



**ROMANIA: MIGRANTS. MANAGING MIGRANTS AND BORDER CONTROL.
HOW TEMPORARY IS THE TEMPORARY REESTABLISHMENT OF BORDER
CONTROLS?**

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

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Abstract: With the current crisis of migration management and the consequent debate on the Schengen acquis, the EU is facing a new challenge that demands a more comprehensive approach. With a view to shed some light on this issue and better understand the solutions ahead, the present paper is a part of a broader European project initiated by the Institute of European Democrats. A “perfect storm” due to the rise of asylum-seekers, the increased migratory pressure, security and social concerns, a yet fragile economic recovery and political internal turmoil have put the Schengen area under a lot of stress and made its future uncertain. The present paper is a presentation of the current situation, of the possible costs of the disappearance of Schengen while mentioning once more the debates concerning this area that came from an EU pre-Schengen Member State (Romania).

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1. Current situation both at the European and national level

Lately, the European Union has been facing a series of crises that generated questions regarding Brussels' capacity of reaction, the Member States cohesion and even the viability of the European construction. Among these (the Ukrainian conflict, the Greek economic crisis, the possible Brexit, rising of populist parties' opinion poll), the refugee flux from the Middle East had a peculiar strong impact. Hence the question on many people's minds is: what is happening with the EU external borders? Which would be the solutions to prevent a dissolution? What would the costs of a possible disappearance be, even on a temporary basis, of the freedom of movement in the Schengen area?

1.1. The refugee crisis. General overview¹

The current refugee influx is the worst since the end of the Second World War – it is a massive wave that includes mainly, but not limited to, refugees from war-torn Syria and Iraq as well as economic migrants from Sub-Saharan Africa, Afghanistan, Pakistan and other regions of Asia and Africa. It was a surge that started in 2010 – 2011 that reached its peak in the second half of 2015.

UNHCR Mid-Year Trends Report 2015 has shown a glooming face of the refugees' crisis as it shows that **2015 is likely to break any known records of forced displacements.**

¹ This material was initially published in Mihai SEBE, *Romania's Stance in the Issue of the Refugees Crisis. Preliminary Observations*, Institute of European Democrats, Brussels, March 2016, available online at <http://www.iedonline.eu/publications/2015/romania-refugee-crisis.php> Last visited on May 31st 2016.

Without taking into consideration the second half of 2015, this report shows an aggravating trend unlikely to stop.

“With almost a million people having crossed the Mediterranean as refugees and migrants so far this year, and conflicts in Syria and elsewhere continuing to generate staggering levels of human suffering, 2015 is likely to exceed all previous records for global forced displacement”².

The pressure on the EU Member States is obvious if we take into consideration that “in the first six months of 2015 Germany was the world's biggest recipient of new asylum claims – 159 000, close to the entire total for all of 2014”³.

This generated a shock wave across the European Union by splitting the Union in two camps – those who welcome the refugees (led by Germany) and those opposing based on a series of arguments either objective or subjective (see the case of Hungary, Slovakia, Romania, etc.).

We have assisted, in the last period⁴, to a series of extraordinary European meetings dedicated to solving the refugee crisis that have resulted in a series of decisions that often generated a series of negative reactions on behalf of the Member States⁵.

One of the most important decision is that regarding the **compulsory quota**⁶ of refugees, that each Member State must receive, which generated a series of heated debates amidst the ranks of national political elites.

The basis for any refugee policy can be found in the *1951 Convention Relating to the Status of Refugees* which remains the law in force even nowadays in relation with the status of refugee. This Convention was later supplemented by a series of international regulations⁷.

² UNHCR *Mid-Year Trends Report 2015*, available online at <http://www.unhcr.org/5672c2576.html> Last visited on May 31st 2016.

³ UNHCR *Mid-Year Trends Report 2015*, available online at <http://www.unhcr.org/5672c2576.html> Last visited on May 31st 2016.

⁴ For an accurate timeline please also visit <http://www.consilium.europa.eu/en/policies/migratory-pressures/history-migratory-pressures/> Last visited on May 31st 2016.

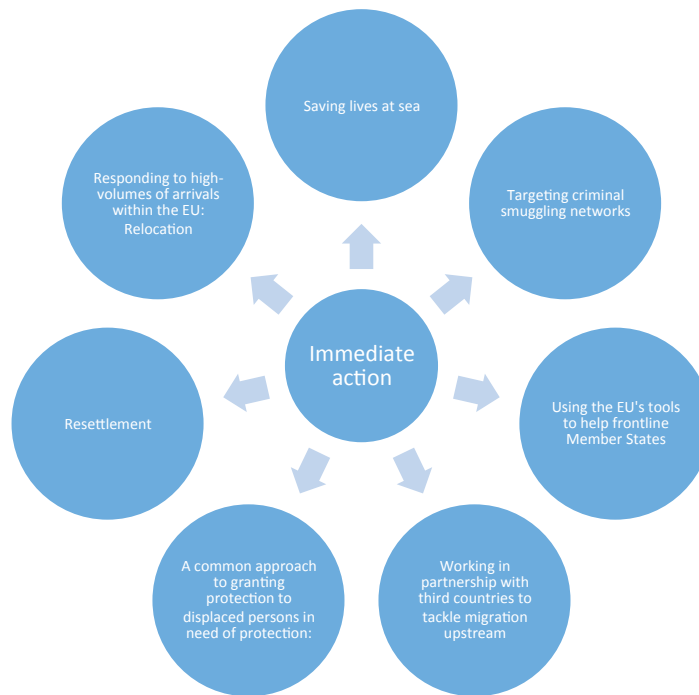
⁵ For further references please visit http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm Last visited on May 31st 2016.

⁶ Romania in accordance with the European Relocation scheme must receive a percentage of 3.75% of refugee. See *European schemes for relocation and resettlement*, available online at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf Last visited on May 31st 2016.. For further details regarding this process please visit *European Commission - Fact Sheet Refugee Crisis – Q&A on Emergency Relocation*, Brussels, 22 September 2015, available online at http://europa.eu/rapid/press-release_MEMO-15-5698_en.htm Last visited on May 31st 2016.

⁷ A complete list of these documents can be found in *The Protection Manual of UNHCR's* which is the repository of protection policy and guidance, available online at <http://www.refworld.org/protectionmanual.html> Last visited on May 31st 2016.

