

THE SCHENGEN ACQUIS – RE-THINKING THE EUROPEAN INTEGRATION IN THE CONTEXT OF THE REFUGEE CRISIS

Introduction

Dimitris Avramopoulos, the European Commissioner for Migration, Home Affairs and Citizenship, has declared in December 2015 that *'the current migration and security challenges know no borders, and require a truly European approach'*.¹

Based on the idea of creating a system where nation states would no longer follow unilateral and destructive policies, the process of European integration has formally started after the Second World War.² This process, leading to economic and political unifications between the different European states,³ has reached a cornerstone with the article 1 of the Treaty on the European Union, which states that the European Union is a *'process of creating an ever closer union among the peoples of Europe'*.⁴

To create closer links between peoples, the first idea that comes to our mind is the free movement of persons within the states. Consequently, one of the most symbolic achievements of the European integration process is thus the removal of internal borders between the Member States parties to the Schengen area.⁵ This area, composed by 22 EU Member States among the 26 Parties, has been created by the Schengen Acquis. The later corresponds to the legal document forming the Schengen body of rules and regulations,⁶ which can be divided in three documents: the Schengen Agreement, the Schengen Convention and the accession protocols and agreements to the Agreement and the Convention. The first document, the Schengen agreement, was signed on 14 June 1985 by five states⁷ and establishes

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¹ European Commission – Press release, A European Border and Coast Guard to protect Europe's External Borders (15 December 2015).

² The process has begun several centuries ago but the cornerstone was reached with the European treaties of 1957.

³ Spolaore, 'What Is European Integration Really About? A Political Guide for Economists', *Journal of Economic Perspectives* (2013), 3.

⁴ Article 1 paragraph 2 of the Consolidated version of the Treaty on European Union states: *'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen'*.

⁵ COM (2015) 673 final, *'A European Border and Coast Guard and effective management of Europe's external borders'*.

⁶ Kabera Karanja, *Transparency and Proportionality in the Schengen Information System and Border Control Co-operation* (Martinus Nijhoff Publishers, 2008), 26.

⁷ The five States, which are now members of the European Union, are Belgium, Germany, France, Luxembourg, the Netherlands.

not only the abolition of checks at the borders in its first article, but also provides the harmonisation of related areas such as crime, immigration, judicial and police co-operation.⁸ Though the Schengen area was born,⁹ the necessary implementation has been achieved by the Schengen Convention,¹⁰ signed on 19 June 1990,¹¹ but entered into force in 1995.¹² Last but not least, the Agreement and the Convention are implemented by accession protocols and agreements with the Parties.¹³ 31 years after the signing of the Agreement, Schengen is one of the greatest achievements of the European integration,¹⁴ by allowing more than 400 million citizens to exercise their freedom of movement within the Schengen area.

Though Schengen is a European success, one might argue that it has failed to ensure the protection of the external borders of the Schengen area. Indeed, after the entry into force of the Schengen Acquis, controls at the internal borders of the Member States were replaced by controls at the external borders, exercised by the states concerned on behalf of all the Parties.¹⁵ Though external borders of the Schengen area have faced a considerable flow of international refugees coming mainly from the Middle-East and Africa over the last decades, we are currently witnessing a gigantic increase in the number of migrants and refugees entering into the Schengen area.¹⁶ 31 years after that the Schengen Agreement was signed, the Schengen area faces considerable pressure to cope this Refugee Crisis with divided Parties' reactions.

This poses several questions as to whether this ambitious Agreement signed back in the 1980s is still relevant with the migration challenge of the 21st century. As a consequence, the fundamental question is whether the Refugee Crisis could undermine this process of European integration or whether it can be a great opportunity for the Parties to adapt the system in order to cope with the current crisis. Consequently, what is the impact of the

⁸ For a comprehensive list of the long-term measures proposed by the Schengen Agreement, see O'Keefe, 'The Schengen Convention: A Suitable Model for European Integration?', *11 Yearbook of European Law* (1991), 185.

⁹ Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship, in: the European Commission, *'Europe without borders: the Schengen area'* (2015).

¹⁰ Mahmood, 'The Schengen Information System: An Inequitable Data Protection Regime', *Vol. 7, No. 2, International Journal of Refugee Law, Oxford University Press* (1995), 180.

¹¹ Schutte, 'Schengen: Its Meaning for the Free Movement of Persons in Europe', *28 CMLR 549* (1991), 551.

¹² In March 1995, the Convention entered into force and the border controls were abolished between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Portugal.

¹³ Kabera Karanja, *Transparency and Proportionality in the Schengen Information System and Border Control Co-operation* (Martinus Nijhoff Publishers, 2008), 26; Vermeulen, 'Mutual Legal Assistance in Schengen', in den Boer, *Schengen Still Going Strong: Evaluation and Update* (European Institute of Public Administration, 2000), 53.

¹⁴ Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship, in: the European Commission, *'Europe without borders: the Schengen area'* (2015).

¹⁵ Hailbronner, *Immigration and Asylum Law and Policy of the European Union* (Kluwer, The Hague, 2000), 130.

¹⁶ Schneider, *Migration, Integration and Citizenship: A challenge for Europe's future – Volume II*, (Forum Maasticht, 2005), 8.

