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The State of the Schengen Area in the Light of the 2019 European Parliament Election

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Abstract

This policy brief assesses the state of the Schengen area ahead of the 2019 European Parliament election. Is Schengen really in crisis? It examines this question in the light of the main policy and legal developments related to the Schengen system that have occurred during the last three years, chiefly the reintroduction of internal border checks on persons, the establishment of a common European Border and Coast Guard (EBCG) and the increasing use of border fences at the common external borders. How can these developments be understood in relation to the stage of Europeanisation characterizing EU border standards and the EU founding principles? The policy brief concludes by outlining policy priorities for the next European Parliament.

Keywords

1. Introduction

The Schengen Area represents one of the major and most visible achievements of European integration. The free movement of persons is a constitutive feature lying at the foundations of the European Union (EU) which is valued by European citizens. Between 2015 and the end of 2018 there was much discussion about Schengen being in 'crisis' and especially after the emergence of the European refugee humanitarian crisis in the summer of 2015, when a large number of asylum seekers entered across the eastern Mediterranean from Turkey to Greece and from there to other European countries.

Some EU member states responded by re-introducing internal border checks and derogating from the Schengen regime. A few other governments built new border fences. More than three years later, and although the number of irregular entries of asylum seekers has fallen,[1] there are still five EU Schengen members conducting systematic internal border controls. However, is Schengen really in crisis? This brief examines the state of the Schengen area by assessing the latest developments – chiefly the reintroduction of internal border checks on persons, the establishment of a common European Border and Coast Guard (EBCG) and the increasing use of external border fences – in the light of EU border standards and the EU founding principles.

2. 'Europeanizing' the Schengen System

The Schengen system had its origins outside the European Communities (EC) framework.[2] It started as an intergovernmental agreement among five participating States (Belgium, France, Germany, Luxembourg and the Netherlands). This took the shape of the 1985 Schengen Agreement, which was complemented with the 1990 Convention implementing it. The system entered into force in 1995. The main motives lying behind its original drafting and development were to dismantle internal border controls, allow the free movement of persons and develop 'compensatory or flanking' security measures.'[3]

The Schengen model was linked to a parallel system for sharing responsibility for assessing asylum applications which came under the guise of the 1990 Dublin Convention. In contrast to the Schengen paradigm, the guiding principle was 'no free movement' for asylum seekers to decide where their asylum claim would be examined inside the Schengen territory. The EU Dublin model runs on the basis of a 'first country of entry' rule, according to which responsibility is often conferred on the state where the first irregular entry takes place.

Between 1990 and 1999 Schengen membership was enlarged to all the EU Member States (except the UK and Ireland), with some non-EU states – Iceland, Norway, Liechtenstein and Switzerland – joining too. 1999 was a milestone year, with the Schengen regime being brought under the EC pillar in the Amsterdam Treaty. This meant an application of the Community method of cooperation to the area

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[1] According to statistics provided by UNHCR, from about 850,000 entries by sea and land in Greece in 2015, and 176,000 in 2016, the number of entries decreased to 13,800 in 2017 and to 26,000 from January to June 2018. Regarding Italy, the statistics have remained rather stable since 2014, with about 153,000 entries in 2015, 181,000 in 2016, 119,000 in 2017 and 18,500 from January to June 2018. According to Frontex, "In the first nine months of 2018, the number of irregular border crossings into the EU via the top four migratory routes fell by a third from a year ago."

[2] Integrated Security in Europe: A Democratic Perspective, Collegium-News of the College of Europe/Nouvelles du Collège de l'Europe, No. 22-XII.2001. For a critique see D. Bigo, "Frontiers Control in Europe: Who is in Control?", in Didier Bigo and Elspeth Guild (eds.), Controlling Frontiers: Free Movement into and within Europe, London: Ashgate, pp. 66-67.