As regards the European Union, since 1999, it has created a Common European Asylum System (CEAS)⁸ which is fully operational as the current challenges have shown, yet it needs further reforms and adaptations.

This can be seen clearly in the *2015 European Agenda for Migration*⁹ which sets up a series of short and medium term priorities in the area of migration.



⁸ *Common European Asylum System*, European Commission, available online at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm Last visited on May 31st 2016.

⁹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*, Brussels, 13.5.2015 COM(2015) 240 final, available online at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf Last visited on May 31st 2016.

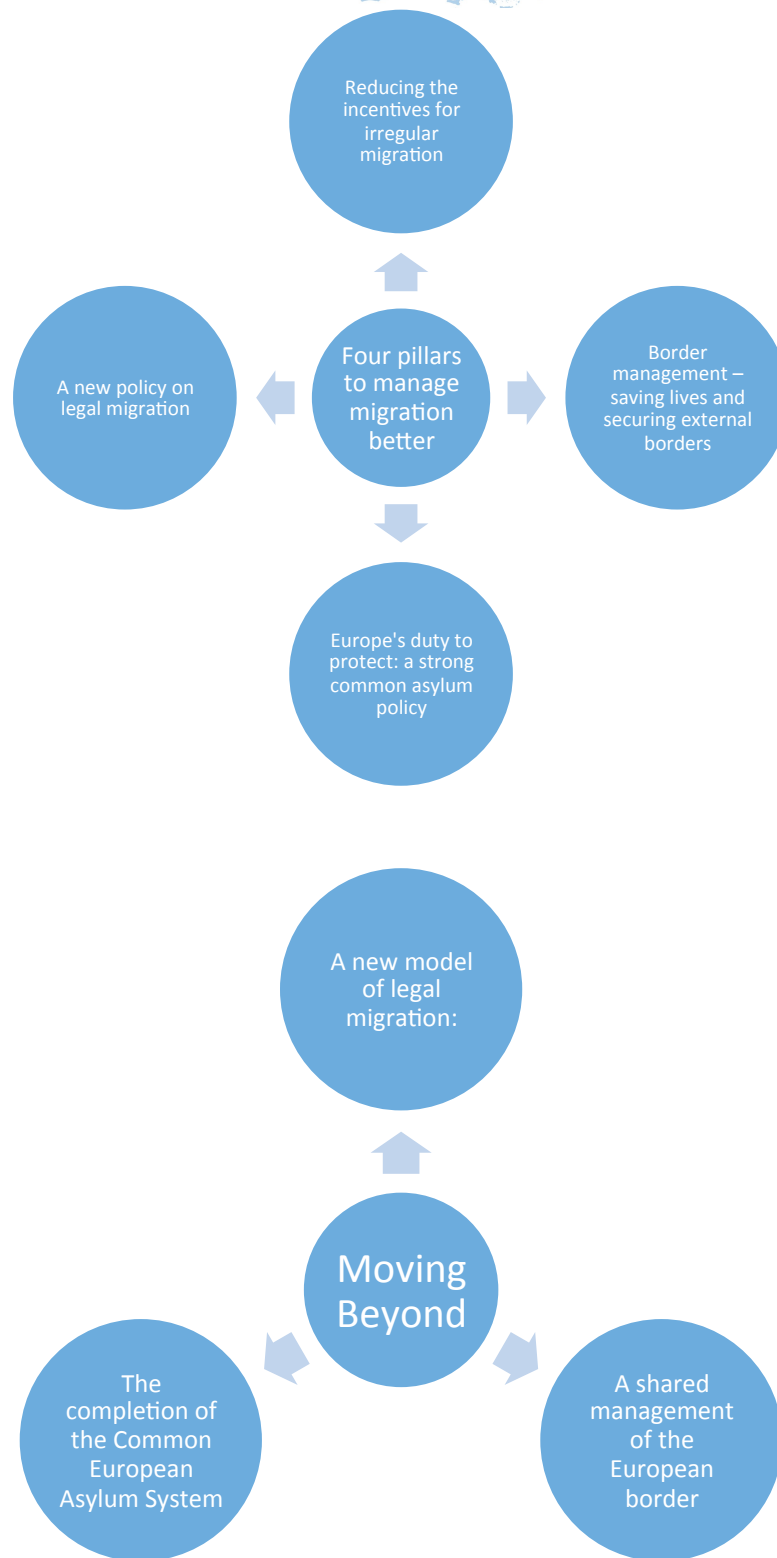


Figure 1. Short-, medium- and long-term priorities of the European Agenda for Migration¹⁰

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, Brussels, 13.5.2015 COM(2015) 240 final, available online at <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background->

1.2. Impact on the Schengen area. Current challenges

The entire Schengen philosophy can be based upon the principle of the safety of external borders – the moment when under severe stress due to migration, everything started to fall apart. This was obvious in September 2015 when temporary border controls were reintroduced by Germany, particularly at the German-Austrian border (EC press statement¹¹).

It was a period of confusion and contradictory statements with alarming declarations coming from high level national officials: “effective measures are necessary now to stop the influx [...] That includes help for countries from where refugees are fleeing and also includes an effective control of our own borders which also no longer works given the EU’s complete failure to protect its external borders”¹².

Current Temporarily Reintroduced Border Controls
<p>Temporarily reintroduced border controls in the context of foreseeable events:</p> <ol style="list-style-type: none"> 1. Denmark (4 March – 2 June 2016) big influx of persons seeking international protection: all borders with particular focus on the sea and land borders with Germany 2. Norway (15 January – 11 June 2016) all borders with focus on ports with ferry connections to Norway via internal borders 3. Sweden (10 January – 7 June 2016) all borders, with special focus on Southern and Western harbours and Öresund Bridge between Denmark and Sweden 4. France (13 November – 26 July 2016) COP 21, the emergency state as introduced on the French territory further to the terrorist attacks in Paris, Euro 2016, Tour de France.
<p>Temporarily reintroduced border controls in the context of Recommendation of the Council of 12 May 2016¹³:</p> <ol style="list-style-type: none"> 5. Germany (12 May – 12 November 2016) land border with Austria 6. Austria (16 May - 12 November 2016) land border with Slovenia and with Hungary

[information/docs/communication_on_the_european_agenda_on_migration_en.pdf](#) Last visited on May 31st 2016.

