The future of Schengen

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Introduction

« Better together » is unfortunately no longer an idea that may apply to the functioning of Schengen agreement. This ambitious project, one of the European Union's (EU) hallmark accomplishments, and represented in collective minds by the lack of controls at the borders of the signatory countries, has been the stalwart of the economic development of the EU, by allowing for the free circulation of people and goods. Precisely, this is what is at stake today, and for reasons that have little to do with the original design of the Schengen agreement. Signed in 1985 by a small group of pioneers (France, West Germany, Belgium, the Netherlands, Luxemburg) and coming into full force in 1995, the Schengen area is now composed of all EU member states, except for Great Britain and Ireland (who have opt-outs) on the one hand, and Romania, Bulgaria, Croatia and Cyprus (who are legally obliged to join the area once technical requirements have been met) on the other. Iceland, Liechtenstein, Norway and Switzerland are members of Schengen despite not being in the EU, which makes at current a Schengen area with 26 countries that covers more than 400 million people over an area of 4 million km², with 42673km of sea borders, 7721 km of land borders and approximately 1800 border crossing points.

The premises of Schengen – making it easier for people and goods to move freely across Europe – are today being questioned, because open borders have created more problems than they have solved. Specifically, open borders are at the heart of the ongoing discussions about a new European bargain and necessary tradeoffs between liberty and security. Schengen has been shaken in its foundations by three different issues: the increased terrorist threats on European territory, the uncontrolled refugee crisis and flows that peaked in the summer of 2015, and the importance of the actions of organized crime networks. But more than borders, the demise of Schengen is at heart a crisis of confidence of the EU, and of confidence of EU member states in one another. It is also a symbol of EU structures that were not built for crises (much like the Eurozone has shown), and of the lack of common approaches – towards refugee policy or counter terrorism – that would keep the European glue together when a crisis arises. Finally, the way the livelihood of Schengen has been deeply questioned by various European politicians also represents the extent to which the EU has become the victim of short-term political considerations versus the necessity of devising long-term solutions that offer a future to living "better together".

Questioning whether the Schengen agreement is still alive and valid therefore leads to forward thinking about what should be done in the future to reinforce European approaches to crisis management and developing common answers in the case of grave contingencies. This is a crisis that the EU should learn and build upon, regardless of what its member states decide on the fate of Schengen. Much like the Eurozone, it is highly questionable whether the Schengen agreement will be able to live on if it goes from last-chance Summit to last-chance Summit; it is therefore already now that the fundamentals of a new bargain on open borders are being laid down.

At heart, the tensions surrounding the Schengen agreement is not about the open borders themselves. Only seven states have reinstated border controls (temporary or still ongoing) at Schengen's internal borders since September 2015, and only at a small part of the border, or even only at certain specific points. As troublesome as the Hungarian fence-building has been, the constructions at the Croatian and Serbian borders have not taken place at internal Schengen borders (exception being made of the short-lived fence at the border with Slovenia), and Prime Minister Orban, whose attitude towards the European Union is not always the most constructive, has come out in support of the Schengen system (like all the leaders of the V4 countries[02]), instead decrying the inefficiencies of the Dublin system of registration of migrants. This dichotomy hits the nail on the head regarding the true disease that ails Schengen: it is a victim of inefficient migration policies in Europe and insufficiently protected external borders. However, it is way too early to say that Schengen is bound for a slow death and a renegotiation, as some politicians have already called for.

Discussions around the new framework for the Schengen Agreement require understanding why the system has been inefficient in responding to the pressures that were levied upon it since 1995 and on. This paper will therefore look into how the repeated systemic shocks that took place since 2014 (terrorist attacks in Paris and Brussels and the large inflow of refugees) have given way to discussions about a "Schengen 2", but also consider the extent to which these discussions are very much borne of political dynamics that have little to do with open borders. While examining the arguments of the tenants of a new Schengen and those who plead for a simple adaptation of the system, this paper will argue that what is truly needed are common European approaches to migration and asylum, and a workable approach to reinforce the external borders of the EU. These are the elements that will allow to create common stakes and shared interest in European foreign policy, and help address the root causes of what created such stress on the Schengen system. This will also help Europe feel more comfortable in its role as a global actor, and create clearer synergies between the EU and NATO in delivering security to Europe.

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02   See "Joint Statement of Visegrad Group Countries", December 3 2015.
Available at : http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-151204

1. Assessing Schengen in crisis:
tremors, but no earthquake

The causes of the unraveling of Schengen have been well documented, both by experts and journalists[03], and in some cases, "obituaries are already being written"[04]. The refugee crisis, the real terrorist threats on Europe, interstate criminality have all questioned the efficiency of the Schengen agreements, and especially the tradeoff that it proposed: in order to make up for the opening of internal borders, the system would enhance the ability of national police and judicial forces to work together. It does so by creating (among other) European databases that would help the identification of EU citizens and third-country nationals who pose a threat to the EU, either by moving between Schengen member states or in and out of Schengen's external borders.