[3] S. Carrera and T. Balzacq (eds.), Security versus Freedom? A Challenge for Europe's Future, Farnham: Ashgate Publishing.

and an increase in the role played by the Commission. The result was a harmonization and codification of all the Schengen *acquis* in the shape of the Schengen Borders Code (SBC).[4]

By the end of 2007 all the 2004 enlargement EU member states had joined the Schengen Area, with the exception of Cyprus. Bulgaria, Romania and Croatia are still candidate Schengen countries. The 'Europeanisation' of Schengen took a decisive step with the 2009 Lisbon Treaty, which confirmed the role of the Commission and expanded that of the European Parliament to deliver democratic control.

Interior ministries remained in the driving seat at the core of the Schengen machinery. This was so in relation to the evaluation of the implementation and enforcement of the common Schengen rules by national and local authorities. Intergovernmentalism also prevailed in relation to the rules envisaging any temporary reintroduction of internal border checks, which was deemed a domain reserved by the relevant national governments.

A decisive step in the Europeanisation of Schengen resulted from a political controversy in 2011. A few hundreds of Tunisian immigrants arrived in Italy as a result of revolutions in the southern Mediterranean region. The Italian authorities started issuing temporary residence permits for 'humanitarian protection' to these people and encouraged them to move towards France. This led to the Franco-Italian Schengen affair, with France re-introducing internal border checks, which resulted in pushing back a few hundreds of immigrants holding these permits and a blocking of trains from Ventimiglia in April 2011.[5]

The Commission concluded that the 'spirit of Schengen' had been breached by both governments. It then proposed a new legislative (Schengen Governance) package which called for a reform of the existing rules covering both the reintroduction of internal border controls by Member States and the Schengen Evaluation Mechanism (SEM). The underlying objective of the Commission's proposals was to recalibrate the powers of both the Commission and the European Parliament and to inject a 'coordinated EU decision.'

The Union-focused nature of the Schengen Governance Package meant more EU supervision and less margin for manoeuvre for the ministries of the interior. The proposed legal framework transformed the SEM away from the previous Council of the EU Secretariat-led and Member State peer-to-peer intergovernmental evaluation model and into a Commission-led evaluation tool.

Two new regulations which came into force in October 2013 also granted a closer degree of democratic control by the European Parliament over the reintroduction of internal border checks and the SEM. The Parliament's role proved to be controversial during inter-institutional negotiations. Following an attempt by the Council to change the legal basis of the new SEM, and hence exclude the European Parliament from its adoption, the Parliament played 'hard ball' and froze the negotiations in other key Justice and Home Affairs files in what became known as 'the Schengen freeze.' Parliament confronted the Council by delivering a formal declaration stating that any future change to the SEM would be subject to consultation with the Parliament, which meant a *de facto* co-decision role.

[4] Guild, E. (2006), "Danger – Border under Construction: Assessing the First Five Years of Border Policy in an Area of Freedom, Security and Justice," in J.W. de Zwaan and F.A.N.J. Goudappel (eds.), Freedom, Security and Justice in the European Union, Implementation of the Hague Programme, The Hague: T.M.C. Asser Press, pp. 45-72.

[5] Carrera, S., E. Guild, M. Merlino and J. Parkin (2011), A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair, CEPS Liberty and Security in Europe Series, Brussels.

3. Reintroducing Internal Border Checks

3.1. Latest Developments

Schengen countries had in the past reintroduced internal border controls in exceptional and casuistic cases.[6] With the emergence of the European refugee humanitarian crisis in summer 2015, Germany, Austria and Slovenia took immediate action and reintroduced internal border checks in September 2015. This was followed by Denmark, Sweden and Norway, which in November 2015 implemented similar actions.[7]

All these decisions took place on the basis of Art. 25 SBC. This provision allows Schengen countries to exceptionally re-introduce checks as a measure of last resort "when there is a serious threat to public policy or internal security in a member state" at all or specific parts of its internal borders. They can do this subject to specific deadlines: up to 30 days or "for the foreseeable duration of the serious threat if its duration exceeds 30 days." Art. 25 SCB stipulates that the total time period must not exceed six months.