¹¹ *European Commission Statement following the temporary reintroduction of border controls by Germany, particularly at the German-Austrian border*, Brussels, 13 September 2015, available online at http://europa.eu/rapid/press-release_STATEMENT-15-5638_en.htm Last visited on May 31st 2016.

¹² *Statement by the German Federal transport minister Alexander Dobrindt*, September 13th 2015, available online at <http://www.nationalreview.com/corner/423943/consequences-merkel-andrew-stuttaford> Last visited on May 31st 2016.

¹³ Available online at <http://data.consilium.europa.eu/doc/document/ST-8835-2016-INIT/en/pdf> Last visited on May 31st 2016.

Table 1. Situation of the Schengen countries that have temporarily reintroduced border controls¹⁴

It was a sign that the Schengen area, as it was defined at that moment, needed to undergo drastic changes in order to adapt to the new realities. Last year, we have assisted to a bitter feud amidst the EU Member States, between the Northern and the Southern states, accusing each other of not doing enough and of lack solidarity. That against the background generated by a massive immigration¹⁵ which found no adequate answer at the European level yet. And if that context remains, what to do with the Schengen Agreement as it makes possible for illegal immigrants to move freely between the Member States? A situation that raises security risks. If so many illegal aliens walk freely, it would make sense, from a security logic, to reinstate the border controls in order to add a new layer of threat detection?

We are currently witnessing mainstream political formulas that have started to adopt eurosceptical formulas in order to legitimize their position and mobilize their support. Amidst the ranks of the far right we can see a line of attack on identity issues: Schengen constitutes a breach that threatens the organic homogeneity of national communities; the freedom of movement as a source of migration (the so-called Europhobes)¹⁶ (Bertoncini & Koenig 2014, p. 6). Anti-immigration parties are influential in countries such as Denmark, Sweden and

¹⁴ See more at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index_en.htm Last visited on May 31st 2016.

The 1985 *Schengen Agreement* and the 1990 *Convention implementing the Schengen Agreement* have been formally codified in EU law by the *Schengen Protocol* to the 1997 Treaty of Amsterdam. The Schengen related instruments have been formally codified by the 2006 Schengen Borders Code (SBC) which has been updated severally times in the last decade that regulates the conditions and the way in which the Schengen states care reintroduce intra-state border controls on persons. See for instance *Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances* available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R1051-20131106> Last visited on May 31st 2016.

¹⁵ The pressure on the EU Member States is obvious if we take into consideration that “in the first six months of 2015 Germany was the world's biggest recipient of new asylum claims – 159 000, close to the entire total for all of 2014” *UNHCR Mid-Year Trends Report 2015*, available online at <http://www.unhcr.org/5672c2576.html> Last visited on May 31st 2016.

¹⁶ Yves BERTONCINI, Nicole KOENIG, *EUROSCEPTICISM OR EUROPHOBIA: VOICE VS. EXIT?*, 27 November 2014, available online at <http://www.notre-europe.eu/media/euroscepticismmoreeurophobia-bertoncini-koenig-ne-jdi-nov14.pdf?pdf=ok> Last visited on May 31st 2016. For a 2015 media coverage please also visit *Euroscepticism: More than a British phenomenon*, Euractiv, 2015, available online at <http://www.euractiv.com/section/med-south/linksdossier/euroscepticism-more-than-a-british-phenomenon/#accordion-further-reading> Last visited on May 31st 2016.

Hungary. All of these parties believe that national immigration laws should be toughened and the Schengen Agreement should be revised, if not abolished.

“The third element concerns the Schengen area and the principle of free movement of citizens – two very distinct notions, which are often linked by Eurosceptic/Europhobe forces. We classify a party as Europhobe if it proposes measures that fundamentally contradict the freedom of movement (of workers and migrants). More concretely, a party is considered Europhobe if it proposes an exit from the Schengen area or the permanent restoration of national borders. Depending on the party and country, such proposals typically rest on utilitarian and/or identity-related arguments.”¹⁷

Selected populist and Eurosceptic parties in Europe

February 2015

Country	Party (year founded)	Stance	Voting intentions, latest*, %	European parliament seats†	Broadly in favour of:			
					Austerity	Euro	EU	Immigration
Britain	UKIP (1993)	R			✓	✗	✗	✗
Denmark	Danish People's Party (1995)	R			✗	✗	✗	✗
France	National Front (1972)	R			✗	✗	✗‡	✗
Germany	Alternative for Germany (2013)	R			✓	✗	✓‡	✗
Greece	Golden Dawn (1985)	R			✗	✗	✗	✗
Greece	Syriza (2004)	L			✗	✓‡	✓	✓
Hungary	Jobbik (2003)	R			✗	✗	✗	✗
Italy	Five-Star Movement (2009)	L			✗	✗§	✓	✓
Italy	Northern League (1991)	R			✗	✗	✗‡	✗
Netherlands	PVV (Freedom Party) (2006)	R			✗	✗	✗	✗
Spain	Podemos (2014)	L			✗	✓‡	✓	✓
Sweden	Sweden Democrats (1998)	R			✗	✗	✗‡	✗

Sources: Demoskop; TNS-Nipo; Metroscopia; Deutsche Bank; Ipsos MORI; Forsa; Electograph.com; Forsa; Politiko.dk; YouGov; European Parliament; party websites; press reports; *The Economist*

* Latest poll/election † Out of 751
‡ Want to renegotiate terms § Will hold referendum

Economist.com

Figure 2. Selected populist and Eurosceptic parties in Europe (2015)¹⁸

¹⁷ Yves BERTONCINI, Nicole KOENIG, *EUROSCEPTICISM OR EUROPHOBIA: VOICE VS. EXIT?*, 27 November 2014, available online at <http://www.notre-europe.eu/media/euroscepticismoreurophobia-bertoncini-koenig-ne-jdi-nov14.pdf?pdf=ok> Last visited on May 31st 2016.

¹⁸ Source: *The Economist*, February 2015, available online at <http://www.economist.com/blogs/graphicdetail/2015/02/daily-chart-11> Last visited on May 31st 2016.

2. Future development. What if Schengen disappears? Possible costs.

Although the future of Schengen seems bleak, it is this author's belief that **Schengen is not going to disappear**. Our belief is supported by both **economic arguments**¹⁹ (goods transportation cost, touristic losses, economic saves due to the lack of border patrols) as well as **political ones** (the disappearance of Schengen would be an unprecedented setback and a regress for the EU)²⁰.