As a matter of fact, the large majority of the 141 articles of the Convention implementing the Schengen agreement organize the police and justice cooperation between national authorities. This mutual reinforcement of the freedom of circulation but also of security constitutes one of the essential advances of Schengen, one so important that even the United Kingdom is a party to the police and justice cooperation aspects.

Therefore, it is important to note that the Schengen agreement is not simply about open internal borders. While it is certainly the most visible deliverable, it only represents the emerged part of the iceberg. Under the surface, it is clear that the long-lasting destabilization of the Middle East has had profound effects on European stability, highlighting the extent to which our foreign policy choices can now have clear impact on our domestic choices.

a. Terrorism:
back on the European map

The terrorist attacks that took place between 2014 and 2016 in France and Belgium have highlighted the deficiencies of both the internal border system but also, and perhaps more importantly and worryingly, of how member states make little use of the information mechanisms offered by the Schengen agreement. The attack on the Jewish museum in Brussels, the two main attacks in France in 2015 and in Belgium in March 2016, and the failed attack on the (symbolically, cross-border) Thalys train in August 2015, all have in common the fact that its perpetrator(s) were able to cross the French-Belgian borders easily.

In addition to that, the fact that one of the perpetrators of the November 13 attacks, Salah Abdeslam, was reportedly controlled up to three times by police authorities while being exfiltrated from Paris despite being known by the police authorities represents the limits of the Schengen cooperation. Member states themselves are responsible for inputting relevant information into the systems, but have expressed fear that they "lose" the information once they do so[05], especially on such confidential information related to national security. However, had the Belgian police known whom they were looking for, perhaps the arrests would have served their purpose.

The other aspect of the uncontrolled effects of international terrorism on Schengen is the issue of the "foreign fighters". Some of the perpetrators of the November 13 and March 22 attacks - including the so-called 'mastermind' of the Paris attacks, Abdelhamid Abaaoud- had spent time in areas held by Daech, their numerous comings and goings remaining undetected by national authorities. The terrorists took the habit to leave and depart from different countries than the ones where they knew there were potentially under surveillance, and here again, the lack of use of the information sharing systems helped them to circulate easily around EU territories, including even to buy weapons and move them across borders[06].

Finally, the counter-terrorist and refugee inflow ended up mixing when it was revealed that the purported November 13 suicide bombers at the Stade de France were in possession of Syrian passports - likely stolen by Daech - and had been fingerprinted on their arrival on the Greek island of Leros. Other perpetrators of the attacks, including Abaaoud himself, either had returned to Europe via the refugee flow and the Balkan route, or were planning on using this possibility to allow for the undetected entrance of terrorists.

The limits of the Schengen system were made bare by the renewed terrorist threats in Europe: a lack of cooperation between member states because of turf wars and reluctance to share info (without an incentive or even coercive mechanism to do so) and insufficiently controlled external borders that put welcome mechanisms under undue strains. Therefore, while open borders were indeed one of the symptoms of the problem, the terrorist threats were able to take advantage of deficiencies generated mostly by the lack of action of the member states, whether that be inputting and sharing information, or ensuring the proper protection of the external borders. This paints a very clear picture of the need for a reinforcement of control and surveillance mechanisms by the EU itself, in order to assess the better use of the instruments.

03   See for example: Camino Mortera-Martinez, Why Schengen matters and how to keep it: A five-point plan. Center for European Reform, May 2016. Available at: http://www.cer.org.uk/sites/default/files/pb_schengen_cmm_13may16.pdf See also: Elspeth Guild, Evelien Brouwer, Kees Groenendijk and Sergio Carrera, What is happening to the Schengen borders?. CEPS paper in liberty and security, December 2015. Available at: https://www.ceps.eu/system/files/No%2086%20Schengenland_0.pdf
04   Ian Traynor, Is the Schengen dream of Europe without borders becoming a thing of the past?. The Guardian, 5 January 2015. Available at : http://www.theguardian.com/world/2016/jan/05/is-the-schengen-dream-of-europe-without-borders-becoming-a-thing-of-the-past