In the context of the first round of evaluations under the new SEM, in the midst of the crisis in November 2015 the Commission carried out an unannounced on-site visit to several locations in Greece to evaluate the implementation of the Schengen *acquis*. The evaluation results unsurprisingly concluded that "there are serious deficiencies in the carrying out of external border controls." The Commission provided Greece with a number of recommendations in February 2016, which were then adopted by the Council. These focused on the "identification, registration and fingerprinting" of asylum seekers entering irregularly.

In its March 2016 Communication 'Back to Schengen,' the Commission concluded that if "migratory pressures and the serious deficiencies in external border control" persisted beyond May 2016 it would present a proposal to the Council to operationalize Art. 29 SBC. The Commission presented this proposal to the Council in May 2016 and in October 2016 the Council adopted it in a Decision setting out a recommendation for prolonging temporary internal border controls in "exceptional circumstances putting the overall functioning of the Schengen area at risk."

The Decision allowed Austria, Germany, Denmark, Sweden and Norway to maintain internal border controls for a period of six months. It provided specific guidelines concerning the exact border points

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[6] Groenendijk, K. (2004), "Reinstatement of Controls at the Internal Borders of Europe: Why and Against Whom?", European Law Journal (10), pp. 150-170. The motives included: for the purposes of safeguarding international events taking place in their countries; attempts to restrict irregular immigration; as a response to serious health scares and similar circumstances. See also Apap, J. and S. Carrera (2004), "Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?", Alternatives: Global, Local, Political, Vol. 29, No. 4, October, pp. 399–416; and Annex by S. Carrera, E. Guild, M. Merlino and J. Parkin (2011), A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair, CEPS Liberty and Security in Europe Series, Brussels.

[7] France notified the reintroduction of border checks on grounds unrelated to migration and the refugee crisis in October 2015 based on the COP21 UN Climate Change Conference in Paris. They were then continued following the terrorist attacks in the country between 2015 and 2017, along with the declaration of the state of emergency. Malta notified reintroduction of internal border checks in September 2015 for the Valetta Conference on Migration which took place on 11/12 November and the Commonwealth Heads of Government Meeting on 27/228 November the same year.

where checks would be reintroduced,[8] which constituted small parts of their internal borders corresponding with very specific land border zones and ports, and also concrete reporting procedures.[9]

Art. 29 SBC was originally designed as a provision that would never be used in practice. It provides for a specific procedure to apply in exceptional situations when the overall functioning of the Schengen area is at risk "as a result of persistent serious deficiencies relating to external border control." It allows member countries to introduce internal border controls for an additional period of six months, which can only be renewed three consecutive times for similar six-month periods.

The official deadline for all these interior ministries to 'come back to Schengen' was October/November 2017. However, the same five member states not only exhausted the possibility of extending the Art. 29 SBC procedure three times but have unlawfully continued conducting internal border checks after the expiry of the deadline until the present day. The six-month period foreseen in Art. 25 SBC has also been exceeded. Based on the latest official information and formal notifications by the relevant ministries of the interior, Austria, Denmark, Germany and Norway have notified extensions until May 2019, Sweden until February 2019, and France until April 2019.

3.2. Justifications by Member States

The official justifications provided in the notifications issued by the five Schengen members involved mainly relate to the so-called "migratory crisis and resulting secondary movement of undocumented and irregular immigrants" and risks of further secondary movements from those asylum seekers who are still in Greece. The use of asylum or migration as the reason for prolonging internal border checks beyond November 2017 does not constitute a legitimate ground for derogating from Schengen.

This was underlined by the European Commission in a 2017 Communication 'Preserving and Strengthening Schengen' and an accompanying Press Release, which stated that as of November 2017 it was no longer possible for any Schengen member to invoke "the unprecedented migratory and refugee crisis which started in 2015, the deficiencies in the external border management by Greece and the secondary movements." Little was said about the impacts that these internal border checks had on the fundamental rights of asylum seekers.