2.1. Economic costs of the possible disappearance of Schengen

A possible disappearance of Schengen and the reintroduction of border controls on a permanent basis would lead to a severe reduction of the four freedoms and deeply impact the Single Market and thus would create a negative effect on the economy. Thus a series of studies were done presenting the impact of this situation on a regional or economic sector basis (see below).

It's all about numbers!... If we were to really understand the meaning of Schengen, first of all, we must have in mind the people who benefit from it. We have approximately 1.7 million people who work in different country than the one where they are currently living and cross the Schengen borders daily. We should add to this an impressive 24 million business trips in Europe and a staggering figure of 57 millions cross Schengen borders road transports²¹ and we have the full dimensions of what Schengen really is.

In the last decade, we assisted to an increase of the intra-EU trade as the Eurostat data show us. This is a fast growing process with a slight decline in the crisis period (2008 – 2009) who is currently on the rise and any impact on Schengen would affect its growth rate.

¹⁹ *The Economic Cost of Rolling Back Schengen*, 3rd February 2016, available online at <http://blog.en.strategie.gouv.fr/2016/02/the-economic-cost-of-rolling-back-schengen/> Last visited on May 31st 2016.

²⁰ Michael BÖHMER, Jan LIMBERS, Ante PIVAC, Heidrun WEINELT, *Departure from the Schengen Agreement Macroeconomic impacts on Germany and the countries of the European Union*, Bertelsmann Stiftung, 2016, available online at https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/NW_Departure_from_Schengen.pdf Last visited on May 31st 2016.

²¹ *Speech by President Jean-Claude Juncker – EP Plenary session – Conclusions of the European Council meeting of 17 and 18 December 2015* Available online at http://europa.eu/rapid/press-release_SPEECH-16-112_en.htm Last visited on May 31st 2016.

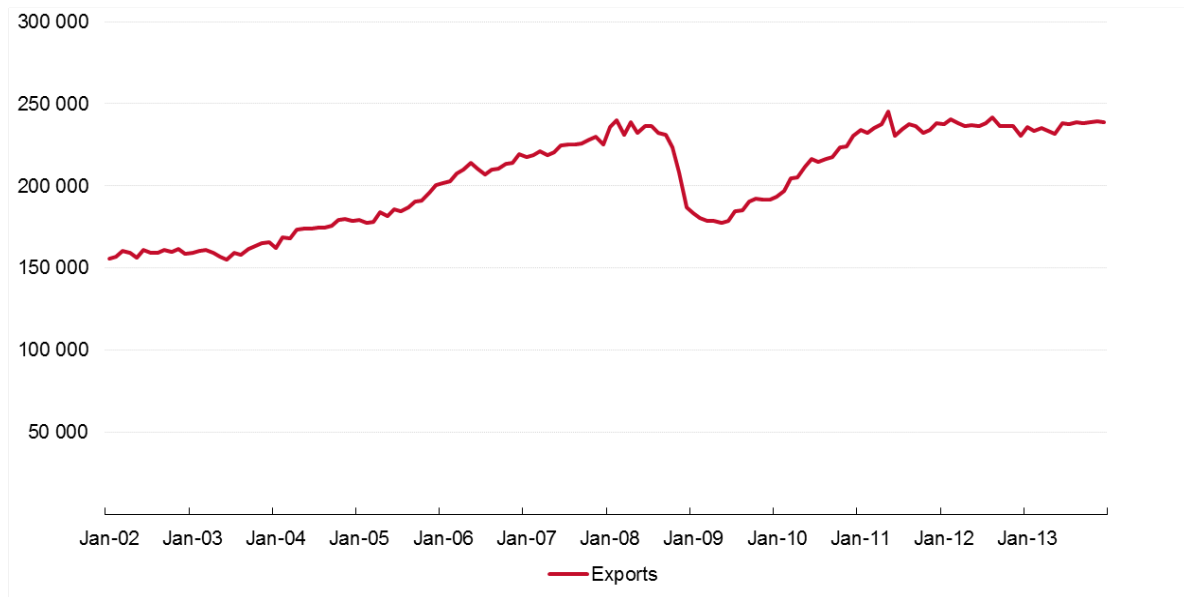


Figure 3: *Evolution of intra EU28 export trade, 2002-2013 (EUR 1 000 million)*²²

This positive effect is also revealed in a series of academic studies that prove that Schengen is a positive influence on the European trade, thus backing the statistical data provided by Eurostat.

One of these early studies dates from 2011 and attempts to indirectly infer trade impediments from trade flows while attempting to explain the variation of trade integration both across countries and industries. The obtained data proved that Schengen area reduced the trade frictions between the parties involved and facilitated the cross-border integration of industries. “The abolition of border controls among the participating countries has helped to foster trade integration, most probably through the elimination of time delays and administrative burdens that were previously experienced at borders.”²³

Davis and Gift (2014) are the authors of a cornerstone paper that provides a detailed scientific study of the effect the Schengen Agreement had on trade²⁴. The authors demonstrate

²² *Intra-EU trade in goods - recent trends* Available online at http://ec.europa.eu/eurostat/statistics-explained/index.php/Intra-EU_trade_in_goods_-_recent_trends Last visited on May 31st 2016.

²³ Natalie CHEN, Dennis NOVY, *Gravity, trade integration, and heterogeneity across industries*, 2011, Available online at <https://www2.warwick.ac.uk/fac/soc/economics/staff/dnovy/heterogeneity.pdf> Last visited on May 31st 2016.

²⁴ “We argue that the immigration policies established by Schengen promote cross-border commerce for three central reasons. First, immigrants bring a preference for goods specific to the country from which they emigrated, thereby raising demand for familiar products. Second, immigrants have the potential to recognise the savings from trade because of their knowledge of foreign low-cost producers. Finally, immigrants are plugged

that member countries of the Schengen area become more closely linked trading partners due to the “increased labor mobility which can increase demand for foreign goods, can spread information about foreign trading partners who might be cheaper suppliers and can lower the risk of doing business abroad, for example, by easing cross-border contracting and improving trust”²⁵.

