

After Brexit: Schengen remains in the balance, but the border question should not be neglected

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The year 2016 will be remembered as the occasion in which an EU Member State submitted its membership to the EU to a referendum and 52% of the voters chose to leave, prompting a substantial shift in the EU political agenda for next time to come. To deal with the terms and details of the divorce, like the most appropriate moment to trigger **article 50** of the Lisbon Treaty or the model of the future UK/EU relationship, is at the top of the two parties' agendas. **Strong cooperation and good faith will be necessary** as interests begin to draw apart.



There will be no place for a 'best of both worlds' approach from the UK or for threats or an unreasonable degree of pressure from the EU. The first assessment of future proceedings was held on the margins of the European Council of 28 and 29 June, where the future of the EU was also dwelt upon. This will probably accelerate the debate that was being edged aside but was steadily being considered necessary to reaffirm the EU's values as regards mutual trust, democracy and solidarity while searching for new forms of flexible and inclusive solutions. **A two-speed Europe should not be feared.** It solved past serious divisions between member States and can still do so.

Understandably, the remainder of the EU Council's agenda, such as progress on improving the integration of the EU's external border management or dealing with the external dimension on migration (the implementation of the EU-Turkey Statement and the Commission's proposals for a new Migration Partnership Framework) were completely

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overshadowed. We must deal with one crisis at a time but the outcome of the British referendum shows that challenges must be tackled with consequent and reliable solutions or they will come back again knocking at our door.

The first stage of the long and complex divorce should not overshadow the EU's remaining challenges. **The future of the Schengen area is still in the balance.** If Schengen and its associated migratory and asylum policies continue to be a 'collective asset no one stands up for', 31 years on from its inception, 2016 can still be remembered as the moment of extreme political speeches, the overrating of the protection offered by national borders and the successful call for the unilateral reestablishment of national border controls, leading to a progressive decline of freedom of movement in the EU. Another shock to Schengen's foundations, such as occurred last September, must not be allowed to happen again. The 'surprise effect' of the exceptional and massive influx of persons arriving irregularly to the EU gave rise to contradictory political messages.

Perceived initially as too big to control, Angela Merkel's 'open doors' policy and 'wave through' approach –by which more than 1 million people travelled unchecked through the Western Balkan route on their way to Germany, Austria or Sweden– gave way to an overstretching of national reception capacities. **Eight Schengen countries** (Denmark, Germany, Hungary, Austria, Slovenia, Slovakia, Norway and France) **introduced unilateral temporary border controls** on public policy grounds. Border controls on security grounds were also established in France and Belgium after the terrorist attacks in their territories. These controls were in accordance with the Schengen Borders Code (SBC).

Unsurprisingly, upon the expiration of these initial measures, the 'persistent serious deficiencies' in Greece's external border controls –according to a Schengen evaluation published in November 2015– have failed to be corrected. Despite a considerable transfer of financial and technical assistance and some acknowledged improvements in registering and processing refugee claims, the 50,000 on Greek territory still represent a considerable risk of secondary movements. Targeted border controls were kept until mid-November for Germany, Austria, Sweden, Denmark and Norway by a Council of Ministers decision of 12 May. For the first time, Schengen's exceptional safeguard mechanism –article 26, n.2 SBC, allowing the reintroduction of border controls up to two years in situations of serious threat to public policy or internal security– were invoked, placing the overall functioning of the Schengen area at risk.

Temporary border controls are just a consequence of a more complex issue: addressing the **structural deficiencies in the Southern European maritime external border**, in particular the identification and registration of irregular migrants and sea border surveillance, re-emerged with the progressive destabilisation of neighbouring regions. Two thirds of the measures necessary to get back to the full application of Schengen by the end of the year focus on this challenge, particularly restoring Greek border securing and assuring efficient and dignified procedures to deal with third-country nationals who cross external borders irregularly and in need or not of international protection.

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These deficiencies are expected to be mitigated by the likely agreement on the creation and full functioning of the **EU Border Guard** by August. It will not be a truly European border guard and neither will it resolve new migratory pressures. The EU Border Guard is just the possible first step for integrated border management. Each Member State's primary responsibility for managing its borders will be combined with the introduction of a shared responsibility in managing the security of the EU's external borders. If a Member State faces disproportionate migratory pressure or any other challenges at its external borders **there will be an obligatory pool of up to 1,500 border guards** available to be deployed. If a member state refuses to cooperate with the Agency and jeopardise the functioning of Schengen zone, only then can the others reintroduce temporary border controls according to the Schengen Border Code. It is thus a stabilisation safeguard mechanism that reinforces cooperation and mutual trust before national controls can be introduced. The revamping of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States

(**Frontex**) includes a supervisory capacity role for Vulnerability Assessments of the EU's external border. The first is foreseen for August so that preventive measures can be taken to allow the lifting of border controls by the end of the year.

For the time being **the inflows are under control**, mostly because of the messages sent through the EU-Turkey Agreement. However, a sudden inflow could occur again and it is necessary to be able to face up to the challenge.

The urgency to keep high political pressure to get 'back to Schengen' and bridge an increasingly divided Europe ought to deserve the EU leaders' attention, focus, leadership and political commitment. To use an expression of Yves Bertoncini and António Vitorino: **Schengen is bravely 'racing against time' until the end of the year.** Failure to comply with this deadline and extending systematic national border controls further, although legal, would be contrary to the Schengen spirit and radicalise the political questions facing the EU's citizens and their leaders: are we seeking to maintain the rights associated with Schengen membership while strengthening the duties that go with it in terms of solidarity, border controls and migration policies? Or are we going to allow Schengen to live permanently with safeguard mechanisms and miss the opportunity to improve our collective ability to deal with migratory pressures or terrorist threats? These questions should also be among those in the minds of the EU's leaders as they debate the Union's future.