Other Schengen members, such as Denmark, Sweden and Norway, have alluded to potential linkages between 'secondary movements' of asylum seekers and criminality and terrorism.[10] The evidence provided in these notifications has been non-existent. The Parliament's Annual Report on the Functioning of the Schengen Area condemned the continued internal border checks, which in its view were "not in line with the existing rules as to their extension, necessity and proportionality, and are therefore unlawful." It criticized the Schengen countries concerned for artificially changing the legal basis and not having "sufficiently justified such controls or provided enough information on their results, *therefore hindering analysis by the Commission and scrutiny by Parliament*" (emphasis added).

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[8] In particular, these included: Austria at the Austrian-Hungarian land border and Austrian-Slovenian land border; Germany at the German-Austrian land border; Denmark in the Danish ports with ferry connections to Germany and at the Danish-German land border; Sweden in the Swedish harbours in the Police Region South and West and at the Öresund bridge; Norway in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

[9] It added that "The Member State that carries out internal border control pursuant to the present Implementing Decision should regularly review the necessity, frequency, location and time of controls, adjust the controls to the level of the threat addressed, phasing them out wherever appropriate, and report to the Commission every two months."

[10] For example, in its latest notification of October 2018, the Danish Ministry of Immigration and Integration mentions as the justification for internal border checks that "the current threats to the public order and internal security caused by terrorists who are using the possibility to move freely within Schengen to plan, prepare and execute terrorist attacks." It continues by saying that "There may be individuals among refugees and migrants who have arrived in Europe and Denmark who can pose a terror threat either because of a direct link to militant Islamist groups abroad or due to radicalization."

One of the key arguments by the five countries is that intensified police checks in selected border areas would not achieve the same effect as border controls. The use of "proportionate police checks" not amounting to permanent border controls has in fact been recommended by the European Commission on several occasions. In its Annual Report on the Implementation of the Schengen Area of May 2018, the Parliament recalled that member states have a number of tools at their disposal other than systematic internal border checks on persons, such as "targeted police controls" which do not have border control as their objective. The Annual Report underlined that the reintroduction of internal border checks was linked more to a perception of security threats "*rather than sound evidence of [their] actual existence*" (emphasis added).[11]

The secondary movement argument calls for an equally meticulous examination showing the exact scale and relevance of this issue at present. Current statistics say little about the actual scale of the phenomenon. The quantitative information available on how the EU Dublin system works only shows a small percentage of applications not based on legitimate grounds. These mainly include, for example, moving to another Schengen member because of personal links (including family unity) and escaping from inhuman and degrading treatment – such as destitution or lack of housing and access to basic social rights – which result from substandard reception conditions in the first country of entry.

3.3. The New Commission Proposal on the Re-introduction of Internal Borders

Following a call made in a leaked 'non-paper' issued by the ministries of the interior and immigration of the five Schengen countries concerned in September 2017, the Commission issued a new Proposal for a Regulation amending the rules applicable to the temporary reintroduction of border controls at internal borders. The Regulation would allow the reintroduction of internal border checks under Art. 25 SBC for a period of up to one year, which could be extended to a maximum length of two years. In cases where "exceptional circumstances" falling under Art. 29 SBC existed, the total period could be prolonged by a further two years, which overall could mean five years. The only obligation for governments would be to justify their decision with a 'risk assessment' explaining how internal border controls contributed to addressing the perceived threat.

A recent report by the European Parliament on the Commission's proposal states that "it is evident that this proposal of the Commission was made to 'legalise' existing practices of member states which are not anymore in line with the current provisions of the Schengen Borders Code." The rapporteur expressed her disagreement with the Commission's attempt and concluded that current member state practices were "disproportionate, unjustified and inadvertent and may even amount to abuse."

4. Schengen External Borders

4.1. The European Border and Coast Guard

One of the most visible responses by the Juncker Commission to the crisis was the adoption of the European Border and Coast Guard (EBCG), reforming the Frontex Agency. The establishment of an EBCG was a priority among the original political guidelines issued by President of the Commission Juncker. In his inaugural speech entitled "A New Start for Europe" of July 2014 he stated that there was a need to "reinforce the work of Frontex and put European border guard teams into action for quick deployment."