Refugee Crisis on the process of European integration in the specific case of the Schengen Acquis? This article intends to search for an answer.

To answer to these questionings, this article will focus on the decisive role of the Member States in the integration process, but also the influence of the European Commission which defends the process of European integration. Though the analyse is based on migration law, a multidisciplinary approach with political sciences and history is needed to fully understand the current state of play examined in this paper. To that end, I proceed as follows. I start by outlining the biggest achievements of Schengen to remove the internal border and its biggest danger: the protection of the external borders, which maps out the ensuing discussion. In the second section, I present and analyse the impact of the Refugee Crisis and the Parties' reactions on Schengen. In the last section, I summarize the different solutions suggested by scholars and the commission to avoid the inefficient end of Schengen and to rather contribute to the reconfiguration of the Schengen area.

1. The Schengen Acquis: the European integration through the removal of internal borders with the Achilles heel of the external borders

As pointed out by *Bruno de Witte* and *Anne Thies*,¹⁷ the European scale is more and more favoured than a national one thanks a better achievement. For example, the environmental protection is a transnational matter which justifies that actions are taken at the European level.¹⁸ Though the legal cultures within the different EU Member States may differ,¹⁹ this pluralism is not a barrier anymore, but rather a solution to increasing Europeanization and globalization situations.²⁰ Although the European integration may be a dilemma for the states involved,²¹ the Member States have concluded an increasing number of treaties in specific areas which are not immediately of the interest of the European Union, such as tax law, defence, culture and migration.²²

¹⁷ De Witte and Thies, 'Why Choose Europe? The Place of the European Union in the Architecture of International Legal Cooperation', in Kapteyn, *et al* (eds.), *The Law of the European Union and the European Communities*, (Kluwer Law International, 2008), 25.

¹⁸ Krämer, 'Community Environmental Law—Towards a Systematic Approach', *11 Yearbook of European Law* (1991), 151.

¹⁹ Smits, 'Legal Culture as Mental Software: How to Overcome National Legal Culture?', *2007/2, Maastricht Working Papers Faculty of Law* (2007), 6.

²⁰ Friedman, *The World is Flat* (Farrar, 2005). It has also to not be forget in European history that thinking in terms of nation-states is a relatively new phenomenon, in Smits, 'Legal Culture as Mental Software: How to Overcome National Legal Culture?', *2007/2, Maastricht Working Papers Faculty of Law* (2007), 6.

²¹ Kapteyn, 'Civilization under Negotiation: national civilizations and European integration: the Treaty of Schengen', *Vol 32, Issue 02, European Journal of Sociologie* (1991), 363.

²² De Witte and Thies, 'Why Choose Europe? The Place of the European Union in the Architecture of International Legal Cooperation', in Kapteyn, *et al* (eds.), *The Law of the European Union and the European Communities*, (Kluwer Law International, 2008), 25.

The founding fathers of the European Union have supported the idea of the establishment of common spaces²³ between the Member States,²⁴ where persons and goods can circulate freely.²⁵ Based on the idea that the abolishment of control of borders of the different Member States is a pre-condition to the establishment of the four freedoms, the free movement of persons, goods, services and capital, in a functioning internal market,²⁶ the Schengen project enshrines the abolition of internal borders.²⁷ The general Community-wide consensus on gradually abolishing the controls on persons, has been reached in the Schengen Acquis, and legally based on the 1985 Schengen Agreement.²⁸ The later enshrined the gradual abolition of checks and controls at the internal borders of the Parties and transferred them to the external borders.²⁹ Indeed, one may highlight that the Parties to the Schengen Agreement are of the opinion that the internal freedom of movement and external border control are structurally interdependent.³⁰ As a consequence, the adoption and implementation of the Schengen Acquis is the cornerstone of the freedom of movement of persons in the European Union,³¹ by allowing European citizens to exercise their freedom and by allowing the internal market to prosper.³² The related ideas in the White Paper 1985 of the Commission on the completion of the internal market equally reflect this crucial point of departure.³³ Through the history of the Schengen

²³ This exercise in ‘political myth-making’ is part of a larger EU project involving the construction of a single European space, or what Jensen and Richardson call a ‘*monotopia*’: Jensen and Richardson, *Making European Space: Mobility, Power and Territorial Identity* (Routledge, 2004). The EU monotopia is supposed to be a single, common space within which all constraints to the movement of goods, peoples, services, and money have been removed. In: Zaiotti, ‘Performing Schengen: myths, rituals and the making of European territoriality beyond Europe’, *Vol. 37, Issue 02, Review of International Studies* (2011), 546.

²⁴ Kostadinova, ‘The European Commission and the Configuration of Internal European Union Borders: Direct and Indirect Contribution’, *Vol. 51, N° 2, Journal of Common Market Studies* (2013), 275.

²⁵ COM(2016) 120 final, ‘Back to Schengen – A Roadmap’ (2016), 1.

²⁶ Fijnaut, ‘The Refugee Crisis: the End of Schengen?’ *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314.

²⁷ Huybrechts, *The Schengen Convention and the Schengen acquis: 25 years of evolution*, (Springer online, 2015), 380.

