

Free movement of people: Schengen at risk

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I. Introduction

1. Legal basis

Article 3(2) of the Treaty on European Union (TEU); Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V TFEU.

2. Objectives

The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject, in the 1957 Treaty establishing the European Economic Community (1.1.1, 3.1.3 and 3.1.4), covered the free movement

of workers and freedom of establishment, and thus individuals as employees or service providers. The Treaty of Maastricht introduced the notion of EU citizenship to be enjoyed automatically by every national of a Member State. It is this EU citizenship that forms the basis of the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right, which is also included in the general provisions on the Area of Freedom, Security and Justice.

3. Achievements

A. The Schengen area

The key milestone in establishing an internal market with free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) came within the sphere of intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the ‘Schengen acquis’ (5.12.4) into the Treaties. Today, under the Lisbon Treaty, it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible for accession countries to ‘opt out’ since the EU enlargement of 1 May 2004 (Article 8 of the Schengen Protocol).

Participating countries

There are currently 26 full Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Liechtenstein (which have associate status). Ireland and the United Kingdom are not parties to the Convention but can ‘opt in’ to selected parts of the Schengen body of law. Denmark, while part of Schengen, enjoys an opt-out for

any new JHA measures, including on Schengen, although it is bound by certain measures under the common visa policy. Bulgaria, Romania and Cyprus are due to join, though there are delays for differing reasons. Croatia began the application process to accede to the Schengen area on 1 July 2015.

Scope

The Schengen area's achievements include:

- the abolition of internal border controls for all persons;
- measures to strengthen and harmonise external border controls: all EU citizens need only show an identity card or passport to enter the Schengen area (5.12.4.); a common visa policy for short stays: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa (see Annex II of Council Regulation (EC) No 539/2001) may obtain a single visa, valid for the entire Schengen area;
- police and judicial cooperation: police forces assist each other in detecting and preventing crime and have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state; there is also a faster extradition system and mutual recognition of criminal judgments (5.12.6. and 5.12.7.);
- the establishment and development of the Schengen Information System (SIS) (5.12.4).

Challenges

While the Schengen area is widely regarded as one of the primary achievements of the European Union, it has been placed under considerable strain by the unprecedented influx of refugees and migrants into the EU in 2015. The sheer numbers of new arrivals prompted Germany – followed by Austria and Slovenia – to temporarily reintroduce checks at the internal Schengen borders in September 2015, as provided for in the Schengen Borders Code. The ongoing challenges have served to underline the inextricable link between robust external border management and free movement inside those external borders.

B. Free movement of EU citizens and their family members:

First steps

In a bid to transform the Community into an area of genuine freedom and mobility for all its citizens, the following directives were adopted in 1990 in order to grant residence rights to persons other than workers: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of

Member States who do not enjoy this right under other provisions of Community law and for members of their families).

Directive 2004/38/EC

In order to take account of the large body of case-law linked to the free movement of persons, a new comprehensive directive was adopted in 2004, namely Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The new directive repealed a number of earlier directives, including the three mentioned above, and brought together the piecemeal provisions scattered across different pieces of legislation and augmented by jurisprudence. It is designed to encourage Union citizens to exercise their right to move and reside freely within the Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, and to limit the scope for refusing entry or terminating the right of residence. Under Directive 2004/38/EC,

family members include: the spouse; the registered partner if the legislation of the host Member State treats registered partnerships as equivalent to marriage; direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; and dependent direct relatives in the ascending line and those of the spouse or registered partner.

- Rights and obligations:

For stays of under three months: the only requirement for Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.

For stays of over three months: the right of residence is subject to certain conditions. EU citizens and their family members — if not working — must have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. Union citizens do not need residence permits, although Member States may require them to register with the authorities. Family members of Union citizens who are not nationals of a Member State must apply for a residence permit, valid for the duration of their stay or a five-year period.

Right of permanent residence: the directive gives Union citizens the new right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is no longer subject to any

conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.

Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health: Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Under no circumstances may an expulsion decision be taken on economic grounds. Measures affecting freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a sufficiently serious and present threat affecting the fundamental interests of the state. Previous criminal convictions do not automatically justify expulsion. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for such a measure. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he/she has resided in the host country for ten years or if he/she is a minor. Lifelong exclusion orders may not be issued under any circumstances and persons concerned by exclusion orders may apply for a review after three years. They also have access to judicial review and, where relevant, administrative review in the host Member State.

Finally, the directive enables Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred in the event of abuse of rights or fraud, such as marriages of convenience.