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[11] The need for any emergency laws and policies to be subject to strict rules and based on evidence was highlighted by five United Nations Special Rapporteurs in relation to the state of emergency in France following the Paris attacks of November 2015. In a letter to the government of January 2016 they underlined the need to take due regard of the effects on the rule of law and fundamental freedoms. In particular, ex ante and effective judicial controls. See OHCHR (2016), "UN rights experts urge France to protect fundamental freedoms while countering terrorism", Geneva, 19 January.

In its Communication on "The European Agenda on Migration" of May 2015, the Commission announced that it would launch a "reflection" to set up a "European System of Border Guards" covering a new approach to coastguard functions and moving towards a "European Coastguard." The idea of establishing such an EU body was far from novel.[12] The peak of the European refugee humanitarian crisis gave the Commission political momentum to quickly move forward with a legislative proposal in December 2015.

Regulation 2016/1624 on the EBCG was adopted in record time and was published in the Official Journal in September 2016. In brief, the Regulation increased the Frontex Agency capacity regarding human and financial resources and gave a reinforced coordination role to national border and coast guard authorities. The EBCG was entrusted with monitoring national implementation of the Schengen *acquis* and EU standards, and with carrying out 'vulnerability assessments' scrutinizing member countries with external borders. The results feed the SEM. The Agency may intervene in cases when 'urgent action' is needed in any member country to deal with circumstances putting in jeopardy the Schengen area.

The EBCG was also given expanded competences in the area of return and third-country cooperation. The Regulation gave Frontex explicit competence for search and rescue (SAR) at sea and stronger monitoring of fundamental rights of activities on the ground, including a non-independent complaint mechanism (Carrera and Stefan, 2018).

Nevertheless, the EBCG remains 'just a name' which does not reflect its actual competences (Carrera and den Hertog, 2016). The new Agency is dependent on EU member states for contributions, political willingness to cooperate and domestic capacities. It does not have its own personnel and neither does it have the power of command over national border authorities. The EBCG is designed to ensure reinforced coordination among national authorities and new operational tasks 'in times of crisis.' It is not equipped to ensure a permanent and stable institutional response facilitating the application of common EU border standards across the Union (Carrera, Blockmans, Guild and Gros, 2017).

In his State of the Union Speech delivered on September 2018, President of the Commission Juncker presented "the last elements needed for compromise on migration and border reform," which included another new proposal for a regulation further reinforcing the EBCG. The main idea would be to further strengthen Frontex's operational capabilities with 10,000 operational staff by 2020 and its own equipment such as vessels, planes and vehicles. The EBCG would receive executive powers on the ground, including the power to carry out identity checks and to authorize or refuse entry at the external borders and SAR.

4.2. Border Fences and Walls

The European refugee humanitarian crisis gave new momentum to border wall dynamics (Carrera, Stefan, Luk and Vosyliute, 2018). The successive Schengen enlargements came along with high expectations that new states would keep the EU external borders safe. This was the case of Spain, which following its Schengen accession in the mid-1990s began to work on the construction of a border fence between the Spanish enclaves of Melilla and Ceuta bordering with Morocco. These fences have undergone constant changes following incidents of people trying to cross them since the mid-2000s. Practices around the border fences with Morocco have included the use of so-called 'hot or summary returns,' which entail the automatic expulsion of anyone crossing the border fence without an individual assessment or access to asylum. These were found unlawful by the European Court of Human Rights (ECtHR) in October 2017, and have been criticized by the Council of Europe's Special Representative on Migration and Refugees.

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[12] Monar, J. (2005), "The European Union's 'Integrated Management' of External Borders," in J. DeBardeleben (ed.), Soft or Hard Borders? Managing the Divide in an Enlarged Europe, Farnham: Ashgate Publishing, pp. 145-164. Carrera, S. (2010), "Towards a Common European Border Service?", CEPS Working Document No. 331, June.

