY CAUSE THOSE BORDERS TO CARRY ON SUFFERING FROM THE NEGATIVE IMPACT OF WARS TAKING PLACE ONLY A FEW HOURS’ PLANE RIDE AWAY”

In organising three high-level meetings with the Balkan countries<sup>23</sup>, with Turkey and with the African countries in the space of a few months, the Europeans have become involved in negotiations that place them in a waiting position with respect to the asylum-seekers’ and other migrants’ countries of origin or transit. This situation compels them to make use of all of the offsets available to them in order to urge those countries to help in reducing the migrant influxes: financial aid<sup>24</sup>, trade incentives, visas facilitation, military training and so forth. Yet those offsets need to form part of an “action plan” (see table 5) or of an “agreement” that does not allow the EU partner in question to benefit from them without helping effectively to curb the migrant influxes, because of course, it may not be in its interest to curb those influxes.

TABLE 5 ► The “EU Turkey joint action plan”: main elements

EU ACTIONS	TURKEY ACTIONS
<b>Supporting the Syrians under temporary protection &amp; their Turkish hosting communities</b>	
Financial assistance through IPA, EU trust Fund for the Syrian Crisis and multilateral organisations (HCR&WFP)	Registration of migrants and building a stronger management strategy and system
Refugee facility for Turkey 2016-2017 (3 billions euros)	Continued efforts in favor of Syrian under temporary protection and vulnerable people
<b>Strengthening cooperation to prevent irregular migration</b>	
Further support Turkey in its capacity to combat migrant smuggling	Enhance the fight against criminal migrants smuggling networks
Support cooperation between EU member states and Turkey in organising joint return operations	Readmit irregular migrants not in need of international protection
Deploying a Frontex liaison officer in Turkey	Further strengthening the interception capacity of the Turkish Coast guard
<b>Additional political elements (out of the “joint action plan”)</b>	
Accession negotiations: relaunch of the negotiations by the opening of chapter 17 (on economic and monetary policy) and preparatory work for the opening of other chapters in 2016	
More high level dialogue: regular Summits twice a year and High Level Economic Dialogue Mechanism to be launched by the end of March 2016	
EU Turkey Visa dialogue: lifting of visa requirements for Turkish citizens by October 2016 once the requirements of the Visa Roadmap are met (including EU-Turkey readmission agreement).	

Source: Y. Bertoncini & A. Vitorino, data EU Council and EU Commission

In their enlargement policy, the Europeans for a long time had a powerful weapon to use with their neighbours, who were prepared to meet most of their demands in return for EU membership. While that tool cannot work with the African countries, it can still be mobilised with the Balkan countries, and it has been revived in very ambiguous circumstances with Turkey. But apart from that, what foreign and defence policy tools can the Europeans rely on to shape their immediate neighbourhood, including when their American allies show no inclination to intervene? France and the United Kingdom were able to intervene to put an end to Al-Qadhafi’s rule in Libya, but they proved particularly powerless to then stem the resulting chaos. The terrorist attacks on 13 November triggered stronger military operations in Syria on the part of France, of the United Kingdom and of Germany, but as things stand today, those operations have not yet made it possible to establish all of the conditions for a diplomatic and political settlement of the ongoing civil war. While their ability to put an end to the chaos in Syria and in Libya is going to be first and foremost a litmus test of the Europeans’ influence or evanescence<sup>25</sup>, it is also largely on that ability that the continued existence of the Schengen area in its present form is going to depend.

23. On this issue, see Annex 5: “Follow up to Western Balkans Leaders’ Meeting - State of Play report” to the COM(2016) 85 final, *op. cit.*

24. On this issue, see Annex 7: “Member States’ pledging to Trust Funds - State of Play table” to the COM(2016) 85 final, *op. cit.*

25. In this connection, see Elvire Fabry, Thomas Pellerin-Carlin and Emmett Strickland, “What European security and defence policy do we need?”, *Synthesis of the Jacques Delors Institute’s 2015 European Steering Committee*, December 2015.

## CONCLUSION

It is way too soon to announce the death of “Schengen”, just as it proved way too soon to announce the “Grexit” in 2015, and it is even possible that the crisis in the Schengen area may have a similar outcome to the crisis in the euro area. After an initial period that shook the member states’ mutual trust and revealed their reluctance to cooperate in full, innovative mechanisms for solidarity and control were put in place to safeguard a common asset that no country and no people basically wanted to see disappear.

No European people wanted or wants a return to their national currency, which would once again become a target for global speculation and subject to competitive devaluation. So who would want the disappearance of the Schengen area, which would have an unquestionable impact on the European people’s daily lives without guaranteeing control of the migrant influxes or making the struggle against terrorism any more effective?

In the light of that consideration, the tensions rocking the Schengen area might prove to be akin to just another display of the “euro-scoliosis”<sup>26</sup> from which the construction of Europe has been suffering for the past few years - a scoliosis which is typical of a growing crisis and of forced progress, taking roundabout routes at the end of rifts which are unpleasant to watch, but which actually prompt the EU in the end to persevere in its existence.

26. See Yves Bertoncini, “[Sharing solidarity and sovereignty better: transcending ‘euroscoliosis’](#)”, *Tribune*, Jacques Delors Institute, October 2015.

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