The implementation of Directive 2004/38/EC

The directive has been beset by problems and controversy, with evidence emerging of serious shortcomings in implementation and continuing obstacles to free movement. The directive had to be transposed into national law and implemented by all Member States by 30 April 2006. On 10 December 2008, the Commission presented to the Council and the European Parliament a report on the application of the directive, which highlighted a number of serious problems with the transposition provisions and, in 2009, it issued a communication on guidance for better transposition and application of the directive. Since then, the Commission has launched infringement proceedings against a number of Member States for incorrect or incomplete transposition of the directive, but problems persist, as attested, for example, by the large volume of petitions submitted to the European Parliament on the subject and the considerable caseload before the Court of Justice testing some of the grey areas of the directive. However, it is not just barriers to free movement that have sparked controversy, but the perceived abuse of free movement rules by EU citizens for the purposes of “benefit tourism”. While all the evidence points to very low numbers for

intra-EU migrants accessing social security in a Member State other than their own, the issue is politically charged and has led to calls from some Member States for reform –either of the 2004 directive or of the Treaties themselves.

Transitional period for workers from new EU Member States

The Treaty of Accession signed on 16 April 2003 allowed the ‘old’ EU-15 Member States to apply ‘transitional arrangements’ to nationals of the Member States which acceded to the EU in 2004. This meant that certain limitations of the free movement of persons could be maintained for citizens of the ‘new’ Member States for a transition period of up to seven years from the date of their accession. In the case of Bulgaria and Romania, the period ran from 1 January 2007 until 1 January 2014 and, in the case of Croatia, has applied since 1 July 2013.

(source:

[http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/020103/04A_FT\(2013\)020103_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/020103/04A_FT(2013)020103_EN.pdf)

II. Schengen at the EU institutions

1. EU Parliament

Parliament has long fought hard to uphold the right to free movement, which it regards as a core principle of the European Union. In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU, Parliament calls on the Member States to comply with the Treaty provisions on EU rules governing freedom of movement and to ensure that the principles of equality and the fundamental right of freedom of movement are upheld for all Member States. In response to the ongoing debate surrounding benefit tourism, it strongly contests calls from some European leaders for changes to and restrictions on the free movement of citizens with the end of the transitional arrangements for the free movement of workers from Bulgaria and Romania on 1 January 2014. Parliament also rejects any proposal to cap numbers of EU migrants as being in breach of the EU Treaty principle of the free movement of people. It calls on the Commission and the Member States to ensure the strict enforcement of EU law so that all EU workers are treated equally and not discriminated against as regards access to employment, working conditions, remuneration, dismissal, and social and tax benefits. Finally, it reminds Member States that it is their responsibility to combat misuse of social welfare systems, whether perpetrated by their nationals or by other EU citizens.

With regard to the pressure placed on the Schengen area by the influx of refugees and migrants in 2015, Parliament, in its resolution of 17 September 2015 on migration and refugees, reiterated “its commitment to open borders within the Schengen area, while ensuring effective management of external borders”, and stressed “that the free



movement of people within the Schengen area has been one of the biggest achievement of European integration”.

(source:

[http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/020103/04A_FT\(2013\)020103_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/020103/04A_FT(2013)020103_EN.pdf))

Freedom of movement: why Parliament acted to preserve the EU's biggest achievement

Article - Schengen – 19-06-2013

<http://www.europarl.europa.eu/news/en/news-room/20130617STO12374/Freedom-of-movement-why-Parliament-acted-to-preserve-EU's-biggest-achievement>

Civil liberties committee to debate situation at Schengen internal borders

LIBE Press release - Schengen – 30-09-2015

<http://www.europarl.europa.eu/news/en/news-room/20150928IPR94791/Civil-liberties-committee-to-debate-situation-at-Schengen-internal-borders>

The EU needs to overcome fear and divisions to safeguard Schengen, say MEPs PLENARY SESSION Press release - Immigration / Asylum policy / Schengen – 02-02-2016

<http://www.europarl.europa.eu/news/en/news-room/20160129IPR11903/The-EU-needs-to-overcome-fear-and-divisions-to-safeguard-Schengen-say-MEPs>

MEPs debate relocation, hotspots, Schengen and Dublin rules with Avramopoulos Immigration - 14-01-2016

Migration Commissioner Dimitris Avramopoulos joined the Civil Liberties Committee on Thursday to debate the implementation of measures to tackle the migration and refugee crisis, including relocation and work in the reception “hotspots”. MEPs also raised the issue of the future of Schengen as well as the need for a review of the Dublin system.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bIM-PRESS%2b20160111IPR09430%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

Migration: debate on Coast guard and external border checks

Press release - Justice and home affairs – 29-02-2016

<http://www.europarl.europa.eu/news/en/news-room/20160229IPR16385/Migration-debate-on-Coast-guard-and-external-border-checks>

Plans to turn the EU’s Frontex border agency into a common border and coast guard, which in emergencies could be deployed even without the approval of the country concerned, were presented by the Commission and the Dutch Presidency and debated by Civil Liberties Committee MEPs on Monday. MEPs also debated legislative proposals on systematic checks at external borders and a European travel document.