Figure 1: Border Fences and Internal Border Controls (March 2017)
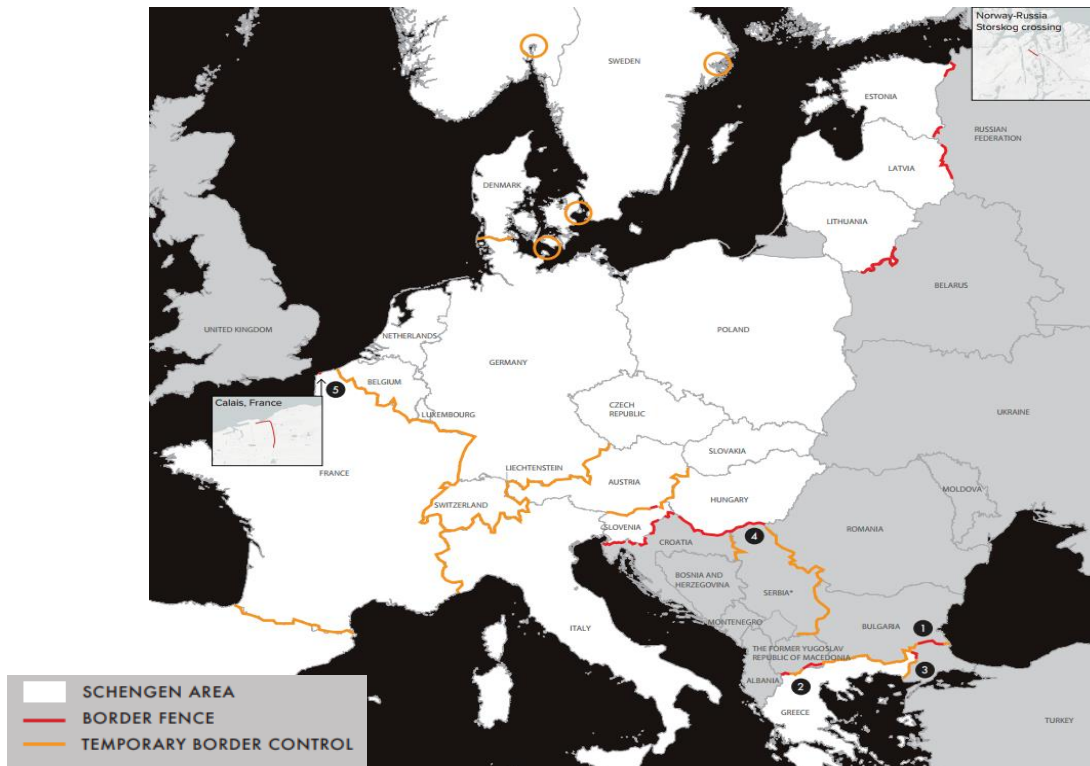
Source: UNHCR

The emergence of the European refugee humanitarian crisis led Hungary to set up its own border fence along its frontiers with Serbia and Croatia with the goal of limiting irregular entries and human smuggling (Carrera, Mitsilegas, Allsopp and Vosyliute, 2018). The European Court of Human Rights found the Hungarian government practice of detention in the 'transit zone' inside the border fence and of sending people back to Serbia in expedited ways contrary to human rights. The Council of Europe's Venice Commission and the OSCE ODIHR underlined in their recent 2018 Opinion on Hungary that the Hungarian government policy had "contributed to a hostile public perception towards all immigrants/foreigners." The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has documented ill-treatment inflicted on third-country nationals by the Hungarian authorities during 'push backs' towards Serbia.[13]

The lack of proportionality inherent in border walling comes together with the role of walls as magnifying glasses of unlawful practices and coercion standing at odds with the rule of law and human rights. The European Parliament's Annual Report on the Functioning of the Schengen Area of May 2018 acknowledged that "the construction of walls and fences at the EU's external and internal borders by various member states is increasing and is being used as a deterrent for entry and transit of asylum seekers." The report condemned the construction of border walls, raised doubts as to the compatibility of such actions with the SBC and called on the Commission to evaluate existing and future constructions thoroughly and report back to Parliament.