05   See for example: The Paris Terrorist Attacks: Failure of the EU's Area of Freedom, Security and Justice?. EU Migration and Law and Policy Blog, 6 January 2016. Available at: http://eumigrationlawblog.eu/the-paris-terrorist-attacks-failure-of-the-eus-area-of-freedom-security-and-justice/
06   See: Benjamin Cunningham, Salah Abdeslam spent three weeks in Slovakia. POLITICO Europe, April 7 2016. Available at: http://www.politico.eu/article/slovak-officials-confirm-terror-suspect-was-in-the-country-last-year-salah-abdeslam-isil-terror-attacks-paris-brussels/

b. Dealing with firsts:
the refugee crisis and Europe

The massive arrival of refugees in 2015 pointed to another weakness of the Schengen system: the fragility of the system if the member states cannot protect their external borders. The system had already been tested in 2011 when Italy, faced with a massive influx of migrants from Tunisia, had granted them temporary residence permits that allowed them to travel to other Schengen member states. France, believing that a number of these migrants would head to its border, promptly reinstated border controls, under the possibility afforded to it by the Schengen agreement text. This same situation, with significantly higher numbers, shook Greece in the summer of 2015, and the tremors were felt over Europe very quickly.

It would be easy here to find fault in Greece's lack of protection of its border, which is effectively extremely hard to do efficiently. Requests for support by the EU were met late despite early warnings by Greece of the potential breadth of the situation.

However, the real fault lies in the so-called 'Dublin system' EU rules on asylum, whereby the member state in which the applicant first enters is the one responsible for the processing the application. Because of the scale of the inflow and technical limitations, and also because almost all the migrants intended on moving on to other more migrant-friendly countries, Greece (and Italy, which also saw a large inflow) failed to stop and register refugees who went on via the Balkans route and Hungary to Austria, Germany and Scandinavian countries, facilitated by the lack of internal borders. The Dublin system also plans that refugees should be returned to their original point of registration, which countries such as Germany did not do, determining that Greece did not guarantee the safety of the asylum seekers. Therefore, the migration system that underpinned the proper functioning of Schengen was openly set aside by member states, which caused a chain reaction by other member states.

Due to this uncontrolled movement of population at Schengen's external borders, a certain amount of countries decided to reinstate temporary border checks over the course of 2015 and 2016: Germany, Austria, Slovenia, Sweden, Norway, Denmark, the Czech Republic, Slovakia, Belgium and Italy in response to the refugee flows, and France and Malta because of international events taking place on its territories. The first listed countries did so on the basis on Articles 23 and 25 of the Schengen Borders Code of 2006 (which codifies most of the relevant rules), quoting uncontrolled migration flows as the reason to enact such measures; article 23 requires that a "serious threat to public policy or internal security" in a member state be proved, while article 25 gives member states the possibility to immediately close its borders in case requiring swift action. Both articles enounce the

maximal length of a border closure, while article 24 specifies the procedure according to which closures can be carried out and give the Commission power to assess the proportionality of the measures and request any information or clarification necessary[07]. France had notified the Council that it would reinstate border checks already on October 15, due to the upcoming COP21 climate change conference; these controls were prolonged after the November 13 attacks and extended for the duration of the state of emergency[08].

While every single one of these border closures was concluded under legal mechanisms, the powerful symbolism of closed borders has however led to many grandiose proclamations about the death of Schengen. This is a severe overreaction that occults the real problems: the crisis concerns the mechanisms of reception of refugees and the asylum-granting process in the first place, and not the open borders themselves. As mentioned by Guild et al., "the introduction or removal of Schengen border controls should have no impact on the right of asylum-seekers to cross the external and internal Schengen borders to seek asylum", given the member states' obligations towards international law and the EU Charter of Fundamental Rights. Secondly, it remains true that despite the faults of the Dublin system, the vast majority of refugees who entered the Schengen area illegally were eventually registered, meaning that the EU border protections are still functional, despite being in dire need for increased resources. The real problem lies outside the borders and at the external borders themselves.

c. An unhelpful political context:
Schengen as a scapegoat?

Much of the negative feeling and fear-mongering brought forth by these events also has to do with the negative political dynamics that surround discussions of the European Union in the member states. The rise of populist, Euro-skeptical (if not outright hostile) political parties that have captured an increasing share of votes in almost all member states has created reactions that go counter the possibility of finding European answers to these issues. This is especially prevalent in the loaded context of national security that the refugee crisis and increased terrorism have brought forward, and an increased return to national solutions and inward-looking, territorialist, feelings within national populations.