The Commission presented the border and coast guard package on 15 December 2015 to ensure strong and shared management of the EU’s external borders. The package includes:

- a regulation to establish the European border and coast guard,
- a revision of the Schengen Borders Code to introduce mandatory systematic checks on EU citizens entering and leaving the EU, and
- a European travel document for the return of illegally staying third country nationals.

Next steps

European Border and Coast Guard regulation, rapporteur Artis Pabriks (EPP, LV):

- presentation of the draft report: 11 April (TBC)
- deadline for amendments: 20 April
- vote in committee: May (TBC)

Revision of the Schengen Borders Code, rapporteur Monica Macovei (ECR, RO):

- presentation of the draft report: 20 April (TBC)
- deadline for amendments: 27 April (TBC)

European travel document, rapporteur Jussi Halla-aho (ECR, FI):

- presentation of the draft report: 20 April (TBC)
- deadline for amendments: 27 April (TBC)

2. EU Commission

Schengen agreement 30 years

Europe is celebrating the 30th anniversary of the Schengen Agreement. This was signed on 14 June 1985 and marked the start of the process that abolished the controls at the borders between the Member States (the so-called "internal borders"). The first borders were opened ten years later, in March 1995.

Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship said: *"The Schengen agreement has fundamentally transformed the European landscape. Removing the control at the borders between the Member States is one of the most outstanding achievements of European integration visible to every cross-border traveler. It would not have been possible without the mutual trust between the Member States. Mutual trust and close cooperation is something that we need today and I hope that this anniversary will mobilise us to join our efforts in addressing the common challenges not only in the Schengen cooperation, but in the entire area of migration."* The original signatories of this Agreement were Belgium, France, Germany, Luxembourg and the Netherlands. It was integrated into the legal framework of the EU with the Treaty of Amsterdam in 1999.

The present-day Schengen area covers 26 countries: all EU Member States except

UK, Ireland, Cyprus, Bulgaria, Romania and Croatia, plus the non EU countries Iceland, Norway, Switzerland and Liechtenstein. Estimates show that over 1.25 billion journeys within the Schengen area made every year. Apart from abolishing the controls at the internal borders, the Schengen cooperation created common rules covering the checks at the external borders, harmonised the conditions of entry and the rules on visas for short stays, enhanced police cooperation and strengthened the cooperation between the judicial authorities.

Evaluation and monitoring

The Schengen evaluation and monitoring mechanism, in place to monitor the implementation of the Schengen acquis, was strengthened to ensure an effective, consistent and transparent application of the Schengen rules and regulations by the Schengen Member States, while at the same time maintaining a high level of mutual trust between those Member States.

The strengthened mechanism covers all aspects of the Schengen acquis, including external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at the internal borders and the functioning of the authorities applying the relevant parts of the Schengen acquis. It, furthermore, introduces the possibility to carry out unannounced on-site visits and gives clearer rules for the set up and adoption of evaluation reports and recommendations, as well as for the follow-up of identified deficiencies in Member State's external border control. At the same time, the Commission is given an overall coordinating role for the organization and implementation of the mechanism. This role is to be executed in close cooperation with the Member States.

In practice, the strengthening of the mechanism translates in Schengen evaluations to Member States implemented based on a multi-annual and an annual evaluation programme - for the period 2015-2019, 5 to 7 Member States will be evaluated each year, beginning in 2015 with the evaluation of Austria, Belgium, Germany, Liechtenstein and the Netherlands - and resulting in evaluation reports with concrete recommendations for remedial action. Subsequently, the Member State concerned is required to submit an action plan setting out how it intends to remedy the weaknesses identified. The implementation of the plan will be reviewed on a regular basis. In addition, Member States can be assisted in fulfilling the recommendations via practical and/or financial measures from the Commission, Frontex or other EU bodies. Possible re-visits will allow ensuring that the changes have been implemented. In the exceptional circumstances where persistent serious deficiencies in a Member State's control of its external borders have been identified and when it is clear that measures taken by the evaluated Member State are not sufficient to ensure the adequate remedy of these deficiencies, border controls may be reintroduced temporarily. However, this is a step of last resort and would be used only if all other

measures like operational support from Frontex were ineffective in mitigating a serious threat.

(source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/schengen-evaluation/index_en.htm)

Temporary Reintroduction of Border Control

The Schengen Borders Code provides Member States with the capability of temporarily reintroducing border control at the internal borders in the event that a serious threat to public policy or internal security has been established.