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[13] The Report stated that "Therefore, the CPT must recommend once again that the Hungarian authorities take steps without further delay to ensure that all police officers are given a clear and firm message, emanating from the highest political level, that any form of ill-treatment of detained persons, including threats of ill-treatment, as well as any tolerance of ill-treatment by superiors, is unacceptable and will be punished accordingly." Paragraph 13. It also stated that "The alleged ill-treatment consisted in particular of kicks and punches to various parts of the body (including the face and/or head) and baton blows (in particular to the knees, shins and calves), in some cases after the persons concerned had been made to lie down on the ground, as well as of spraying pepper spray directly into the face. Further, several allegations were received from foreign nationals that they had been bitten by unmuzzled service dogs set upon them by police officers."

4.3. Search and Rescue at Sea

The challenges of irregular entries via the central Mediterranean towards Italy preceded 2015. Already in October 2013 and in response to tragic ship wreckages off the island of Lampedusa in which more than 360 people died, the Italian Operation Mare Nostrum (OMN) took unilateral responsibility for rescuing people in need of international protection.[14] This followed the lack of a concerted EU response to constant calls by Italian representatives for 'European solidarity.'

The main focus of the operation was on SAR in international waters (including those around Malta and Libya), and the disembarkation of the people rescued onto Italian territory. The OMN rescued about 150,000 people in the Mediterranean. Despite its military nature, it received wide support from human rights organizations, which expressed concerns when plans to abort it were announced by the Italian and EU authorities in December 2014. Since then, no other EU initiative has taken over the work previously done by OMN. This left a protection gap in the Mediterranean which was only widened by the still unresolved conflict and unrest in Libya. Instead, the EU responded with a new Frontex Joint Operation (JO) called 'Triton' (recently replaced by 'Themis') which, while it engaged in SAR in the context of border surveillance, was not officially meant to replace OMN.[15]

The SAR gap was filled by the Italian coastguard and civil society organizations. NGOs have since then experienced high political pressure and criminalization dynamics creating fundamental obstacles against them continuing to engage in SAR activities in a way which ensures their independence and freedom of association.[16] As the Aquarius boat controversy illustrated, the situation remains unresolved. A joint letter issued by a group of academics expressed concern about the current Italian policy against civil society engaged in SAR and the prosecution of NGO representatives.[17]

This has resulted in an increase in the number of casualties and deaths in the Mediterranean, with more than 1,500 people missing or dying in the first half of 2018.[18] The European Parliament's Annual Report on the Functioning of the Schengen Area concluded that "a permanent, robust and effective Union response in search and rescue operations at sea is crucial in preventing the loss of life at sea," and called for Frontex to take proper steps to include SAR activities in its operations.

5. Conclusions and Policy Priorities

This policy brief has shown that the Schengen system is not in crisis: only a few member states' interior ministries have argued 'in the name of crisis' in favour of derogating their obligations under the Schengen regime. These derogations have been limited in geographical scope and intensity and no other Schengen member country has joined in. These developments, however, are at odds with the current stage of Europeanisation of the EU border and asylum policies, which lay down a set of standards on

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[14] Carrera, S. and L. den Hertog (2015), "Whose *Mare*? Rule of law challenges in the field of European border surveillance in the Mediterranean," CEPS Paper in Liberty and Security in Europe, No. 79/ January.

[15] SAR has since then become a field of constant political struggles for Italy. While there is a solid international legal framework providing common rules on SAR and disembarkation, consensus is often lacking regarding the exact criteria for ascertaining the obligations on where to disembark rescued asylum seekers at distress at sea. While primary responsibility to provide a place of safety rests with the government responsible for the SAR region, there is no obligation to disembark in its own territory. Indeed, not all persons being rescued are always disembarked at 'the nearest port,' but rather at a 'place of safety.' There is a clear international duty to assist people in distress at sea and not to send them back to an 'unsafe' country with risk of ill-treatment or torture.

[16] S. Carrera, V. Mitsilegas, J. Allsopp and L. Vosyliute (2018), Policing Mobilities: Policies against Migrant Smuggling and Their Impact on Civil Society in the EU, Hart Publishing.