²⁸ Mahmood, ‘The Schengen Information System: An Inequitable Data Protection Regime’, *Vol. 7, No.2, International Journal of Refugee Law, Oxford University Press* (1995), 179.

²⁹ Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 266.

³⁰ Pastore, ‘Visas, Borders, Immigration: Formation, Structure, and Current Evolution of the EU Entry Control System’, in Walker (ed.), *Europe’s Area of Freedom, Security and Justice* (Oxford University Press, 2004), 94-98.

³¹ Guild, ‘The legal framework: who is entitled to move?’, in Bigo and Guild (eds.), *Controlling frontiers: free movement into and within Europe* (Aldershot: Ashgate, 2005), 14-48; Carrera, ‘What does free movement mean in theory and practice in an enlarged EU?’, *11, 6 European law journal* (2005), 699-721; Connor, ‘Goods, persons, services and capital in the European Union: jurisprudential routes to free movement’, *11 (2), German law journal*, (2010), 159-209; Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No 2, European Security, Routledge* (2010), 266.

³² COM(2016) 120 final, ‘Back to Schengen – A Roadmap’, 1.

³³ COM(85) 310 final, ‘Completing the Internal Market’.

Acquis,³⁴ two reasons may explain the Member States' consensus on this specific topic. On the one hand, it can be argued that this objective would not have been efficiently reached at the national level and required thus European actions; On the other hand, the Schengen Acquis can be interpreted as a proof of the Member States' voluntary engagement in a new step of the integration process.³⁵ From this vision, it might be concluded that the spillover is more political than legal,³⁶ in this integration process.

Since the Treaty of Lisbon, which provides legal instruments for the development of a common border security policy,³⁷ the Schengen Acquis have further been developed in essential fields for a functioning Schengen area.³⁸ The Schengen Acquis have thus been expanded in border policy, data protection, the Schengen Information System, police cooperation, judicial cooperation and visa policy.³⁹ Consequently, the Schengen area appears to become a common agency for border control with common rules for identification documents, visa regulations, etc.⁴⁰

However, the process is still incomplete,⁴¹ and divisions have appeared between the Parties.⁴² Not only the successive integration of associated states has made cooperation under

³⁴ Anderson, *et al.*, *Policing the European Union* (Oxford: Clarendon Press, 1995); Noll, *Negotiating asylum: the EU acquis, extraterritorial protection, and the common market of deflection* (The Hague: Martinus Nijhoff, 2000); Walters, 'Mapping Schengenland: denaturalizing the border', 20 (5) *Environment and planning D: society and space* (2002), 561-580; Occhipinti, *The politics of EU police cooperation: toward a European FBI?* (London and Boulder, 2003); Aden, 'Administrative governance in the fields of EU police and judicial co-operation', in: Hofmann, *et al.*, *EU administrative governance* (Cheltenham: Edward Elgar, 2006), 341-360; Peers, 'From black market to constitution: the development of the institutional framework for EC immigration and asylum law', in: Peers and Rogers (eds), *EU immigration and asylum law: text and commentary* (Leiden: Martinus Nijhoff, 2006), 19-46; Zaiotti, 'Revisiting Schengen: Europe and the emergence of a new culture of border control', 8 (1), *Perspectives on European politics & society* (2007), 31-54; Neal, 'Securitization and risk at the EU border: the origins of FRONTEX', 47(2), *Journal of common market studies*, (2009), 333-356.

³⁵ De Witte and Thies, 'Why Choose Europe? The Place of the European Union in the Architecture of International Legal Cooperation', in Kapteyn, *et al.* (eds), *The Law of the European Union and the European Communities*, (Kluwer Law International, 2008), 29-30.

³⁶ Kostadinova, 'The European Commission and the Configuration of Internal European Union Borders: Direct and Indirect Contribution', Vol. 51, N° 2, *Journal of Common Market Studies* (2013), 266.

³⁷ Ladenburger, 'Police and criminal law in the treaty of Lisbon', 4 *European constitutional law review* (2008) 20-40; Georgiev, 'Towards a common European border security policy', Vol. 19, No. 2, *European Security*, Routledge (2010), 266.

³⁸ Huybrechts, *The Schengen Convention and the Schengen acquis: 25 years of evolution*, (Springer online, 2015), 383.

³⁹ *Ibid.*, 381.

⁴⁰ Tholen, 'The Changing Border: developments and risks in border control management of Western countries', Vol. 26, Nbr. 2, *Internal Review of Administrative Sciences* (2010), 264.

⁴¹ Zaiotti, 'Performing Schengen: myths, rituals and the making of European territoriality beyond Europe', Vol. 37, Issue 02, *Review of International studies* (2011), 555.

⁴² Kostadinova, 'The European Commission and the Configuration of Internal European Union Borders: Direct and Indirect Contribution', Vol. 51, N° 2, *Journal of Common Market Studies* (2013), 265.