The reintroduction of border control at the internal borders must remain an exception and must respect the principle of proportionality. The scope and duration of such a temporary reintroduction of border control at the internal borders is limited in time and should be restricted to the bare minimum needed to respond to the threat in question. Reintroducing border control at the internal border should only ever be used as a measure of last resort. The reintroduction of border control is a prerogative of the Member States. The Commission may issue an opinion with regard to the necessity of the measure and its proportionality but cannot veto such a decision if it is taken by a Member State.

Current Temporarily Reintroduced Border Controls

- Temporarily reintroduced border controls in the context of *events requiring immediate action*.

Denmark (4 January - 23 February 2016) big influx of persons seeking international protection: all borders with particular focus on the sea and land borders with Germany

- Temporarily reintroduced border controls in the context of *foreseeable events*:

Norway (15 January – 14 February 2016) all borders with focus on ports with ferry connections to Norway via internal borders

Sweden (10 January – 9 March 2016) all borders, with special focus on Southern and Western harbours and Öresund Bridge between Denmark and Sweden

Austria (16 November 2015 - 15 February 2016), all borders but with special focus on the Slovenian-Austrian land border; the border can be crossed only at the authorised border crossing points (land and airports)

Germany (14 November - 13 February 2016), all borders, with special focus on the German-Austrian land border.

France (13 November – 27 March 2016) the emergency state as introduced on the French territory further to the terrorist attacks in Paris.

Foreseeable cases (Art 23 and 24 SBC)

For foreseeable events (e.g. sport events), the duration of the measure is limited to thirty days or for the foreseeable duration of the threat if that threat exceeds thirty days. If required, the reintroduction of border control can be prolonged for renewable periods of up to thirty days. The total period shall not exceed six months.

The Member State shall notify the Commission and the other Member States at least four weeks before the planned reintroduction of border control. An exception is made if the circumstances giving rise to reintroduced border control become known less than four weeks before the planned reintroduction.

Cases requiring immediate action (Art 25 SBC)

Where immediate action needs to be taken in order to adequately respond to a threat, a Member State may reintroduce border control for ten days without prior notification. The Commission and the Member States must be informed of such decisions immediately. The reintroduction can be prolonged for periods of up to twenty days. The overall period shall not exceed two months.

Cases where exceptional circumstances put the overall functioning of the Schengen area at risk (Article 26 SBC)

In exceptional circumstances, where the overall functioning of the Schengen area is put at risk as a result of persistent serious deficiencies relating to external border control, and insofar as those circumstances constitute a serious threat to public policy or internal security, the Council may, based on a proposal from the Commission, recommend that one or more Member States decide to reintroduce border control at all or at specific parts of their internal borders. Such a recommendation shall only be made as a last resort and as a measure to protect the common interests within the Schengen area, where all other measures, in particular those referred to in Article 19a(1) of the Schengen Borders Code, are ineffective in mitigating the serious threat identified.

The existence of serious deficiencies in the carrying out of external border control must be first identified in an evaluation report, as drawn up pursuant to Regulation 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis. The Member State concerned has three months in which to report on the implementation of the relevant action plan further to such an evaluation report. After the expiry of this period, if the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 of the Schengen Borders Code where all the conditions for doing so are fulfilled.

3. Council of the EU

Working Party for Schengen Matters

The Working Party for Schengen Matters meets in four different formations, each dealing with a particular area within the Schengen system.

- SCHEVAL deals with the evaluation mechanism
- SIS SIRENE deals with issues related to the use of the Schengen Information

System (SIS) and handles organizational and operational questions relating to the cooperation between SIRENE bureaux.

- SIS-TECH processes, if necessary, technical questions relating to the Schengen Information System (SIS)
- Schengen Acquis and coordinates all legislative matters relating to the application of the Schengen acquis.

III. Publications:

1. Scientific publications

“The Schengen Convention and the Schengen acquis: 25 years of evolution”: Gerrit Huybreghts, *ERA Forum*, 2015, Vol.16(3), p. 379-426

The intimate relationship between security, effectiveness, and legitimacy: a new look at the Schengen compensatory measures: Morten Jarlbæk Pedersen, *European Security*, 02.10.2015, Vol. 24(4), p. 541-559.

