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Schengen at the crossroads

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On 4 July 2016, the Jacques Delors Institut – Berlin organized a high-level conference entitled “Schengen at the crossroads” in cooperation with the German Federal Chancellery. What are the implications of the British referendum? How can the EU overcome the supposed dichotomy of freedom and security? What reforms are needed to maintain the freedom of movement and make the Schengen system more resilient? How can greater convergence between European asylum systems be achieved? These and related questions were discussed by a range of prominent speakers from politics, academia and NGOs. This report summarises the main arguments and provides input for the discussion on the future of the Schengen area.

1 Introduction

In 2015, the European Union (EU) was faced with unprecedented migratory influx. The number of first-time asylum applications reached 1,255,600 and thus doubled in comparison to the previous year. This massive influx, combined with deficiencies in external border control as well as important irregular secondary movements within the EU, led a range of Schengen members including Germany, Austria, Sweden and Norway to temporarily restore internal border checks. Many deduced that the Schengen system had collapsed – that it was dead.

The collapse of Schengen would have important economic, political and societal costs. According to estimates, the annual economic losses in terms of trade, commuting, tourism and border controls could amount to €63 bn¹. The political costs would be even more consequential. According to Eurobarometer polls from November 2015, European citizens view the freedom of movement as one of the EU's two most valued achievements together with peace between the member states. The same polls show that a majority of citizens is in favour of a common European migration policy.

Schengen is neither dead, nor has it collapsed. However, it is at an important crossroads. What are the implications of the British referendum for the Schengen area? How can the EU overcome the supposed dichotomy of freedom and security? What reforms are needed to maintain the freedom of movement and make the Schengen system more resilient? How can greater convergence between European asylum systems be achieved? On 4 July 2016, the Jacques Delors Institut – Berlin invited a range of prominent speakers to discuss these and related questions².

2 Schengen and “Brexit”

Our discussion on the future of Schengen took place eleven days after the historical vote of the British people in favour of a withdrawal from the EU. As the Director of the Jacques Delors Institut – Berlin and Associate Dean of the Hertie School of Governance, Prof. Dr. Henrik Enderlein, underlined in his introductory remarks: Schengen and Brexit are closely intertwined.

The freedom of movement for workers was a key issue in the British debate preceding the referendum. The argument of the ‘leave’ camp was that Britain could only regain control over immigration in case of a Brexit. Former British Prime Minister David Cameron and leader of the ‘remain’ camp, instead, suggested reforming the principle of free movement by curbing social benefits for EU workers in the United Kingdom (UK).

All of the speakers stressed that the EU's four freedoms are inseparable. According to Michael Roth, State Minister for Europe in the German Foreign Office, “those who think that they can separate out single fundamental principles of the Union and participate in the European integration process without carrying the corresponding duties have not understood the European project”. The message to Britain was unequivocal: if you want to participate in the

¹ Auf dem Brinke, Anna “[The economic costs of non-Schengen: What the numbers tell us](#)”, Jacques Delors Institut – Berlin, Policy Paper No. 162, April 2016.

² The full conference programme and a selection of pictures can be found [here](#).

Single Market, the free movement for workers is non-negotiable and has to be preserved. António Vitorino, former Justice and Home Affairs Commissioner and then President of the Jacques Delors Institute, pointed out that this is not only in the interest of the 3 million EU citizens in the UK, but also of the 1.2 million British citizens that live and work in other EU member states.

Looking at the bigger picture, several speakers argued that the collapse of Schengen and the failure to handle the refugee crisis would be more threatening to the European project than a “Brexit”. A core lesson from the British referendum is that the EU has to demonstrate that it can deliver in the fields that matter to its citizens. As the Head of the Federal Chancellery, Peter Altmaier underlined: “Europe has to deliver on the big questions of our time”. European decision-makers also have to do more to forge a positive narrative about the EU that highlights its added value and transcends national public spheres. It is crucial to remind the citizens of the very tangible benefits of the Schengen system and to counter *Angst*-based narratives about migration exploited by right-wing populists with reasoned arguments and facts.