<i>Type of costs of border controls reintroduction in the Schengen Area</i>	
<i>Immediate costs</i>	
<i>1. Impact on cross – border transport of goods</i>	<i>increase in direct costs of between €1.7 and 7.5 billion each year</i>
<i>2. Impact on commuting workers</i>	<i>There are 1.7 million workers in the EU who cross a border every day to go to work. These citizens would see their quality of life significantly affected. According to the Commission, border controls would cost commuters, as well as all other travellers, between € 1.3 and 5.2 billion in terms of time lost. In addition, increased commuting time would reduce cross-border job opportunities.</i>
<i>3. Impact on tourism</i>	<i>The reintroduction of border controls within the Schengen area would also affect tourism, and particularly cross-border day-trips.</i>

into social net-works that lower the risks of importing and exporting. Employing the well-established gravity model of trade, we show that migratory flows stemming from Schengen are positively and significantly related to cross-national exchanges in goods and services over the period 1980 to 2011.” DAVIS, D. and GIFT, T. (2014), The Positive Effects of the Schengen Agreement on European Trade. *World Economy*, 37: 1541–1557. Available online at <http://www.readcube.com/articles/10.1111/twec.12158> Last visited on May 31st 2016.

²⁵ Esther ADEMMEER, Toman BARSBAI, Matthias LÜCKE and Tobias STÖHR, *30 Years of Schengen Internal blessing, external curse?*, Kiel Institute for the World Economy, no. 88, June 2015, available online at https://www.ifw-kiel.de/wirtschaftspolitik/zentrum-wirtschaftspolitik/kiel-policy-brief/kpb-2015/kiel_policy_brief_88.pdf Last visited on May 31st 2016.

<i>Type of costs of border controls reintroduction in the Schengen Area</i>	
4. Border control costs for the public sector	<i>Between € 600 million and € 5.8 billion in Additional administrative costs would have to be paid by Member-State governments, due to the need for increased staff for border controls.</i>
Indirect costs	
<p><i>As regards social costs, there would be an impact on cross-border communities, as well as risks of discrimination at border checks.</i></p> <p><i>Moreover, cultural exchanges, cross-border movements and experiences of life across borders would decline.</i></p> <p><i>There could be a loss of trust of citizens in their Member States and the EU's ability to uphold the rule of law, including border control and security measures.</i></p>	

Table 1. *Type of costs of border controls reintroduction in the Schengen Area*²⁶

Schengen must face up measures to be reformed.²⁷

A first step was the **Schengen governance pack of 2013** when signatory members agreed that border controls could be temporarily reintroduced under extraordinary circumstances (such as a serious threat to national security).

Since the 2015 migration crisis the need to reform grew and future scenarios are being drafted. One possible outcome would a *strong national attitude toward receiving more national power and discretion when it comes to reintroducing border controls.*

There are also talks regarding a *various geometry of the Schengen area* with the suspension of countries along the European Union's external borders that are seen as failing to effectively control their borders. In regards to this variable geometry a special notice must

²⁶ Alexandra GATTO, Pierre GOUDIN, Risto NIEMENEN, *Schengen area: Update and state of play*, European Parliamentary Research Service, March 2016, available online at http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/579109/EPRS_BRI%282016%29579109_EN.pdf Last visited on May 31st 2016.

²⁷ *Europe Rethinks the Schengen Agreement*, 2nd September 2015, Stratfor, available online at <https://www.stratfor.com/analysis/europe-rethinks-schengen-agreement> Last visited on May 31st 2016.

be given to the new EU Members States such as Romania and Bulgaria²⁸ that would meet renew resistance in joining the Schengen area.

The Schengen area needs to evolve in a similar direction if it is to survive. External security cannot be ensured as long as the defence of the external borders is left to individual member states, especially if one of them, Greece, is already facing an economic crisis. *Member states need to realize that they can be more secure without sacrificing liberty if **they create common institutions to guard the external borders and reinforce the existing framework for internal security.***

Despite these challenges the Schengen area still remains of the EU best and most visible achievements being a key element of the born European identity²⁹. Therefore the need to save it is an imperative one and must take into consideration all the economic and political problems mentioned before.

One of the most visible proposition meant to restore the confidence in Schengen is in my opinion the regulation designed to establish a European Border and Coast Guard Agency (taken in December 2015) who's primary objective would be to "organise the appropriate technical and operational assistance to Member States so as to reinforce their capacity to implement their obligations with regard to the control of the external borders, and to face challenges at the external border resulting from irregular immigration or cross-border crime." The element of novelty is the fact that this Agency would be able to intervene even if the Member States do not demand its assistance.

"Where a Member State does not take the necessary corrective measures in accordance with a decision of the Management Board referred to in Article 12(6) or in the event of disproportionate migratory pressure at the external border, rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area, the Commission, after consulting the Agency, may adopt a

²⁸ Romania and Bulgaria are in a very peculiar situation as Romania was evaluated during 2007 – 2011 period within the legal framework of a mechanism that nowadays no longer exists, on the basis of the former Schengen Governance. Thus the two countries haven't accepted the new Schengen governance package and are waiting for a political decision in this regard. See more at Ciprian CIUCU, Roxana ALBIȘTEANU, *La spartul târgului? Opțiunile României vizavi de Spațiul Schengen*, CRPE Policy Brief no. 38, September 2015, available online at <http://www.crpe.ro/wp-content/uploads/2015/09/La-spartul-targuluiOpțiunile-României-vizavi-de-Spatiul-Schengen11.pdf> Last visited on May 31st 2016.

²⁹ *Parlemeter 2015 European Parliament Eurobarometer*, October 2015, available online at http://www.europarl.europa.eu/RegData/etudes/STUD/2015/570419/EPRS_STU%282015%29570419_EN.pdf Last visited on May 31st 2016.

decision by means of an implementing act, identifying the measures to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures.”³⁰

This is just a part of a larger EU-wide legislation change which includes, among other things, the reinforcement of checks against relevant databases at external borders by obliging Member States to carry out systematic checks on persons enjoying the right of free movement under Union law (i.e. EU citizens and members of their families who are not EU citizens) when they cross the external border against databases on lost and stolen documents as well as in order to verify that those persons do not represent a threat to public order and internal security.³¹

Another stepping stone is the revision of the Dublin Regulation aiming by this to provide the means to reinforce the security of external borders while maintaining the freedom of movement and obeying all the international regulations in force. This is an action that is supposed to take part in 2016:

“When the Dublin system was designed, Europe was at a different stage of cooperation in the field of asylum. The inflows it was facing were of a different nature and scale. When the Commission undertakes its evaluation of the Dublin system in 2016, it will also be able to draw on the experience from the relocation and resettlement mechanisms. This will help to determine whether a revision of the legal parameters of Dublin will be needed to achieve a fairer distribution of asylum seekers in Europe.”³²

A key element of reform is also the *March 2016 Roadmap* presented by the European Commission that offers a precise date (December 2016) to mark the end of exceptional measures undertaken by the Schengen Area Member States.