Abstract: The so-called Schengen compensatory measures such as the Schengen Information System (SIS) or the European Dactylographic System (Eurodac) have been the centre of much attention. However, the research on these security measures has focused almost solely on their effect on liberty, human rights, and the like. Not much attention has been given to the actual effectiveness of the security remedies taken in the European Union (EU) to compensate for the abolition of border controls, despite effectiveness being an obvious source of legitimacy in the realm of security. This article takes a first step in the direction of correcting this neglect and develops the foundations for an analytical framework focusing on effectiveness and legitimacy. The framework is illustrated through a minor analysis of the legal and institutional set-up of SIS and Eurodac as examples pointing to sources of ineffectiveness in the very set-up of the databases.

The European Parliament as an actor in EU border policies: its role, relations with other EU institutions, and impact: Katrin Huber, *European Security*, 03 July 2015, Vol. 24(3), p. 420-437.

Abstract: This contribution focuses on the European Parliament (EP) as an actor in European Union (EU) border policies. It situates the Parliament in the dynamics of the Schengen project and discusses the distinct role it plays therein, as well as its impact thereon. The article argues that the EP managed to establish itself, years before the entry into force of the Lisbon Treaty, as a credible actor in border policies able to bring the citizens’ perspective into EU border policies. With its keen interest in the Schengen area as an area in which citizens can move freely without being subject to border controls, and with its focus on fundamental rights, it played, and continues to

do so, a role in ensuring that “Schengen works”. The article presents its powers and the interplay with the other EU institutions, mainly on the basis of a number of key examples.

EU Justice and Home Affairs: institutional and policy development: G Vermeulen, Wendy De Bondt, Editorial Maklu, Antwerpen 2015.

Abstract: "This book offers insight into the historical, institutional, and topical development of EU policy in the area of justice and home affairs, while also being embedded within a broader international context. The main part of the book, dedicated to the EU, is therefore preceded by a section on cooperation in the Schengen Area (an area comprising 26 countries), respectively the Council of Europe, without a proper understanding of which the development and functioning of the EU would be hard to fully grasp. Before addressing the actual policy dimension, all parts start with a historical introduction and a sketch of the institutional structures and functioning."

2. Think-tanks

L'agenda migratoire de l'UE: un nouvel élan bienvenu, António Vitorino and Yves Bertoncini, *Huffingtonpost France*, 17.05.2015

http://www.huffingtonpost.fr/antonio-vitorino/immigration-union-europeenne_b_7300074.html?utm_hp_ref=france

Why the Schengen agreement might be under threat, *Economist*, 24.08.2015

<http://www.economist.com/blogs/economist-explains/2015/08/economist-explains-18>

Is Schengen dead?, Judy Dempsey, *Carnegie Europe*, 26.08.2015

<http://carnegieeurope.eu/strategieurope/?fa=61105>

The Schengen Area under threat: problem or solution?, Martina Menghi, Yves Pascouau, *Notre Europe-Jacques Delors Institute*, 02.09.2015

<http://www.institutdelors.eu/media/synthesisschengenmenghipascouausept2015.pdf?pdf=ok>

Europe Rethinks the Schengen Agreement, *Stratfor*, 02.10.2015

<https://www.stratfor.com/analysis/europe-rethinks-schengen-agreement>

Commission: Schengen suspension could be extended, 60% of migrants should be sent back, *EUrActiv*, 26.01.2016

<http://www.euractiv.com/sections/global-europe/commission-schengen-suspension-could-be-extended-60-migrants-should-be-sent>

Fit for purpose? The Facilitation Directive and the criminalization of humanitarian assistance to irregular migrants, Sergio Carrera, Elspeth Guild, Ana

Aliverti, Jennifer Allsopp, Maria Giovanna Manieri and Michele LeVoy with Mirja Gutheil and Aurelie Heetman, *CEPS*, 29.01.2016

<https://www.ceps.eu/publications/fit-purposethe-facilitation-directive-and-criminalisation-humanitarian-assistance>

The economic consequences of Schengen, Guntram B. Wolff, *Bruegel*, 02.02.2016

Abstract: The president of the European Commission, Jean-Claude Juncker, recently warned that “without Schengen and the free movement of workers, of citizens, the euro makes no sense.” And in fact, it is the single currency and the ability to travel freely without identity documents that most Europeans associate with the EU. So how does it really stand with Schengen and the euro?

<http://bruegel.org/2016/02/the-economic-consequences-of-schengen/>

Schengen's stress test: political issues and perspectives, Yves Bertoncini and António Vitorino, *Notre Europe- Jacques Delors Institute*, 16.02.2016

António Vitorino and Yves Bertoncini analyse the civic and diplomatic roots of the crisis in the Schengen area in order to diagnose its scale and to identify a potential way out over the coming months.