Schengen difficult to understand,⁴³ but it seems that it has failed to restrict the flow of asylum seekers and migrants both at domestic and intergovernmental levels.⁴⁴ Since the beginning of the negotiations, the main cause of division between the Parties has been to agree upon an effective and fair system of control and an equally workable system of cross-border co-operation at the external borders of the Schengen area.⁴⁵ Indeed, by deciding to share a common internal area of free movement,⁴⁶ it consequently leads to a security deficit for the combined territory of the Member States,⁴⁷ which needs to be compensated by a reinforcement of consistent standards of border management and security at the external barriers.⁴⁸ Indeed, the efficiency of Schengen depends on an adequate protection and security at the external borders,⁴⁹ in order to deal with possible pressures due to a large numbers of migrants and refugees.⁵⁰ Numerous scholars and politicians have questioned at the time of the drafting of the Schengen Acquis whether the system of control at the external borders, in particular in the southern Member States, could be able to maintain an effective system of control and to solve the practical problems that still existed.⁵¹ Among the questioners, a senior member of the Royal Marechaussee in the Netherlands wrote in 1993 that the idealist architects of the Schengen area had not learned the lessons of the past with huge streams of migrants from Central and Eastern Europe after the fall of the Berlin Wall and the collapse of the Soviet Union.⁵² However, the European Parliament has not paid attention at that time to the fragility of the system that was put into place, even when the rapporteurs of the most important reports published on the Schengen system in 1991 and 1992 denounced the lack of involvement of the European Commission and the European Parliament in the discussions related to the Schengen Convention.⁵³ In practice, there has been a lack of control on cross-border operations by the police force.

⁴³ Huybrechts, *The Schengen Convention and the Schengen acquis: 25 years of evolution*, (Springer online, 2015), 380.

⁴⁴ Bazo, 'The Role of Spain as a Gateway to the Schengen Area: Changes in the Asylum Law and their Implications for Human Rights', *Vol. 10, No. 1/2, International Journal of Refugee Law, Oxford University Press* (1998), 215.

⁴⁵ Wiesbrock, *Legal Migration to the European Union* (Martinus Nijhoff Publishers, 2010), 315.

⁴⁶ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 2.

⁴⁷ Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security, Routledge* (2010), 255; Walters, 'Secure borders, safe haven, domopolitics', *8 (3), Citizenship studies* (2004), 252.

⁴⁸ Kölliker, *Flexibility and European Unification: the Logic of Differentiated Integration* (Rowman & Littlefield publishers, 2006), 211; Articles 3 and 7 of the agreement fixe common standards for the crossing of the external borders of the Schengen area.

⁴⁹ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders'.

⁵⁰ Fijnaut, 'The Refugee Crisis : the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 31.

⁵¹ *Ibid.*, 316.

⁵² Nijssingh, 'Grenzeloos Optimisme', 40 *Ons Wapen* (1993) 5–10 in Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 316.

⁵³ European Parliament, 1990–1991, *Rapport de la Commission Juridique et Des Droits des Citoyens sur la Liberté de Circulation et la Sécurité dans la Communauté Européenne* (rapporteur: Malangré), A3-0199/91, pe 143.354/def.,

Though the problems appeared since the beginning of Schengen have remained at the centre of the attention and the debates in the European Union,⁵⁴ the critics against the whole system have increased with the challenge of coping with the Refugee Crisis.

2. The Schengen Acquis: the challenge of the Refugee Crisis for the European Integration process

To understand the challenge that represents the Refugee Crisis for the Schengen system, it is first needed to explain the origins of this migration flow and the diverse Member States' reactions.

Multiple factors can explain a migration flow. Nowadays, the flow of migrants and refugees in Europe finds its numerous origins in the systemic poverty and corruption, failed states, dictatorship, terrorism, war and civil war in numerous parts of the world.⁵⁵ For example, the conflict and crisis in Syria and other states in the same region have pushed a considerable number of migrants to take the road to Europe. Indeed, the European Union appears for those people as an attractive territory of peace, democracy, prosperity for those fleeing persecution, human rights violations, armed conflicts or natural and human-made disasters.⁵⁶

From all the foregoing reasons, Europe has always been attractive for migrants and refugees,⁵⁷ however, a increasing flow of people has tried to recently reach the 'fortress Europe'.⁵⁸ Over the last months, the flow of migrants and refugees coming to Europe represents the largest refugee crisis since the Second World War.⁵⁹ Until 2014, it was estimates that every year approximately 200 000 illegal migrants cross Schengen border to EU and seek for asylum.⁶⁰ In 2015 and 2016, this phenomenon has rocketed unprecedented numbers of asylum seekers and economic migrants crossing the external borders to enter into the Schengen area. Between January and November 2015, more than 1.5 million illegal border

Brussels, 3 July 1991; 1992–1993, *Second Report on the Entry into Force of the Schengen Agreements* (rapporteur: van Ouirve), A3-0336/92, pe 202.504/fin., Brussels, 5 November 1992. In: Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 316.

⁵⁴ Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security*, Routledge (2010), 255.

⁵⁵ Fijnaut, 'The Refugee Crisis: the End of Schengen ?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314.

⁵⁶ Crépeau, *et al*, *International Migration: security concerns and human rights standards* (SAGE publications, McGill University, 2007), 312.

⁵⁷ It is not the first time that the Schengen agreement is in danger with migrating waves, such as the influx of North African refugees in 2011 which had pushed Italy and France to review the agreement.