Schengen is an ideal tool for politicians to decry the way the EU works, but this position also embodies interesting contradictions. As François Heisbourg has expressed it, "unlike in the eurozone, there is as yet no sign that supranational institutions akin to the European Central Bank

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07   France 24, Contrôles à la frontière française : l'UE demande des "clarifications" à la Belgique, 28 February 2016. Available at: http://www.france24.com/fr/20160228-controles-frontiere-commission-europeenne-schengen-belgique-france-calais
08   Which has been prolonged until July 26, in order to ensure the security of the Euro 2016 competition and the Tour de France.

and the European Stability Mechanism will be set up to allow Schengen to function under stress. And whereas the single currency continues to enjoy majority support, immigration is a hot-button issue."[09] The fact that Schengen is not embodied by any European institution means that the mostly intergovernmental processes that structure its evolution may fall prey to domestic considerations, which explains the prevalence of politicians – even from mainstream political parties – calling for the renegotiation of Schengen. Former French president Nicolas Sarkozy, who is now running for the chance to present himself again in 2017, has declared since 2014 that "Schengen 1 is dead" and that "the priority is to lay the foundations of Schengen 2"; his opponent on the far-right, Marine Le Pen, has called for "throwing Schengen in the trash" and announced that she would immediately renegotiate a French opt-out if she were elected President. A series of other politicians from Germany, the Czech Republic, Austria, the Netherlands have all called for a form of renegotiation of the current Schengen agreement, all based on the fact that the external borders are not being properly protected.

This again discounts the legal obligations that states have to offer assistance to refugee-seekers, especially the ones from Syria and Iraq, and leads Guild et al. to note that "it is hypocritical for certain member states to seek to push external border member states to breach their human rights obligations in order to relieve those members states farther from those external borders from having to step up to the plate to fulfil their human rights obligations."[10] This also discounts the fact that despite an undoubtedly pro-active response by the EU to find workable solutions by introducing the relocation mechanisms (the so-called 'quotas'), the response by certain member states delved into a negative spiral that doomed any plan from the outset and undermined the authority of the EU. Therefore, instead of working towards a manageable solution that would allay the burden of external border member states, the refusal only contributed to a degradation of the situation and increased scapegoating of the Schengen agreement.

In effect, it seems clear that levying blame upon Schengen was nothing but a pretext to decry a broken-down system of European solidarity and a way not to assume common responsibility for the faults of a system countries signed on to. The necessity of solidarity is a common occurrence in European discussions, and one which has often created tensions. To a certain extent, the application of solidarity often underpins policy agreements between various member states, such as in the case of Greek membership of the Eurozone or sanctions towards Russia. Here, similarly, the quota system was in fact a way for Central and Eastern European members to exercise solidarity (on a proportional basis) with other member states who were making significant commitments

to taking in asylum seekers. As mentioned above, a fictional, "different" Schengen with better controls would not have changed the situation regarding the legal status of these people.

Herein lies an interesting contradiction, noted especially in Central Europe, regarding this approach. While all four Visegrad 4 countries (the Czech Republic, Hungary, Poland and Slovakia) have strongly expressed their hostility to the quota system, accompanied by often-times violent rhetoric towards Muslim immigrants and Islam in general[11], the region has a great deal to lose by a renegotiation of the Schengen agreement and especially by a change to the open border system. The region's reliance on exports to Germany and foreign investments, but also the large communities of Central European citizens living in various other Schengen member states whose living conditions would be jeopardized, makes the V4 a very unlikely proponent of a renegotiated Schengen agreement that would undermine the fundamentals of the region's prosperity (see more on the potential economic impacts of non-Schengen below), one strong enough to prevent any change given their weight in the qualified majority voting system. Politicians seem to wary of that, Viktor Orban having declared: "Dublin is dead, Schengen lives", stressing that "free travel between Schengen countries must be protected", leading Guild et al. to conclude that "even the Hungarian authorities are unwilling to enter into a direct challenge to EU rule of law" and "appear reluctant to challenge the Schengen border free system directly". The tensions between the desire to renegotiate the Schengen agreement and the desire to keep the system alive are therefore manifested in the oft-repeated idea of excluding Greece from the arrangement.

Besides all legal considerations, the idea according to which this would allow to save Schengen as it is, represents a very short-term fix, with mostly domestic repercussions, that would have the effect of deconstructing the EU and further giving life to the idea of a two-speed Europe. A proper, European-wide asylum policy cannot be done without Greece, for instance, especially as refugees still continue to trickle in to the country's islands (further consideration of these questions below). These proposals continue to irresponsibly undermine the practice of solidarity and further contribute to creating regional divisions (on top of renationalizing European foreign policy). So far, the political challenges to undermining the unity of Europe on the future of Schengen seem to carry little weight behind them, especially as no governing party in a member state has explicitly stated its desire to renegotiate Schengen.

The Council has put Greece to the test, addressing a list of 50 recommendations that should be implemented by May 2016 in order to ensure that its external borders are better protected and that it manages migrant inflow appropriately.

Even if it is "a target that officials and diplomats acknowledged few expect Athens to meet"[12], this would open the possibility of the application of article 26 of the SBC, which plans for the possibility of imposing border checks for up to four periods of six months on the grounds of a lack of controls on Schengen's external borders.