<http://www.delorsinstitute.eu/011-22435-Schengen-s-stress-test-political-issues-and-perspectives.html>

Irregular migration, trafficking and smuggling of human beings: policy dilemmas in the EU, Sergio Carrera, Elspeth Guild, *CEPS*, 22.02.2016

<https://www.ceps.eu/publications/irregular-migration-trafficking-and-smuggling-human-beings-policy-dilemmas-eu>

IV. Current issues: migration crisis and the suspension of Schengen

A shared European policy strategy for growth, jobs and stability, Ministry of Economy and Finance, Italian Government, February, 2016

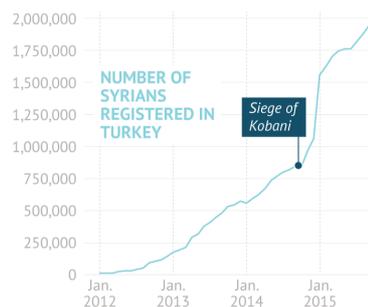
http://www.rai.it/dl/docs/1456154316893Shared_Policy_Strategy.pdf

Gain a deeper understanding of migration patterns and the unique challenges they pose for European policymakers

http://cdn2.hubspot.net/hubfs/515194/B2C_content/Steve_-_New_-_Revamped_WF_PDFs/europe-migrants-updated_160122.png?t=1456198804564

SYRIA, EUROPE, AND THE MIGRATION CRISIS

A surge of migration to Europe emerged in 2015, as growing numbers of Syrians made the journey through Greece and the Balkans to Germany. This led to political problems both within and between countries.



EASTERN MEDITERRANEAN SEA ARRIVALS

Dec. 2014	Dec. 2015
2,056	103,338

WESTERN MEDITERRANEAN SEA ARRIVALS

Dec. 2014	Dec. 2015
6,732	9,395

A massive wave of migration swept through Europe in 2015, as hundreds of thousands of people arrived from conflict-ridden parts of the globe. The European Union has been struggling to find a way to adapt to the flow. Germany, as a major migrant destination and EU leader, has led the effort. In October 2015, an emergency meeting was called in Brussels to discuss the crisis.

The sheer numbers of migrants and a shift in arrival routes have led to deeper structural problems. In 2014, the primary route into Europe was across the Mediterranean from the south. Some 170,000 people took the journey, 25 percent of them from Syria.

While the Italian route remained relatively static in 2015, migration along the eastern route surged. In 2015, the number of arrivals through Greece rose to exceed 530,000. In September 2015 alone, 156,000 immigrants took the eastern route, compared to just 7,000 in the same month the previous year. Of the migrants, 66 percent were Syrian and 21 percent were Afghan.

After landing in the Greek islands, migrants register with authorities before boarding a ferry to Athens. From there, most have gone north to Thessaloniki and then up through Macedonia to Serbia. Hungary has built fences along its borders with Serbia and Croatia, pushing people up north to Slovenia.

Sources: UNHCR, Migration Policy Centre
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Member States' Support to Emergency Relocation Mechanism

(Communicated as of 16 February 2016)

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf

Member States' Support to Emergency Relocation Mechanism

(Communicated as of 16 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	✗	2	1300
Croatia	✓	✗	✗	2	11	✗	✗	✗	✗	968
Cyprus	✓	✓	✓	✗	✗	✗	30	✗	6	314
Czech Republic	✓	✗	✗	35	8	✓	30	✗	✗	2691
Denmark	N/A	N/A	N/A	5	50	✓	✗	✗	✗	N/A
Estonia	✓	✓	✓	1	1	✓	16	✗	✗	329
Finland	✓	✓	✓	1	2	✗	220	96	44	1958
France	✓	✓	✓	6	59	✗	1100	41	94	19622
Germany	✓	✓	✓	13	50	✓	40	20	31	27485
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	48	5849
Poland	✓	✓	✓	✗	18	✓	100	✗	✗	6182
Portugal	✓	✓	✓	✗	12	✗	130	10	20	2921

1

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
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
TOTAL	All concerned EU Member States have now notified	20	17	201 experts (of 374 requested)	447 border guards (of 775 requested)	137 border guards (of 1054 requested)	17 Member States 4628 places (of 160,000)	288 (out of 39,600)	295 (out of 66,400)	97,691 (of initial 98,256)¹

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

Dublin Regulation:

The recast Dublin Regulation establishes a hierarchy of criteria for identifying the Member State responsible for the examination of an asylum claim in Europe. This is predominantly on the basis of family links followed by responsibility assigned on the basis of the State through which the asylum seeker first entered, or the State responsible for their entry into the territory of the EU Member States, Norway, Iceland, Liechtenstein and Switzerland.