3 Bridging freedom and security

For the survival of Schengen it is important to balance internal security and the freedom of movement. The coincidence of the massive refugee influx and terrorist attacks on European soil has raised security concerns amongst European citizens. July 2016 polls from the Pew Research Centre suggested that a majority of Europeans fear that refugees will increase domestic terrorism³. A crude link between refugees and terrorism should be avoided and the real risks related to free movement are arguably lower than the perceived ones. As Karen Mets, Senior Advocacy Adviser at Save the Children rightfully emphasised, 99.99% of the migrants arriving in the Schengen area do not represent a security risk. Nonetheless, security concerns and potential risks have to be taken seriously and addressed.

3.1 Towards greater Schengen security

Dr. Emily Haber, State Secretary at the Federal Ministry of the Interior, used three examples to illustrate the risks related to the freedom of movement:

1. The case of Mehdi Nemmouche who had returned to France from Syria in 2013 and was one of the perpetrators of the shooting in the Jewish Museum in Brussels.
2. Several persons entered the Schengen border through the Greek island of Leros in 2015 and were later identified as perpetrators of the terrorist attacks in Paris in November of the same year.
3. An important surge in organised crime in the EU, in particular burglaries, was assigned to people from the Western Balkans and Georgia.

These examples illustrate to what extent security in the Schengen area has become a European public good. This was also the underlying message of the concept of the Security Union proposed by the European Commission. To avoid yet another rhetoric-reality gap, this concept has to be

³ Pew Research Center, “[Global attitudes and trends](#)”, 11 July.

filled with substance through intensified and networked judicial, police and intelligence cooperation.

Many steps have already been taken to strengthen cooperation in these domains. However, as Minister Altmaier highlighted, progress has been dragging for some years. In this regard, Ambassador Joachim Bitterlich described the EU as a “limping Union”: it has opened its internal borders but has failed to take the necessary complementary steps in internal security cooperation. The current situation should thus be seen as a wakeup call and the following priorities should be addressed:

- **Systematic information-sharing:** Prof. Christian Calliess, Legal Adviser to the European Political Strategy Center, suggested creating a legal duty to share information and called for more investment in the respective information technology. State Secretary Haber stressed that we have to know who enters and leaves the EU and welcomed the ETIAS system proposed by the European Commission.
- **Reinforced police cooperation:** The European Counter-Terrorism Centre established within EUROPOL was seen as a good step towards more systematic European cooperation. However, it only has around 80 staff and should be strengthened.
- **Networked intelligence cooperation:** While there should not be a ‘European FBI’, existing cooperation platforms such as the Intelligence Centre should become information hubs and get better at connecting the dots between external and internal dimensions of ‘Schengen security’.

3.2 Internal border controls

If there is a threat to public policy or internal security, the Schengen Borders Code allows the member states to restore internal border checks. The conditions are clear: the restoration of border checks has to be exceptional, limited in time and proportionate.

Dr. Yves Pascouau, Director of Migration and Mobility Policies at the European Policy Centre argued that the temporary restoration of border checks is necessary for a functioning Schengen system. While there have been around 35 instances where internal border controls have been restored in the past decade, a change in pattern can be observed⁴. Since 2015, border controls have mostly been restored due to the unprecedented influx of migrants. In addition, the restoration of border checks has been decided more *ad hoc* and the checks have been maintained for longer periods of time.

Although Dr. Pascouau considered the temporary restoration of border checks justified in light of the deficiencies in external border control, he warned of an overly broad interpretation of the threat to public policy. He recalled the preamble of the Schengen Borders Code, which states that “migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security.”

Dr. Reinhold Lopatka, leader of the parliamentary group of the Austrian People’s Party, explained why his country has considered the influx of migrants as a threat to public policy. He emphasised the disproportionate burden that it has had to carry in comparison to some bigger EU member states. He also mentioned the relatively high proportion of immigrants already in

⁴ European Commission, Migration and Home Affairs, “[Temporary reintroduction of border controls](#)”, Brussels, 2016.

Austria, its rising unemployment rate and the costs arising from its high level of social benefits. “Of course, the best solution is always a European solution”, he argued, “but if there is no European solution and if you want to have a stable situation in your country you have to do something. (...) So we started with the border checks and, to be very clear, we will continue until the day we have a European solution.”

Dr. Pascouau reacted by pointing to a chicken and egg problem: if there is no European solution, we have to act unilaterally. But if we act unilaterally, the odds of forging a European solution become lower. Should the EU really be blamed for the inability or unwillingness of the member states to agree on a common solution?