Any such movement in this direction would undoubtedly represent a momentous phase in European (de)construction, which would require a mixture of pedagogy about the EU that has not been witnessed before, and sufficient long-term thinking in order not to jump from one crisis to another without proper contingency plans. The Council buying time to save Schengen, or sending it to a slow death by creating this possibility of a two-year reintroduction of border checks, requires a better understanding of the arguments that underline current thinking about the preservation of the old system or the creation of a new one.

2. Exploring options:
which future(s) for the Schengen agreement?

At the moment, the real issue seems to be related to the lack of trust between member states. They are the ones who drive the policies that underpin a proper implementation of the Schengen agreement. Therefore, any discussion about the future of Schengen should, at heart, be about how trust can be reinjected at the heart of the system. Trust is what allow member states to work together more efficiently. There is for now a need to identify where the faults of the current Schengen system truly lie: it seems to be its destiny to be accused of being the symbol of "fortress Europe" for some, and for others the ultimate symbol of a lax Europe. Considering the future of Schengen also goes hand-in-hand with thinking about how far the unpicking of the system should go, because the end of Schengen could very well give way to the end of European freedoms, and with them mark the end of decades of European construction.

a. Saving Schengen to save the EU?

Given the centrality of economy in the European project, the main argument behind the preservation of the Schengen system is the real risks of undermining the single market, and of severely limiting the flow of people, goods, services, and capital. In effect, it is not a stretch to say that if these fundamental 'four freedoms' were to be cut, that the whole EU would be under very severe stress.

At the same time, the economic arguments weigh even more in the context of the sluggish recovery of some European economies. The continued facilitation of cross-border exchanges has provided real economic value and created economic opportunities that would be hampered by stricter border controls, especially in the Benelux/Germany/France border regions – their combined weight also make unlikely any sort of renegotiation that would change these conditions. Various studies have pointed to the very real economic consequences of a non-Schengen and its impact on national GDPs, especially for export-oriented countries, whose economic models would have to be transformed. The Bertelsmann Stiftung[13] has worked on a scenario where border checks cause trucks to be inspected at crossing points, leading to higher product prices that could lead to a yearly reduction of EU GDP growth by 0.04%. The impact is more serious for countries such as Poland and the Czech Republic: the study estimates that the countries would gain to lose respectively more than 50 and 20 billion euros until 2025 (based on current growth estimates) if the overall price of products were to drop by 3%, and about 19 and 7,5 billion euros if prices drop by 1%. While event the higher figures represent a deviation of respectively 1.02 and 0.17% of national GDPs, the report foresees higher production costs, lower competitiveness of European producers, which could potentially affect the way foreign firms decide of foreign investments. (No doubt that a country like Slovakia, where Prime Minister Fico announced before the recent elections) Additionally, a study by the Ifo Institute[14] has found that removing border controls leads to an increase of 3.8% in goods being traded, or create the cost-saving equivalents of 0.7% for every internal border that a good needs to cross. This means that countries that are at the periphery of the Schengen area stand to benefit even more, as the costs of imported goods decrease as they cross multiple borders. Depriving countries of these benefits - especially the less rich countries that are at the periphery - would contribute to widening economic imbalances at the European level.

Additionally, touching the free circulation of goods would provide a death blow to any prospect of signing the Transatlantic Trade and Investment Partnership with the U.S. and hamper European standing on global markets by limiting its attractiveness; finally, it would create profound and durable inequalities between member states themselves, between the ones who are powerful enough to dictate their terms in the global market and those who aren't. In effect, any important change to the free circulation of goods, capital and services would create a true two-speed Europe with little prospects for eventual convergence.

The economic case for not suspending or shelving the Schengen agreement is therefore very strong. Given that the

12   Reuters, Heralding Schengen suspension, EU gives Greece three months to fix borders, 12 February 2016. Available at: http://uk.reuters.com/article/uk-europe-migrants-greece-schengen-idUKKCN0VL0ZE

13   Dr. Michael Böhmer, Jan Limbers, Ante Pivac, Heidrun Weinelt, Abkehr vom Schengen-Abkommen Gesamtwirtschaftliche Wirkungen für Deutschland und die Länder der Europäischen Union. GED Study, Bertelsmann Stiftung, 2016. Available at: https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/NW_Abkehr_vom_Schengen-Abkommen.pdf
14   Gabriel Felbermayr, Jasmin Gröschl, Thomas Steinwachs, The Trade Effects of Border Controls: Evidence from the European Schengen Agreement. Ifo Institute – Leibniz Institute for Economic Research at the University of Munich, April 2016. Available at: https://ideas.repec.org/p/ces/ifowps/_213.html

single market is the backbone of the European economy, European competitiveness and growth would be severely hampered, and that is without even considering the extra costs incurred by the means necessary to carry out checks. The short-term solutions of suspending Schengen therefore do not square with desires for continued growth. Commission President Jean-Claude Juncker has already made clear that restoring border "could kill off the internal market"[15], and the ball is now squarely in the camp of national leaders to explain to their populations the deep interest of their countries in maintaining free circulation of goods.