The aim of the Regulation is to ensure that one Member State is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure. The recast Dublin Regulation entered into force in July 2013 and is aimed at increasing the system's efficiency and ensuring higher standards of protection for asylum seekers falling under the Dublin procedure. It contains improved procedural safeguards such as the right to information, personal interview, and access to remedies as well as a mechanism for early warning, preparedness and crisis management. It applies to applications for international protection lodged as from 1 January 2014.

Together with the recast Dublin Regulation, three other legal instruments constitute the "Dublin System": Regulation (EU) No. 603/2013 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the recast Dublin Regulation and Regulation (EU) No. 118/2014 which amends Regulation (EC) No. 1560/2003 laying down detailed rules for the application of the recast Dublin Regulation.

How does it work in practice?

As the recast Dublin Regulation only became applicable from 1 January 2014 it remains to be seen how it will be applied in practice.

However recent publications such as the Dublin Transnational Network project '*Dublin II Regulation: Lives on Hold*' report, show that the operation of the Dublin Regulation often acts to the detriment of refugees. Its application can cause serious delays in the examination of asylum claims, and can even result in asylum seekers' claims never being heard. Areas of concern include the excessive use of detention to enforce transfers of asylum seekers, the separation of families, the denial of an effective opportunity to appeal against transfers and the limited use of the discretionary provisions within the Regulation to alleviate these and other problems. It also impedes integration of refugees by forcing them to have their claims determined in Member States with which they may have no particular connection. Similarly the operation of the Dublin system may also increase pressures on those Member States at the external borders of Europe, where States are often least able to offer asylum seekers support and protection.

(Source: <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>)

1. EU institutions reaction

Timeline - response to migratory pressures

<http://www.consilium.europa.eu/en/policies/migratory-pressures/history-migratory-pressures/>

2016

17-18 March European Council

16 March Council approves financing for emergency assistance within the EU

15 March Council adopts instrument for emergency assistance within the EU

10 March Justice and Home Affairs Council

9 March Council agrees on instrument for emergency assistance within the EU

7 March Meeting of the EU heads of state or government with Turkey

2 March European Commission proposal - instrument for emergency assistance within the EU

25 February Justice and Home Affairs Council

18-19 February European Council

12 February Schengen evaluation of Greece - Council adopts recommendation

4 February Supporting Syria and the region - EU pledges more than €3 billion

3 February Refugee facility for Turkey: agreement on details of financing

18 January Foreign Affairs Council

2015

17-18 December European Council

15 December European Commission package of proposals

3-4 December Justice and Home Affairs Council

29 November Meeting of the EU heads of state or government with Turkey

23-24 November Education, Youth, Culture and Sport Council

16 November Foreign Affairs Council

12 November Informal meeting of heads of state or government

12 November Valletta Summit on migration

9 November Justice and Home Affairs Council

30 October EU Council presidency activates IPCR to step up information sharing

26 October Foreign Affairs Council on development

25 October Meeting on the Western Balkans migration route

15 October European Council

12 October Foreign Affairs Council

8-9 October Justice and Home Affairs Council

8 October Eastern Mediterranean - Western Balkans route conference

28 September EUNAVFOR Med: agreement to start the active phase of the operation

23 September Informal meeting of heads of state or government

22 September Justice and Home Affairs Council on migration

14 September EUNAVFOR Med: Council adopts a positive assessment on conditions

to move to the first step of phase 2 (high-seas)
14 September Justice and Home Affairs Council on migration
9 September European Commission second package of proposals
20 July Justice and Home Affairs Council meeting
25-26 June European Council
22 June EUNAVFOR Med: launch of the operation
16 June Pierre Vimont appointed personal envoy for the Valletta Conference
16 June Justice and Home Affairs Council meeting
27 May European Commission first package of proposals
26 May Foreign Affairs Council on development
18 May EUNAVFOR Med: establishment of the operation
13 May European agenda on migration
13 May Reinforcement of the civilian mission EUCAP Sahel Niger
23 April Special meeting of the European Council

An European Agenda on migration

https://ec.europa.eu/priorities/sites/beta-political/files/migration-1-year_en.pdf

Remarks of Commissioner Avramopoulos in Athens to mark the first flight from Greece under the EU Relocation Scheme. Athens. 04.11.2015.

http://europa.eu/rapid/press-release_SPEECH-15-5999_en.htm

European Commission and UNHCR launch scheme to provide 20,000 reception places for asylum seekers in Greece. Athens, 14.12.2015

http://europa.eu/rapid/press-release_IP-15-6316_en.htm

Schengen evaluation of Greece: Council adopts recommendation to address deficiencies in external borders. 12.02.2016.

http://www.consilium.europa.eu/en/press/press-releases/2016/02/12-schengen-evaluation-of-greece/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Schengen+evaluation+of+Greece%3a+Council+adopts+recommendation+to+address+deficiencies+in+external+borders

Commission adopts Schengen Evaluation Report on Greece and proposes recommendations to address deficiencies in external border management. Press Release. 02.02.2016.