Dr. Lopatka’s answer illustrates the pressure that decision-makers in frontline states are facing and underscores the urgency with which a European solution based on solidarity and responsibility-sharing has to be found: “Then we have to be clear and say that it is not possible to have a European solution because the Commission and the European Parliament do not have the instruments and national governments are not ready to do it. But doing nothing is not a political solution (...) What should we, as politicians, do: sit, wait and drink tea? This is not my job.”

4 What kind of comprehensive strategy?

Several speakers were confident that a European solution can be found. Minister Altmaier stated: “We will be able to solve the refugee crisis at the European level and this can lead to an enormous push for European integration”. There was general agreement that a European solution will have to be based on a comprehensive and fine-tuned strategy that addresses the internal and external dimensions of migration as well as their interlinkages⁵. But while the idea of comprehensiveness generally appealed, views often diverged when it came to the more fine-tuned options and choices.

4.1 Reinforced external border control

All the speakers agreed that the EU has to reinforce external border control in the short-term. Minister Altmaier stressed that “external border control has to become a European responsibility”. The transformation of the EU’s border management agency Frontex into a European Border and Coast Guard was thus welcomed. Mr. Vitorino underlined that this new body should support the member states with emergency operations in situations of massive influx and play a stronger role in assessing and monitoring the quality of national border management.

A divisive question was whether the European Border and Coast Guard should be allowed to intervene against the will of the member state in question if the Schengen system as a whole is under threat. Contrary to the initial Commission proposal, the amended Regulation gives the concerned member state a veto right. Prof. Calliess was in favour of the initial proposal: The member states have the responsibility to protect the external border – if they fail to do so and reject the offer of European solidarity, the EU should be able to take over responsibility.

⁵ See Henrik Enderlein and Nicole Koenig, „[Towards Dublin IV: sharing norms, responsibility and costs](#)”, Jacques Delors Institut – Berlin, Policy Paper no. 169, June 2016.

Alternatively, he argued, the concerned member state could be offered a “Schexit”. According to Prof. Calliess these measures could be used as a threat to ensure greater member states compliance. State Secretary Haber conceded that in 2015, “the principle of sovereignty with regard to open borders had become a risk”. However, she firmly questioned the feasibility of a right to intervene that goes beyond the agreed compromise.

4.2 More convergent European asylum systems

There was clear agreement among the speakers that there should be more convergence between European asylum systems. According to State Secretary Haber, “we have not seen convergence of standards, procedures and decisions. We have seen fragmentation and, in some cases, a race-to-the-bottom”. Elisabeth Kotthaus, Deputy Head of Political Department at the European Commission Representation in Berlin outlined various Commission measures that should foster greater convergence such as the transformation of asylum-related EU directives into more binding regulations.

Ms. Mets criticised the Commission’s reform proposals for being overly punitive and for curtailing migrants’ rights. She called for a much stronger focus on improved reception conditions and for more budget lines dedicated to one of the most vulnerable groups of migrants: children. She explained that some member states such as Hungary have very good child protection systems in place, but criticised that they lack the political will to act according to their own rules.

How can implementation gaps be overcome and compliance with EU norms and standards ensured? Mr. Vitorino and Ms. Kotthaus referred to the proposal by the European Commission to transform the European Asylum Support Office into a fully-fledged asylum agency. According to Mr. Vitorino the new agency should focus on guaranteeing the quality of the asylum processes in the member states to counter the stark disparities in recognition rates. He also proposed the creation of a European Court of Appeal based in the European Court of Justice.

Furthermore, the Commission should continue to launch infringement procedures to discipline the member states and push them towards rule compliance. Boldizsár Nagy, Associate Professor of Public International Law at Eötvös Loránd University and Central European University suggested that there should be more transparency including during the early procedural stages while Ms. Kotthaus highlighted the benefits of initial discretion.

4.3 Physical and financial responsibility-sharing

The speakers had different views on the extent to which the Dublin Regulation and, in particular, the first country of entry criterion should be revised. Mr. Vitorino and State Secretary Haber argued that this criterion should be maintained in order to ensure a clear allocation of responsibility to one member state and create a direct link to its responsibility to protect the EU’s external border. However, both recognised that this rationale has not worked out in practice. State Secretary Haber argued that, in 2015, along with external border control “the sense of responsibility of the countries of first entry imploded as well.” According to Prof. Nagy, the Dublin system is fundamentally flawed. He suggested granting recognised beneficiaries of protection free movement within the Schengen area as long as they are able to sustain themselves.