Less obvious than the economic argument, the idea of the Schengen agreement still being able to be a tool for the safety of Europe is one that needs to some extra visibility. As mentioned above, the inefficiencies in interstate cooperation, especially on counter-terrorism policies, were exploited by the terrorists who struck Paris and Brussels, and contributed to dismissing how useful a tool Schengen could be.

Schengen member state authorities have access to three different databases: the Schengen Information System, which stores information on people on objects in order to control people at borders, detain criminals and track persons and stolen goods; the Eurodac database, which came to fame with the refugee crisis as it stores the fingerprint of asylum-seekers in order to determine the country responsible for them under the Dublin system, and which can also be used partially for law enforcement purposes; and the Visa Information System which keeps the picture and fingerprints of applicants for a Schengen visa. On top of those three databases, EU countries nominally have access to each country's national database where DNA profiles are stored (the Prüm databases) and to the Interpol database of stolen and lost passports.

These databases cover a wide range of law enforcement tools that member states have unfortunately not used. The idea of a "European CIA"[16], which seems to be agitated like a scarecrow since the 2004 Madrid attacks, stems from the frustration towards the willingness of large countries to share data and properly use the existing mechanisms. As Björn Fägersten puts it, "As long as it is only small states with limited capacity (or the European Commission that has even less), which are calling for more centralized cooperation, the prospects for success are slim."[17] Given that the challenge of terrorism is here to stay, the incentives for closer cooperation between member states will not disappear; a country like France that has made such a strong push for the Passenger Name Record system to be agreed upon by the European Parliament would be nothing short of hypocritical if it did not

increase the extent to which it shares information with other member states. There is perhaps here a stronger role to find for the Commission, in acting as an honest broker, but also eventually opening up the idea of coercive measures, in order to enhance the level of intelligence-sharing.

Therefore, in enhancing our security, perhaps the only solution is to want "more Europe". While this may be somewhat counter-intuitive and certainly not the direction that certain European politicians would want to follow, the centrality of the security agenda today means that a failure on this front would have deep consequences for popular trust in the European project. A return to a completely national system promises no better results, especially in that it would create even more mistrust between member states at a moment when the real need is to recreate this trust. How the EU itself will be able to spearhead these advances in cooperation will determine the extent to which the Schengen agreement can live on to see another decade – and more. The European political project would have a very hard time to recover from closed borders and increasing mistrust between its member states.

b. New Schengen:
beyond the speaking points

The idea of renegotiating the Schengen agreement, in effect moving towards a Schengen 2, suffers from the fact that concrete proposals are dime a dozen. To a certain extent, the Commission has preempted any sort of dynamics from taking on by opening up the possibility of border checks for a period of up to two years. Besides the immediate message of reassurance send to member states about their ability to exercise better checks at their internal borders, there is also an element of buying time in order to better assess the future of the agreement. More importantly, putting Schengen on the backburner allows the EU to deal with the more important issues: defining a common asylum policy, establishing a stronger role for Frontex and the European border guards, and generally putting in place the mechanisms that will allow for the reinforcement of Schengen's external borders.

The external borders are precisely one of the biggest points of contention for the opponents of the current system, who believe that there is no way to ensure the member states' security if one country does not take the appropriate measures. Nicolas Sarkozy, who has come out regularly since 2014 in support of a Schengen 2, sees as a prerequisite to any discussion the possibility of imposing sanctions on countries who would be "failing" in their responsibility of protecting the area's external borders, meaning a suspension or the definitive exclusion. This is being framed under the notion of "solidarity"[18] that would no longer be fulfilled by the said member state.

15   Georgi Gotev, Juncker: Restoring borders will kill internal market. Euractiv.com, 15 January 2016. Available at: http://www.euractiv.com/section/justice-home-affairs/news/juncker-restoring-borders-will-kill-internal-market/
16   Björn Fägersten, EU doesn't need a CIA – but better intelligence would help. Euractiv.com, 16 October 2015. Available at: http://www.euractiv.com/section/global-europe/opinion/eu-doesn-t-need-a-cia-but-better-intelligence-would-help/
17   Björn Fägersten, For EU eyes only? Intelligence and European security. European Union Institute of Security Studies, 2016, p. 3. Available at: http://www.iss.europa.eu/uploads/media/Brief_8_EU_Intelligence_Cooperation.pdf