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Migration progress on priority actions and call for urgent actions, *European Commission*, 10.02.2016.

http://ec.europa.eu/news/2016/02/20160210_en.htm

Council agrees its negotiating position to reinforce checks at external borders, Council of the EU, 25.02.2016

<http://www.consilium.europa.eu/en/press/press-releases/2016/02/25-negotiating-reinforce-checks-external-borders/> <http://www.consilium.europa.eu/en/meetings/jha/2016/02/25/>

Managing the Refugee Crisis: Stepping up return procedures to Turkey,
European Commission, 02.03.2016 http://europa.eu/rapid/press-release_IP-16-503_en.htm

EU announces first projects under the Facility for Refugees in Turkey: €95 million to be provided for immediate educational and humanitarian assistance

European Commission, 04.03.2016 http://europa.eu/rapid/press-release_IP-16-584_en.htm

Today the European Commission announced the first projects under the Facility for Refugees in Turkey, pledging €55 million to address the immediate needs of Syrian school-children in Turkey for access to formal education, and €40 million in humanitarian aid through the World Food Programme.

Back to Schengen: Commission proposes Roadmap for restoring fully functioning Schengen system, European Commission, 04.03.2016

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The situation in the Mediterranean and the need for a holistic approach to migration, 09.03.2016

<http://www.europarl.europa.eu/committees/en/libe/subject-files.html?id=20151019CDT00421>

In its Resolution ((2014/2097)(RSP)) of 17 December 2014, the European Parliament instructed the Committee on Civil Liberties, Justice and Home Affairs to assess the various policies at stake in the areas of migration, asylum and border management, develop a set of recommendations and to report to Plenary in the form of a strategic initiative report. The Committee works on this strategic own-initiative report (co-Rapporteurs: Roberta METSOLA (EPP) and Kashetu KYENGE (S&D))

Works focus on the following 8 subject-matters, which were identified in the 17 December 2014 Resolution:

- 1) Article 80 - Solidarity and fair sharing of responsibility, including search and rescue obligations;
- 2) Tackling criminal smuggling, trafficking and labour exploitation of irregular migrants;
- 3) Border management and visa-policy, including the role of Frontex and other relevant Agencies;
- 4) Developing safe and lawful routes for asylum seekers and refugees into the EU including the Union resettlement policy and corresponding integration policies;
- 5) The strategy on cooperation with third countries, in particular on regional protection programmes, resettlement, returns and to address the root causes of migration;
- 6) Developing adequate legal economic migration channels;
- 7) Analysis on how Home Affairs funds are spent in migration & development context, including emergency funds;
- 8) Effective implementation of the CEAS, including the role of EASO.

Migration: a common challenge - EU in search of response to refugee crisis Dossier

<http://www.europarl.europa.eu/news/en/top-stories/20150831TST91035/Migration-a-common-challenge>

2. Think-tanks

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<https://www.ceps.eu/publications/2015-refugee-crisis-european-union>

Enhancing the Common European Asylum System and alternatives to Dublin, Elspeth Guild, Cathryn Costello, Madeline Garlick, Violeta Moreno-Lax, *CEPS*, 04.09.2015 <https://www.ceps.eu/publications/enhancing-common-european-asylum-system-and-alternatives-dublin>

The refugee crisis: Schengen's slippery slope, Andreia Ghimes, *EPC*, 22.09.2015

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Why was the EU not prepared for the refugee crisis and what to expect next?, Andreia Ghimis, Yves Pascouau, *EPC*, 14.10.2015

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Several Member States of the European Union (EU) have reintroduced internal border checks since last year due to the “refugee crises” or, more recently, the closing of part of the “Jungle” in Calais. These decisions, while being required to respect EU law, are contributing to the fall of a symbol.

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address the problem of irregular migration as well as the thorny issue of asylum seeking, which had exposed Greece to strong criticisms in the past years. She demonstrates that an internal crisis may also, paradoxically, provide a good opportunity to strengthen the migration policy framework, even if the implementation and the impact of the new measures taken will have to be monitored in the future.

This paper is part of the "Migration policies and international relations" publication series: The impact of international migrations on the relations between states has been the focus of an extensive body of research and literature over the past two decades (e.g. on border control, labor market issues, transnational ties, etc.). Less an object of attention is the impact on international relations of states' responses to such issues – readmission agreements, visa policies, expulsions, etc. This program proposes to produce a series of on-line publications and public seminars on this issue.

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<http://www.cfr.org/migration/europes-migration-crisis/p32874>

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