³⁰ *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC*, COM/2015/0671 final - 2015/0310 (COD), available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0671> Last visited on May 31st 2016.

³¹ *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders*, COM/2015/0670 final - 2015/0307 (COD), available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0670> Last visited on May 31st 2016.

³² *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European Agenda On Migration*, /* COM/2015/0240 final *//, available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0240> Last visited on May 31st 2016.

- 4 March 2016 (and monthly thereafter): Greece reports on its progress in implementing the actions identified in the Recommendation on resuming Dublin transfers.
- 12 March 2016 at the latest: Greece provides its action plan to implement the recommendations made by the Council, together with a needs assessment.
- 16 March 2016: Commission Communication on the reform of the Dublin Regulation based on the objective of solidarity and fair burden-sharing between Member States.
- 16 March 2016: the Commission presents its First Report on Relocation and Resettlement.
- 22 March 2016 at the latest: Frontex launches additional calls for contributions to further deploy European Border Guard teams to support Greece.
- 1 April 2016 at the latest: Member States respond to the Frontex call by providing human resources and technical equipment.
- 12 April 2016 at the latest: the Commission presents its assessment of the adequacy of the action plan prepared by Greece.
- 16 April 2016: the Commission presents its Second Report on Relocation and Resettlement.
- 11 -17 April 2016: a Schengen evaluation by Commission and Member State experts of air, land and sea borders of Greece will take place.
- 12 May 2016 at the latest: Greece reports on the implementation of the Council recommendations.
- 12 May 2016: if the serious deficiencies in external border control were to persist, the Commission will present a proposal under Article 26(2) of the Schengen Borders Code.
- 13 May 2016: if the serious deficiencies in external border control were to persist, the Council should adopt a recommendation under Article 26(2) of the Schengen Borders Code for a coherent Union approach to temporary internal border controls.
- 16 May 2016: the Commission presents its Third Report on Relocation and Resettlement.
- June 2016 at the latest: the co-legislators reach political agreement on the European Border and Coast Guard and adopt the legal act.
- June 2016: Commission presents its assessment of the possibility of resuming Dublin transfers to Greece.
- August 2016 at the latest: the European Border and Coast Guard is operational.
- September 2016 at the latest: the European Border and Coast Guard has delivered the first

vulnerability tests so that any necessary preventive measures can be taken.

- December 2016: if the overall situation allows, the target date for bringing to an end the exceptional safeguard measures taken.

Table 2. The Roadmap for return to Schengen provisions³³

3. Political objectives and relative strategies at the European and national level.

3.1. Romania and Schengen³⁴

The Schengen area accession has always been a difficult subject to debate in Romania given its sensitive nature. Having fulfilled all the technical requirements for accessing the Schengen area, as recognized by the technical evaluation missions (2009–2010 missions), having received the favourable opinion of the European Parliament (2011) and having fulfilled all the complementary measures required³⁵ Romania is still on the holding list given to be member of the Schengen area (with Bulgaria), to what many perceived as political reasons instead of technical ones.³⁶

It is on this background that the refugee crisis has put under stress the Schengen area as it is currently defined. This has put on hold any attempt to negotiate on this topic, as the idea on mixing the two of them together raises concerns about the seriousness of Romania's intentions as the entire Europe is in crisis and the Schengen area as such is under serious strains.

³³ *Communication from the Commission to the European Parliament, the European Council and the Council Back to Schengen - A Roadmap*, Brussels, 4.3.2016 COM(2016) 120 final, available online at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/docs/communication-back-to-schengen-roadmap_en.pdf Last visited on May 31st 2016.

³⁴ This material was initially published in Mihai SEBE, *Romania's Stance in the Issue of the Refugees Crisis. Preliminary Observations*, Institute of European Democrats, Brussels, March 2016, available online at <http://www.iedonline.eu/publications/2015/romania-refugee-crisis.php> Last visited on May 31st 2016.

³⁵ As recognized in the minute of the European Council of December 13th – 14th 2012: „*The European Council, in response to concerns raised by RO and BG regarding the Commission report on Schengen governance and its references to measures which would contribute to the successful enlargement of the Schengen area, noted that when the Mixed Committee discussed this matter on the 6-7th of December, the Presidency recalled that it had reported on the implications of those measures in October 2012 and stated that the progress made on their implementation was such as to enable the process to be considered as now completed. The European Council invites the Council to revert to this issue in March 2013.*” Available online at <http://mae.ro/node/1582> Last visited on May 31st 2016.

³⁶ Moreover we have to emphasize the bizarre case of Romania and Bulgaria who have been technical evaluated based on a Schengen Governance that no longer exists. See more at Ciprian CIUCU, Roxana ALBIȘTEANU, *La spartul târgului? Opțiunile României vizavi de Spațiul Schengen*, CRPE Policy Brief no. 38, September 2015 <http://www.crpe.ro/wp-content/uploads/2015/09/La-spartul-targului-Optiunile-Romaniei-vizavi-de-Spatiul-Schengen11.pdf> Last visited on May 31st 2016.

In a series of formal declaration Romania's president officially declared that the Schengen area is *de facto* not working³⁷, while also firmly declaring that there is no causality link between the Schengen area accession and the refugee crisis. **“Schengen file shall not be connected to the migration file, because they are two different things** and, consequently, it is obvious we shall not discuss Romania's adhesion to Schengen on this occasion.”³⁸

Actually **the Schengen area has always been related more or less to the migration issue**, even as early as 2011-2012 when first talks emerged about the possibility of a gradual integration of Romania and Bulgaria into the Schengen area – first with aerial and maritime borders³⁹.

The summer of 2012 Romanian political crisis just added new constraints to the Schengen issue – its correlation with the Mechanism for Cooperation and Verification⁴⁰ and the relation between the judicial and legislative power, fighting corruption, etc.