18   Les Républicains, Pour un Schengen II, 27 August 2015. Available at: http://www.republicains.fr/arguflash_pour_un_schengen_2_20150827

The other argument behind the call for a Schengen 2 lies in the desire to have a system that can efficiently help manage migratory pressures on Europe. In the thinking of the French right, states could be part of Schengen 2 only after having adopted a same integration policy, meaning common rules for the access of immigrants to the labor market, education and social security systems, and the same immigration policy, meaning the same rules regarding asylum-seeking. This harmonization would, according to Sarkozy, prevent "a foreigner from entering the Schengen space, and once that is done, to choose the country where social benefits are the highest"[19], citing the unsustainability of such "social tourism", as it is often pejoratively described, for our social compounds. Viktor Orban also recently joined the rank of politicians desiring a renegotiation of Schengen, despite having earlier expressed the desire to keep the benefits of it. Orban's 10-point plan for "Schengen 2.0"[20] are in effect a pot-pourri that mixes a lot of different perspectives, with no ulterior motive other than the rejection of the quota system, which constitutes point 10. The other proposals range from the self-evident ("external borders should be protected" or "the Common Europeum Asylum System should be corrected") to some that are not in the scope of the Schengen agreement itself ("closed and secured reception points should be established outside of the EU", the so-called 'hotspots' in non-EU countries that Sarkozy also supports). The proposals also put an emphasis on the support of third countries and in addressing the root causes of mass immigration to Europe, which will represent a key area for the EU's foreign policy going forward.

Therefore, as we see from the arguments of the new Schengen proponents, the idea of Schengen seems to be limited to the problems that are encountered because of the open border system and underperforming protection of external borders. No politician, even on the extreme-right, has questioned the importance of cooperation between the police and justice, or has even decried its inefficiency. This underscores the extent to which calling for a new Schengen seems to be little more than pandering to domestic constituencies, and calls into question how effective and different a Schengen 2, as proposed, would be. The contingency plans of the current system have worked, and even the proposal floated by the Dutch government of a "mini-Schengen"[21] was quickly swept aside[22], and refused by the V4 countries themselves[23]. It is naturally in the prerogative of political opposition leaders to

offer new solutions. However, the risk of hammering a new idea that doesn't offer new solutions is to continue to irresponsibly delegitimize the EU. The ideas of new Schengen therefore express the political gains that can be had from surfing on the anti-EU wave, and to a certain extent express different roles for the role of the European Union in providing security and prosperity. Therefore, these ideas do more to express the tensions between the movement towards more integration and the new desire of sovereignty, rather than expressing discontent about the Schengen agreement itself.

c. Between pious hopes and political posturing:
can Schengen be renegotiated?

While suspending Schengen and reestablishing controls at the internal borders has proven to be possible, under close supervision by the Commission regarding the proportionality of measures, the wished-for renegotiation of Schengen is a much more complex process than Sarkozy and others may have let on.

The renegotiation of the treaties that govern Schengen cooperation would necessitate an agreement of all 28 EU member states (plus Iceland, Norway and Switzerland) and an eventual ratification of the new treaty by a legislative vote or a referendum. This raises a certain amount of difficulties that make such treaty change unlikely, especially if the process is carried by politicians who are not in government at the moment, such as Nicolas Sarkozy[24]. Convincing this large group of countries that a treaty change is necessary is nothing less than a herculean task, and would require for much bolder and significant ideas to be presented than the ones that are currently on offer. The desirability of treaty change is undoubtedly low in Europe at the moment. Added to that is the fact that the poor experience of the Lisbon treaty still weighs heavily in European decision-makers' minds (especially in France and the Netherlands, whose referendums results rejected the Lisbon Treaty), and that the movement towards consulting populations regarding EU issues may only offer sub-optimal results, such as shown recently by the vote in the Netherlands on the Ukraine-EU association agreement, or the referendum to come this fall in Hungary on the desirability of the quota system[25]. The prospects of continued European integration by referendum are all but doomed, and it is foreseeable that no European politician will take his or her country in a decisive pro-integration stance in the near future, whatever the result of the BREXIT vote is.