⁵⁸ Lezard, 'Fortress Europe by Matthew Carr review – a call for a more humane approach to immigration', *The Guardian* (10 November 2015).

⁵⁹ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 1-2.

⁶⁰ Krcmery, 'Infectious diseases in asylum seekers crossing Schengen borders coming to European Union', *16th ICID Abstracts, Vol. 2 International Journal of Infectious Diseases* (2014), 27.

crossings were detected,⁶¹ which represents the highest number of arrivals ever reached in the European Union.⁶² These high migratory pressures have highlighted serious deficiencies in external border controls, which put the functioning of the whole system at risk.⁶³

In practice, this unprecedented migratory and refugee crisis has led to serious difficulties for some Member States to ensure effective checking and controlling of irregular migrants,⁶⁴ which is one of the main goals of the Schengen Acquis.⁶⁵ Indeed, due to geographical factors, it is needed to keep in mind that the situations are considerably different among the Parties. In 2009, an EUROPOL report on illegal immigration has pointed out that the main migration pressure points in the European Union are located in the islands of Lampedusa, Sicily and Sardinia in Italy, Malta, Mainland Spain and the Canary Islands, as well as the coasts and islands of Greece.⁶⁶ As a consequence, irregular migration exploded last few years in Parties, especially in those located in the South of the European Union,⁶⁷ and along the route across the Western Balkans.⁶⁸ By cause of its geographical location, a collapse of the control system at the external borders has happened in Greece,⁶⁹ due to the huge flow of migrants and refugees.⁷⁰

As a result of these multi-faceted challenges, the Parties have reacted by different solutions, including the wave-through approach chosen by some Member States.⁷¹ Indeed, some of them fear that the Refugee crisis will cause a damage to the European values, institutions and policies. Consequently, the reactions are violent in these states, such as the behaviour of the police against refugees at the iron curtain that Hungary has built.⁷² In other states, the

⁶¹ The exact figure for the period January-October is 1 284 549 illegal border crossings. The data is available from Frontex Risk Analysis Network (FRAN) and covers the Schengen area including the Schengen candidate states. It includes the third state nationals detected at external borders (except temporary external borders) when entering or attempting to enter illegally between the border crossing points (BCPs). For November, the data originates from the Joint Operations Reporting Application (JORA) and from the Croatian Ministry of Interior (<http://www.mup.hr/219696.aspx>); estimates have been used for routes where no data was yet available.

⁶² For the period 2009-2014, the total number of detected illegal border crossings was 813 044.

⁶³ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 11.

⁶⁴ *Ibid.*, 4.

⁶⁵ See the Resolution of the European Parliament on the Schengen agreement and political asylum (6 April 1995), *No C 109, Official Journal of the European Communities* (1995), 169; Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security, Routledge* (2010), 259.

⁶⁶ Facilitated illegal immigration into the EU. Europol, September 2009, in Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security, Routledge* (2010), 260.

⁶⁷ Mainwaring, 'Constructing a Crisis : the Role of Immigration Detention in Malta', *Population Space Place 18, Wiley online library* (2012), 687.

⁶⁸ COM(2016) 120 final, 'Back to Schengen – A Roadmap'.

⁶⁹ *Ibid.*, 4.

⁷⁰ Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314.

⁷¹ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 11.

⁷² Squires, 'Hungary accused of treating refugees inhumanely as migration crisis worsens', *The Telegraph* (28 August 2015).

question of welcoming the refugees and migrants divides the society, as in Germany, in the Netherlands, in France and other Member States.⁷³ In reaction to the fears of uncontrolled and considerable movement of migrants and refugees and the phenomenon of foreign terrorist fighters crossing the borders without being checked,⁷⁴ there is a decreasing confidence from the citizens in the Schengen system to control this unprecedented rise in flows of migrants and refugees.⁷⁵ Consequently, eight states of the Schengen area,⁷⁶ Belgium, Denmark, Germany, Hungary, Austria,⁷⁷ Slovenia, Sweden and Norway,⁷⁸ have chosen to reintroduce temporarily the traditional control measures at their internal borders.⁷⁹

This unilateral reintroduction of internal border controls for a temporary period is based on Article 25 of the Schengen Borders Code,⁸⁰ which provides the possibility to reintroduce controls at the internal borders for a period up to two months.⁸¹ Without improvements, the controls at the borders have been prolonged, based on Articles 23 and 24 of the Schengen Borders Code⁸² for a period up to 6 months.⁸³ However, the combined implementation of articles 23, 24, 25 of the Schengen Borders Code⁸⁴ points out that the border control can only be maintained for a total period of up to eight months,⁸⁵ which shows that it is an exceptional measure.⁸⁶ The provisions of the Schengen Borders Code can only be

⁷³ Culik, 'Fencing off the east: how the refugee crisis is dividing the European Union', *The Conversation* (16 September 2015).

⁷⁴ Wang, 'Brussels attacks: Can Europe keep its open borders?', *CNBC* (22 March 2016).

⁷⁵ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders'.

⁷⁶ Since September 2015, overall eight states of the Schengen area have reintroduced border controls at their internal borders: Belgium, Denmark, Germany, Hungary, Austria, Slovenia, Sweden and Norway. In: COM(2016) 120 final, 'Back to Schengen – A Roadmap', 9.