What came as an evidence was the impossibility to separate Bulgaria and Romania one from the other in regards with the accession to the Schengen area. “The brief response is that Bulgaria can be decoupled from Romania, only on the long term and under extraordinary circumstances. The longer answer proves that this is almost impossible.”⁴¹

Ever since 2012 the migration issue and more precisely the situation of Greece as a Schengen exclave was the untold issue that hinder the Schengen accession. Greece, due to its geographical location and territorial characteristics (high number of islands, etc.) was in 2012 the entry point for approx. 90% of EU illegal immigration as well as a large refugee camp in open air (with approx. 1 000 000 persons living there illegally) that were estimated

³⁷ Press Statement of Klaus Iohannis, September 14th 2015, available online at <http://www.presidency.ro/ro/media/agenda-presedintelui/conferinta-de-presa-palatul-cotroceni-sala-unirii> Last visited on May 31st 2016.

³⁸ Press Statement of Klaus Iohannis, September 23rd 2015, available online at <http://www.presidency.ro/ro/media/agenda-presedintelui/transcrierea-conferintei-de-presa-sustinuta-de-presedintele-romaniei-domnul-klaus-iohannis> Last visited on May 31st 2016.

³⁹ Ciprian CIUCU, *Schengen: de ce nu se poate decupla Bulgaria de România și unde este problema reală*, CRPE Policy Brief, no. 16, September 2012, available online at <http://www.crpe.ro/wp-content/uploads/2012/09/Policy-Brief-nr.-16-Schengen.-De-ce-nu-se-poate-decupla-Bulgaria-de-Romania-si-unde-este-problema-reala.pdf> Last visited on May 31st 2016.

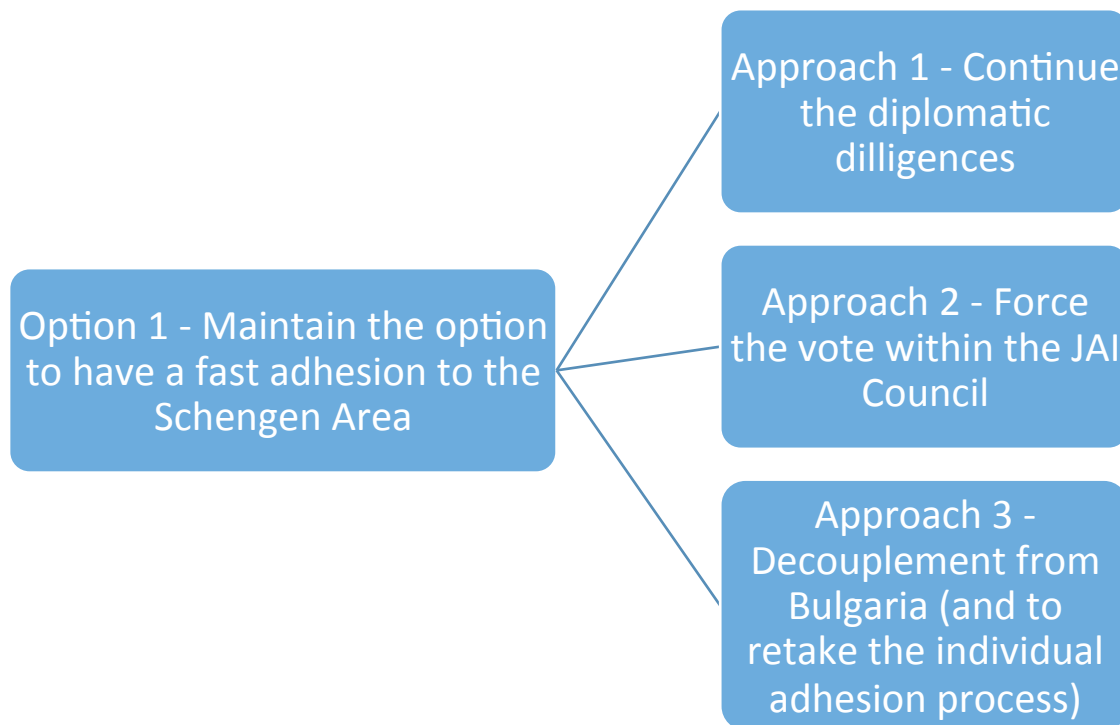
⁴⁰ The *Cooperation and Verification Mechanism* deals with the judicial reform and the fight against corruption. See more at http://ec.europa.eu/cvm/progress_reports_en.htm Last visited on May 31st 2016.

⁴¹ Ciprian CIUCU, *Schengen: de ce nu se poate decupla Bulgaria de România și unde este problema reală*, CRPE Policy Brief, no. 16, September 2012, available online at <http://www.crpe.ro/wp-content/uploads/2012/09/Policy-Brief-nr.-16-Schengen.-De-ce-nu-se-poate-decupla-Bulgaria-de-Romania-si-unde-este-problema-reala.pdf> Last visited on May 31st 2016.

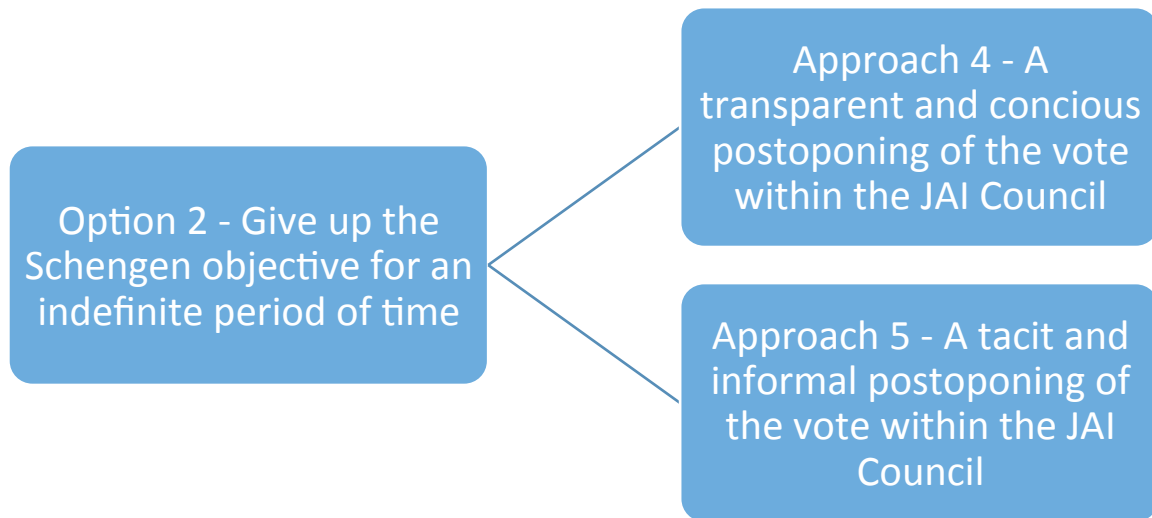
to use Romania and Bulgaria (if they entered into Schengen area) to reach the more prosperous Northern and Western European countries.⁴²

Yet back then there was still hope as the previsions pointed out toward the autumn 2013 – spring 2014 for the integration into Schengen area with the maritime and aerial borders and the year 2015 for the integration with the terrestrial borders.