[17] Retrievable from http://statewatch.org/news/2018/mar/open-arms-statement.pdf

[18] According to UNHCR statistics, between January and July 2018 there were about 1,500 people missing or dying at sea (this includes data from Spain, Italy and Greece). Only in Italy were there more than 1,000 during the same reporting period. Refer to https://data2.unhcr.org/en/documents/download/65373

where and *how* border controls are to be conducted within the Schengen territory and which require effective access to international protection for asylum seekers. They are also in contradiction with the rule of law and fundamental rights, which constitute key EU founding principles.

Since 2013, member state actions reintroducing internal border checks can no longer take place unilaterally but are subject to EU supervision. Their daily implementation and compliance with EU law are subject to an evaluation led by the European Commission and with the democratic scrutiny of the European Parliament. It appears that some interior ministries are attempting to regain national sovereignty and reverse Europeanisation in the Schengen system on the ground of the European refugee crisis. These attempts are particularly risky and damaging to the EU's legitimacy in an area which is hugely symbolic for the Union. In the light of the above, the next European Parliament should focus on two main priorities.

Policy Priority 1: Safeguarding the Integrity of the Schengen Area and the EU Founding Principles

A first policy priority for the next Parliament should be to make sure that these member states stop their unlawful internal border checks and fully align their practices to EU standards and principles. Otherwise, the Parliament should recommend opening enforcement procedures before the Luxembourg Court. There is no need to reform the current Schengen rules and the Schengen enlargement towards Croatia, Romania and Bulgaria should be accomplished. The attempt by the Commission to 'legalise' and indirectly support these practices should be rejected. The next Parliament should follow up its call for a rigorous examination of the compatibility of border walls and border-walling practices with EU standards and founding principles.

The EBCG provides potential for institutional solidarity and the development of a professional culture of border and coast guards across the EU, but it also poses accountability and fundamental rights risks. It could play a more active role in the promotion, evaluation and daily implementation of the EU border standards laid down in the SBC, which already include the delivery of key administrative guarantees and protections. The next Parliament should focus on developing the EBCG's SAR operational functions and ensure a Mediterranean-wide SAR operation. It should also ensure the establishment of an independent complaints mechanism and an EU border monitor (under the competence of the European Ombudsman) to evaluate and handle cases of alleged mistreatment and fundamental rights violations in border controls and surveillance operations.

Policy Priority 2: Towards an Asylum Union

The Schengen Area is currently being held hostage by the lack of progress on the reform of the EU Dublin Asylum System and the lack of correct implementation of the existing EU asylum acquis by the member states. The non-evidence-based justifications by the relevant Schengen countries for the prolongation of internal border checks lack any reference to responsibility-sharing for asylum seekers and refugees or how to ensure solidarity-based access to the EU for people seeking international protection in conflicts such as those in Syria and Iraq.[19] They also say little about how they are delivering EU asylum acquis standards related, for instance, to reception conditions.

The next Parliament should prioritize the enactment and delivery of an 'Asylum Union.' It should reiterate its previous calls to abolish the first irregular entry rule and develop a fairer and solidarity-based model of responsibility-sharing among all the member states. The EU Dublin system criteria forcing people to stay where they do not want to be needs to be reconsidered and tailored in a new

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[19] As the European Parliament Report on the 2017 Commission proposal to extend member states' option to reintroduce internal border checks to up to 5 years emphasized "Undoubtedly there is a strong case to be made that irregular migration into the Union – and the knock-on effects on the Schengen area without internal border controls – is the result of a failed Common European Asylum System for dealing with those seeking international protection and a failure to reform that system."

distribution key model. This should come together with the much-needed reform of the EASO into a new EU asylum agency which would support the operability of the new distribution key model and participate in assessing asylum claims along with national authorities, subject to robust domestic and EU democratic and judicial accountability.

The new Parliament should place full respect for EU founding principles, fundamental rights and the rule of law at the top of its agenda. This is the only way to ensure the legitimation of EU and national policies and social trust in them in areas such as Schengen, which have such a symbolic role for citizens.

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