⁷⁷ The Austrian chancellor Werner said on the 17th of January that the Schengen agreement has been 'temporarily suspended' in Austria. 'Austria 'temporarily' suspends Schengen', *EurActiv* (18 January 2016).

⁷⁸ Traynor, 'Is the Schengen dream of Europe without borders becoming a thing of the past?', *The Guardian* (5 January 2016).

⁷⁹ Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314; COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 2.

⁸⁰ Regulation n° 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), Article 25, paragraph 1: '*Procedure for cases requiring urgent action 1. Where considerations of public policy or internal security in a Member State demand urgent action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders*'.

⁸¹ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 10.

⁸² Article 23 concerns '*Temporary reintroduction of border control at internal borders*'; Article 24 concerns: '*Procedure for foreseeable events*'.

⁸³ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 10.

⁸⁴ Article 25 concerns: '*Procedure for cases requiring urgent action*'.

⁸⁵ Accordingly, if continued, the internal border controls that Member States reintroduced unilaterally under the Schengen Borders Code would have to expire at the latest by 13 May for Germany, 15 May for Austria, 9 July for Sweden and 15 July for Norway.

⁸⁶ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 10.

used in exceptional circumstances⁸⁷ which could affect the whole functioning of the Schengen area and which constitute a serious threat to public policy or internal security within the Schengen area have to be proved.⁸⁸ Indeed, the eight Parties which have reintroduced the borders in this exceptional situation have based on the argument that the influx of high numbers of undocumented or inadequately documented persons, pose a serious threat to public policy or internal security.⁸⁹

The temporary and exceptional characters of this measure avoids that the Member States place in danger the proper functioning of the Schengen area.⁹⁰ If the Parties would close the borders as much as they would like to, the spirit of an open-borders system would disappear. Consequently, it would become a ‘*Europe à la carte*’ in which Parties can decide unilaterally to put in danger the whole system of Schengen and the European integration project.⁹¹

As a consequence, the idea of solving this crisis by closing the borders and ending Schengen has been spread among the public discussions in many Parties.⁹² These questionings embody the idea that the Schengen system has to be adapted to the current crisis.

3. The Schengen agreement: the urgent need of redrawing it to safeguard this European integration process

From the previous considerations may appear that Schengen is the foundation of many problems. Consequently, some might argue that the solution is the end of the Schengen system. Many think that a common EU border security system is not necessary. This argument is based on the variations existing in culture of border control, law enforcement, intelligence and diplomacy.⁹³ In addition, this reasoning is also based in the fact that two EU Member States have chosen to not participate to this system and keep sovereignty on their border controls.⁹⁴

The suggestion that Schengen may disappear would not only inefficient, but it would also be a dangerous back step for the European integration. First, the reintroduction of

⁸⁷ For example, France had reintroduced internal border controls in November 2015, not for the irregular migration, but for the COP21 Conference and the Paris terrorist attacks of 13 November 2015.

⁸⁸ COM(2016) 120 final, ‘Back to Schengen – A Roadmap’, 11.

⁸⁹ COM(2016) 120 final, ‘Back to Schengen – A Roadmap’, 10.

⁹⁰ *Ibid.*, 10.

⁹¹ Jönsson, *et al*, *Organizing European Space* (SAGE Publications, 2000), 133.

⁹² Fijnaut, ‘The Refugee Crisis: the End of Schengen?’ *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314.

⁹³ Jorry, ‘Construction of a European institutional model for managing operational cooperation at the EU’s external borders: is the FRONTEX agency a decisive step forward?’, *6 CEPS Challenge Research paper* (2007), 25; Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security*, Routledge (2010), 266.

⁹⁴ The two European Member States are the United Kingdom and Ireland. Wiener, ‘Forging flexibility the British ‘No’ to Schengen’, *1, European journal of migration and law* (1999), 441-463; Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security*, Routledge (2010), 266.

internal border on a regularly basis would not solve the challenges of the Refugee Crisis,⁹⁵ by jeopardizing the judicial and police cooperation, but would also create economic, political and social costs⁹⁶ for the European Union,⁹⁷ the Member States⁹⁸ and the people.⁹⁹ Then, the advanced process of integration via Schengen is not only one of the basis of the European integration process by maintaining peaceful relationships between the Parties, but it is also a massive codification which highlights the importance of the cooperation in the European Union. As pointed out by *Georges Dassis*, the President of the European Economic and Social Committee, Europe used to be not a long time ago a ‘*champion of walls*’, which have been brought down by the civil society.¹⁰⁰ One might ask if it is a nostalgic feeling which inspires so much the defenders of the construction of new barriers all along the internal borders of the Schengen area. Nevertheless, destroying Schengen will damage but not end the process of European integration enshrined in the Schengen area. A member of the Legal Service of the European Council has stated that even if ‘*the Schengen Convention is dead its provisions are still with us*’.¹⁰¹

On closer investigation on the reintroduction of the border controls, one might conclude that there is an urgent need to reform the Schengen Acquis in order to enforce a new and adapted system to overcome the Refugee crisis.¹⁰² Indeed, by being among the most visible manifestations of the European integration process, Schengen’s erosion would send a powerful signal of a step back regarding the European integration.