Several speakers called for greater responsibility-sharing and solidarity among the member states. They recognised that the EU's current relocation mechanisms are not functioning as they should. Physical responsibility-sharing should thus be combined with a financial component. The Commission's proposal of a corrective fairness mechanism, whereby relocation is triggered after a certain threshold is reached and which foresees fines for member states failing to participate, was criticised as unrealistic. In this context, Ms. Kotthaus underlined that the EU should not become a "Community of sanctions" but remain one of dialogue where sanctions are only applied as a very last resort.

The implementation of a new system combining physical and financial responsibility-sharing is bound to face political resistance and will take time. Europe will have to develop a real culture of common responsibility. However, migrants arriving in Europe do not have this time. Mr. Vitorino thus suggested that implementation could initially be taken forward through variable geometry.

4.4 New deals with countries of origin and transit

Cooperation with countries of origin and transit was seen as a key component of a comprehensive strategy. State Secretary Haber pointed to the difficulties in ensuring cooperation on readmission and return. Countries of origin have little interest in cooperation as remittances of their nationals often represent an important economic contribution. Countries of transit also lack incentives for cooperation on readmission and argue that they do not want to deal with other countries' problems. State Secretary Haber underlined the need to change the cost-benefit calculation of countries of origin and transit by offering them comprehensive migration partnerships that bundle a whole range of tools stretching across foreign, security, economic, development, trade and agricultural policy.

In this context, the EU-Turkey deal was controversially discussed. Minister Altmaier underlined that the agreement has demonstrated Europe's capacity to act. Aside from lowering the number of incoming migrants, it has also contributed to opening the Turkish labour market for Syrian refugees, combating human smugglers and traffickers, and preventing the loss of life at sea. He emphasised that the return of irregular migrants is going hand in hand with enhanced resettlement opportunities. He suggested that the approach of concluding EU migration partnerships with third States might also be applied to African countries such as Mali or Niger. Dr. Lopatka congratulated the German Chancellor for being a key driver behind the EU-Turkey deal, but argued that it will not be enough. Prof. Calliess interpreted the deal as an emergency measure that can provide some breathing space in the short-term without providing a sustainable solution. Meanwhile, Ms. Mets argued the deal has not worked as the resettlement part is still underdeveloped due the member states' lack of political will.

4.5 More coordinated legal migration

To reduce incentives for irregular migration, a comprehensive strategy has to open legal avenues for both humanitarian and economic migration. Concerning the former, Mr. Vitorino proposed combining protection in the region with resettlement. He underscored that "it is hypocritical to say that we Europeans are willing to provide protection, but that migrants should first come to us. We all know how they come to us: with the help of smugglers and traffickers". Instead, Europe should contribute to the protection of refugees closer to their home countries and push

for increased global resettlement efforts. This would require extensive funds and support to the

relevant UN agencies. In addition, Prof. Calliess alluded to the creation of external hotspots and the possibility to issue more humanitarian visa.

Mr. Vitorino called for a new approach to economic migration. While the decision on the admission and integration of economic migrants should remain in the hands of the member states he emphasised the need for a more coordinated European approach. Greater coordination is necessary due to the principle of free movement. Decisions to admit and legalise labour migrants might directly affect other member states if, for instance, the economic situation in this country deteriorates and migrants decide to irregularly move to another.

5 Preserving and extending Schengen

As Minister Altmaier recalled, the EU has faced multiple crises it was not prepared for, but they have almost always contributed to its further development. State Minister Roth made a strong plea for the preservation of the borderless Schengen area: “Borders do not have anything to do with Europe. It is my task and that of my generation to make sure that this remains the case and that we will never raise walls in Europe again.” He firmly underlined the societal value of the principle of the free movement of persons as an instrument for the emancipation of European citizens.

State Minister Roth closed the conference by proposing to save Schengen by extending it. He called for the creation of an “Economic Schengen” that would lower remaining intra-European borders or barriers regarding social policy, labour markets and economic policy. A few member states, in particular France and Germany, should take the lead and build a nucleus of closer cooperation while keeping the doors open to those interested in furthering European integration.