After the continuous disappointments generated by the continuous postponement of Schengen area adhesion **two major options started to dominate the Romanian debate**. Following a **series of informal meetings between civil society representatives and government officials** these are the following:



⁴² Ciprian CIUCU, *Schengen: de ce nu se poate decupla Bulgaria de România și unde este problema reală*, CRPE Policy Brief, no. 16, September 2012, available online at <http://www.crpe.ro/wp-content/uploads/2012/09/Policy-Brief-nr.-16-Schengen.-De-ce-nu-se-poate-decupla-Bulgaria-de-Romania-si-unde-este-problema-reala.pdf> Last visited on May 31st 2016.



*Figure 4. Romania's option in regards with the Schengen Area*⁴³

Option 1 has as defining premises the fact that things are going to change and the migration issue would become less relevant while **Option 2** presumes that the Schengen area as we know it shall dramatically change. Following the informal meetings and the situation on the ground one cannot ignore that the external frontiers of the Schengen area have all too often been violated by the refugee flux and that the harsh criteria imposed to Romania and Bulgaria were not the same with those applied to other states. Moreover **not being in Schengen proved to be an advantage in dealing with the refugees** – who have avoided these two countries.

Option 2 has the advantage to be a negotiating solution that takes into consideration the refugee crisis and the need for the full involvement of all the Member States in managing the external borders of the Schengen area. Also it does not attract any migratory pressure and it eliminates any other external conditionality (such as the MCV). Furthermore, another important conclusion of these meetings is **that connecting the refugees' quotas with our**

⁴³ Ciprian CIUCU, Roxana ALBIȘTEANU, *La spartul târgului? Opțiunile României vizavi de Spațiul Schengen*, CRPE Policy Brief no. 38, September 2015 <http://www.crpe.ro/wp-content/uploads/2015/09/La-spartul-targului-Optiunile-Romaniei-vizavi-de-Spatiul-Schengen11.pdf> Last visited on May 31st 2016.

admission in the Schengen area would be a terrible strategic mistake as the two are separate issues.⁴⁴

We must also mention the debate generated by the launch of this above mentioned Policy Brief that offered the Ministry of Foreign Affairs the opportunity to reiterate that **“Romania’s accession to the Schengen area remains an important objective on the diplomatic agenda.** For its fulfillment Romania shall continue its efforts, underlying the added value our country brought through modernizing the security system of the borders. Also, another aspect discussed was **the reception of refugees on the Romanian territory which is not conditioned by the acceptance of accession to the Schengen area.**”⁴⁵

Preliminary Conclusions

Maintaining Schengen is also about maintaining the core principles of the EU and this is the direction the EU Member States should focus on. Weakening the Schengen Agreements means also weakening the free movement of people – one of the cornerstone liberties of the European Union. Any possible reform of the Schengen that affects this free movement can potentially affect all other freedoms.

The Member States should thus try first of all to limit the effects of illegal immigration before taking any reform action. Thus in term would weaken the populist movements and but time to the governments for an equitable and reason base reform of the Schengen area.

One of the newest studies that shows that indeed the solution is to have concrete results is *The European Union in the Fog: Building Bridges between National Perspectives on the European Union*, which gathers contributions from across the EU and sheds light on Member States’ motivations to participate in the EU and views on its future. The paper identifies three main trends at EU level and “emphasises an overwhelming sentiment across Europe: criticism against the EU is more widespread and ingrained in mainstream political

⁴⁴ Ciprian CIUCU, Roxana ALBIȘTEANU, *La spartul târgului? Opțiunile României vizavi de Spațiul Schengen*, CRPE Policy Brief no. 38, September 2015 <http://www.crpe.ro/wp-content/uploads/2015/09/La-spartul-targului-Optiunile-Romaniei-vizavi-de-Spatiul-Schengen11.pdf> Last visited on May 31st 2016.

⁴⁵ *CRPE Debate* from October 7th 2015 generated by the launch of Ciprian CIUCU, Roxana ALBIȘTEANU, *La spartul târgului? Opțiunile României vizavi de Spațiul Schengen*, CRPE Policy Brief no. 38, September 2015, available online at <http://europedirectbucuresti.ier.ro/evenimente/dezbatere-crpe-optiunile-romaniei-vizavi-de-spatiul-schengen/> Last visited on May 31st 2016.

debates”. The idea is therefore to provide small, concrete projects instead of grand visions, projects that would reaffirm the need for an EU unity, and Schengen can be such a project.

“First, the EU is expected to show results. Instead of grand projects, which can hypothetically federate the Europeans, the EU should focus on delivering on concrete projects. In other words, it should be “an EU of projects.”

The second main trend is more specific to the Eurozone countries. Solving the economic crisis is a priority. There is broad support for a more robust Economic and Monetary Union, but the recipes to reach this stage may be different between those who wish for more flexibility and those who argue that rules should prevail.

The third worthwhile trend to mention is the importance given to foreign policy. Many contributions stress that there is an expectation that the EU should play a greater role in foreign and security policy.”⁴⁶

It is in this context that a strong national and European campaigning needs to be undertaken in order to emphasise once and for all the advantages that this Agreement has brought to us. Yet we must also be able to have a critical look at the deficiencies envisaged and we need to reform this area while maintain its ideals.

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⁴⁶ Vivien PERTUSOT (editor), *The European Union in the Fog: Building Bridges between National Perspectives on the European Union*, IFRI Brussels, March 2016, available online at <http://www.ifri.org/en/publications/publications-ifri/ouvrages-ifri/european-union-fog-building-bridges-between-national> Last visited on May 31st 2016.



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