⁹⁵ *Georges Dassis*, president of the European Economic and Social Committee (EESC), in ‘Hands off Schengen ! Georges Dassis urges European citizens not to surrender the benefits of Schengen’, *Euractiv* (5 February 2016).

⁹⁶ COM(2016) 120 final, ‘Back to Schengen – A Roadmap’, 4.

⁹⁷ According to France Stratégie, trade between states in the Schengen zone could be reduced by at least 10% through the permanent reintroduction of internal border controls. Another study (Bertelsmann Stiftung Study on Departure from the Schengen Agreement. Macroeconomic impacts on Germany and the states of the European Union, February 2016) has shown that, in the case of a reintroduction of border controls, over a period of 10 years, the economic performance of the EU as a whole would be between €500 billion and €1.4 trillion lower than without such controls.

⁹⁸ The long waits at the border would discourage people from looking for cross-border opportunities in the labour market, reducing the pool of potential workers. This would in the medium term reduce the economic efficiency of some regions. The share of cross-border commuters is particularly high in Slovakia (5.7%), Estonia (3.5%), Hungary (2.4%) and Belgium (2.3%).

⁹⁹ Maintaining the border controls would deprive people of the huge benefits of free movement across borders. Indeed, 1.7 million workers in the EU crossing a border every day to go to their jobs and border controls would cost commuters and other travellers between €1.3 and €5.2 billion in terms of time lost.

¹⁰⁰ *Dassis*, president of the European Economic and Social Committee (EESC), in ‘Hands off Schengen ! Georges Dassis urges European citizens not to surrender the benefits of Schengen’, *Euractiv* (5 February 2016).

¹⁰¹ Huybrechts, *The Schengen Convention and the Schengen acquis: 25 years of evolution*, (Springer online, 2015), 380.

¹⁰² Fijnaut, ‘The Refugee Crisis: the End of Schengen ?’ *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314.

The development of a common European Union border security policy based on the weaknesses and the challenge of the European Union has been deeply analysed in the academic field. Not only the debate focuses on the current effectiveness of the Schengen institutional framework,¹⁰³ but it also analyses new solutions to globally improve the Schengen system and the implementation of the Schengen Acquis by Member States.¹⁰⁴ Consequently, the scholars try to understand the future challenges of the border security in the Schengen area in order to improve the practical implications of these challenges and threats by assessing different methods,¹⁰⁵ and by assessing different elements.¹⁰⁶ Some scholars suggest that some elements, which are normally used at national scale, would be used at the European level for the future common European border security policy.¹⁰⁷ The reason why these elements should be used at a larger scale is that they are related to the overall border management effectiveness on a more considerable scale.¹⁰⁸ In other words, the two main elements for an efficient border security framework are: immigration inspections, with a control of movement of human beings, and customs inspections, with the control of movement of goods and information.¹⁰⁹

By taking into account these scholars' proposals and the current situation, the European Commission is of the opinion that the Schengen Acquis must be changed to meet the new challenges and political realities faced by the European Union, in terms of migration and internal security.¹¹⁰ In a global view, the Commission has the ambitious goal to improve the external borders by creating the 'smart border' programme.¹¹¹ The later consists on an entry/exit system by improving on the one hand border controls and combat irregular migration while making on the other hand border crossing easier

¹⁰³ Jorry, 'Construction of a European institutional model for managing operational cooperation at the EU's external borders: is the FRONTEX agency a decisive step forward?', *6 CEPS Challenge Research paper* (2007), 25; Jeandesboz, 'Reinforcing the surveillance of EU borders: the future development of FRONTEX and EUROSUR', *no. 11, CEPS Challenge Research paper* (2008).

¹⁰⁴ Jordan, 'The implementation of EU environmental policy: a policy problem without a political solution?' *17(1), Environment and planning C: government and policy* (1999), 69-90.

¹⁰⁵ Leiter, 'The perils of a half-built bridge: risk perception, shifting majorities, and the nuclear power debate', *35 (1), Ecology law quarterly* (2008), 31-72.

¹⁰⁶ Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security, Routledge* (2010), 266.

¹⁰⁷ Wermuth, 'The strategic challenge of border security. Testimony presented before the House Homeland Security Committee, Subcommittee on Border, Maritime and Global Counterterrorism of the US Congress on March 8, 2007', *Santa Monica, CA: Rand Corporation* (2007), 2.

¹⁰⁸ Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security, Routledge* (2010), 266.

¹⁰⁹ Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 257.

¹¹⁰ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 3.