Regarding the proposal to suspend or exclude a member state from the Schengen agreement, which has gained in popularity among Schengen-skeptics, the issue also

19   Lepoint.fr, "Il faut suspendre immédiatement Schengen !", 21 May 2014. Available at: http://www.lepoint.fr/europeennes-2014/exclusif-nicolas-sarkozy-s-exprime-dans-le-point-21-05-2014-1826581_2095.php

20   Visegrad Post, Orbán's Schengen 2.0 proposition, 19 April 2016. Available at: http://visegradpost.com/en/2016/04/19/orbans-schengen-2-0-proposition/

21   In a zone including Austria, Germany, Belgium, Luxembourg and the Netherlands, with original plans for setting up transit camps for migrants outside those borders. See: Reuters, Dutch government floats 'mini-Schengen' idea to EU partners, 19 November 2015. Available at: http://www.reuters.com/article/us-europe-migrants-netherlands-idUSKCN0T81J720151119

22   Adela Denkova et al., Mini-Schengen not an option, for now. Euractiv.com, 25 January 2016. Available at: http://www.euractiv.com/section/central-europe/news/mini-schengen-not-an-option-for-now/

23   CTK Ceske Noviny, Proposals for limiting Schengen unacceptable, 3 December 2015. Available at: http://www.ceskenoviny.cz/zpravy/proposals-for-limiting-schengen-unacceptable-v4-pms-in-prague/1288807

24   And whose prospects of returning to power are getting slimmer by the day.
25   Reuters, Hungary to hold EU migrant quota referendum by October, 3 May 2016. Available at: http://www.reuters.com/article/us-europe-migrants-referendum-idUSKCN0XU10M

seems to offer complications. Excluding a member or even changing the list of members would also require a revision of the treaty, contrary to the revision of its rules (such as the ones modifying the Schengen Border Code in 2006) which can be done by a regulation: therefore, this prospect is also unrealistic. The other proposal made by Nicolas Sarkozy, to implement a European policy on integration, is not planned by treaties, and remains a national competence that the EU can coordinate but not impose.

The gap between the proposals and the reality of their implementation therefore underscores even further their political content, rather than a true desire to improve EU mechanisms. These proposals also do not touch upon the eventual integration of Romania, Croatia, Bulgaria and Cyprus into the Schengen framework, which should always remain one of the goals of the EU.

Conclusion

This paper assesses that the future of Schengen, despite the tensions, is safe. Emergency mechanisms have kicked in and allowed countries to safeguard their interests when they deemed it to be necessary. The refugee crisis and the increase of terrorism on European territory have proved how the EU function as an instrument where 28 countries work together, and what can happen when the collective mechanisms that ensure our safety are being swept aside in the name of protecting narrow national interests. They have also shown even further that criticism of the EU is often lazy and suggestions for improvement based on an unrealistic view of what the EU can concretely do. The EU is not a crisis management tool and was not designed to be; creating false expectations about what it should deliver (and criticizing it when it does, such as on the quota proposal – irrespective of the merits of the proposal) shows disingenuity and undermines the European political project. At the end, it is not Schengen that is being debated, but the direction of the political project that we Europeans can agree on, and the extent to which we believe that it is important that we have collective tools to answer the crises that knock at our front door, or even inside our own house.

The summer of 2015 is no doubt important in giving Europe the tools it needs to be a global actor and a responsible stakeholder. The publication of the European Union Global Strategy, planned so far for the Council meeting on June 24 (the day after the UK EU membership referendum), should follow with a robust discussion about the tools that the EU should have at its disposal to assume these responsibilities[26], and by extension, to give the Schengen agreement a new lease on life. Taking on these responsibilities will involve "a whole of EU government" approach, which is necessary in order to breathe a new energy into the European political project.

In order to save Schengen, Europeans should be able to:

- agree to a new Single European Asylum System in order to insert more predictability into the system and make the burden more tolerable for countries such as Greece and Italy who are at the forefront of incoming migration flows. The EU-Turkey deal represents a first step, albeit a temporary one, that should be accompanied by larger means for the EU-based hotspots, the creation of safe and legal ways for asylum seekers to reach Europe, and finding an agreement on a fair policy of return for asylum seekers whose requests were denied.

- Significantly reinforce the means of Frontex, by expanding its mandate and capabilities. Its role can no longer be limited to monitoring and the coordination of national forces, and it should instead be able to intervene rapidly and efficiently at the request of a member state if it deems that is not able to properly control its external border. Frontex would be further reinforced by the creation in its structure of a European Border and Coast Guard (which is currently under discussion) which would be dedicated to reinforcing the patrolling of external borders.

- Finally commit itself, where necessary, to work with NATO on intelligence sharing, and to address the root causes of mass migration to Europe. Existing cooperation in the Aegean Sea represents a good model, which should also be expanded to the Libyan coast and potentially to other territories where the joint capabilities of the two institutions can be efficiently used in tackling organized crime and reinforcing the capacities of local actors. The EU will not survive if it is not proactive, and the responsibility rests squarely on its member states.

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26   For further reading, see: Martin Michelot, Embedding NATO into the European Union Global Strategy: the missing link?, Brussels Monitor, EUROPEUM Institute for European Policy, May 2016. Available at: http://europeum.org/data/articles/monitor-michelot-eu-nato.pdf