¹¹¹ 'Smart Borders Pilot Project – Report on the technical conclusions of the Pilot, Volume 1', European Agency for the operational management of large-scale IT systems (2015).

for frequent and pre-vetted travellers.¹¹² The main aim consists to improve the citizens and the Member States' confidence to restore a fully functioning Schengen area.¹¹³

In addition, the Commission has presented in December 2015 a major proposal to establish a European Border and Coast Guard in order to not only address the structural deficiencies of the Union's external borders,¹¹⁴ but also to make a more integrated system of border management work.¹¹⁵ This rapid reserve pool would be called only for a limited timeframe in exceptional migratory pressure.¹¹⁶ Two elements are fundamental for the Commission. First, the Commission proposes an increased and mandatory cooperation between the European Board and Coast Guard and national authorities.¹¹⁷ Second, the Commission suggests to create systematic checks for all people entering or exiting the Schengen area,¹¹⁸ in order to verify that the persons entering in the Schengen area are not a danger to public order or internal security.¹¹⁹

Though numerous are the solutions to improve Schengen, scholars, politicians and the European Union institutions agree that the key end of the crisis lies in the solidarity and the shared responsibility of the Parties.¹²⁰ Closing a border and the eyes on the Refugee Crisis is certainly not a viable solution. Indeed, the local difficulties faced in the states located at the external border have a transnational impact on the whole Schengen area.¹²¹ First, it would not help Southern European states to deal with the refugee flows if the states located in the North of Europe would definitely leave Schengen. The performance of the border management tasks requires indeed an uniform implementation of the Schengen rules.¹²² Moreover, the burden placed on the Parties located in the South of Europe is considerable.¹²³ However, a quicker and more efficient end of the

¹¹² The European Commission, 'Europe without borders: the Schengen area' (2015).

¹¹³ As set out in the Commission's Communication of 10 February 2016: the Commission Recommendation on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration (COM(2016) 85 final).

¹¹⁴ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 5.

¹¹⁵ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 3.

¹¹⁶ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 5.

¹¹⁷ *Ibid.*, 4.

¹¹⁸ European Commission – Press release, A European Border and Coast Guard to protect Europe's External Borders (15 December 2015).

¹¹⁹ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 9.

¹²⁰ Fijnaut, 'The Refugee Crisis: the End of Schengen?' *Vol. 23, European Journal of Crime, Criminal Law and Criminal Justice* (2015), 314; COM(2016) 120 final, 'Back to Schengen – A Roadmap', 2.

¹²¹ COM(2016) 120 final, 'Back to Schengen – A Roadmap', 4.

¹²² COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders', 8.

¹²³ Baldwin-Edwards, 'Navigating between Scylla and Charybdis: migration policies for a Romania within the European Union', 7, *Journal of southeast European & Black Sea studies* (2007) 35.

crisis is possible with cooperation between the Parties,¹²⁴ the European Union agencies¹²⁵ and the European Union institutions.¹²⁶ Instead of considering that the responsibility to not protect the external borders is a burden only on Parties located in the South of Europe, it would rather be more efficient to restore a strong external border¹²⁷ in these states to stabilise the asylum migration.¹²⁸ For example, to fight against the increasing transnational and illegal trafficking of human beings in numerous Parties, common actions must be operated at the European level,¹²⁹ instead of uncoordinated actions operated by individual Parties.¹³⁰ Second, the European Union Member States which have chosen the wave-through approach should re-open their borders,¹³¹ in order to attain two obligations. Not only to comply with their obligations under European Union law to granting access to asylum procedure for asylum seekers,¹³² But also to provide human resources and technical equipment to the Parties under migration pressure.¹³³

¹²⁴ The European Council of 18/19 February gave a clear mandate to restore, in a concerted manner, the normal functioning of the Schengen area while giving full support to Member States in the most difficult circumstances in the paragraph 8 e): "*The Council adopted a Recommendation on 12 February 2016. It is important to restore, in a concerted manner, the normal functioning of the Schengen area, with full support for Member States which face difficult circumstances. We need to get back to a situation where all Members of the Schengen area apply fully the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions or who have not made an asylum application despite having had the opportunity to do so, while taking into account the specificities of maritime borders, including by implementing the EU-Turkey agenda*".

¹²⁵ EU Agencies and the Commission should also assist Greece. More precisely, Member States, EU Agencies and the Commission should support Greece in implementing the Recommendations made to Greece by the Council and the Commission with regard to the following steps. As stated in: COM(2016) 120 final, 'Back to Schengen – A Roadmap', 7.

¹²⁶ *Ibid.*, 2.

¹²⁷ As a result, the Council adopted on 12 February 2016 a set of 50 recommendations to Greece to remedy serious deficiencies in external border management.

¹²⁸ Steps should be taken as a matter of urgency to address the growing humanitarian crisis in Greece and to relieve the migratory pressure it faces. See Report from the Commission to the European Parliament and the Council: Progress report on the implementation of the hotspots in Greece: COM(2016)141; 4 March 2016.

¹²⁹ Monzini, 'Sea-border crossings: the organization of irregular migration to Italy', 12 (2), *Mediterranean politics* (2007), 181; Georgiev, 'Towards a common European border security policy', *Vol. 19, No. 2, European Security*, Routledge (2010), 260.

¹³⁰ COM(2015) 673 final, 'A European Border and Coast Guard and effective management of Europe's external borders'.

¹³¹ A wave-through approach is neither politically nor legally acceptable. Politically, the conclusions adopted by the European Council at its meeting on 18 and 19 February call for "an end to the wave-through approach".

¹³² COM(2016) 120 final, 'Back to Schengen – A Roadmap', 2.

¹³³ *Ibid.*, 7.

Taken together and co-ordinately, these measures proposed by scholars, politicians and the Commission aim to return to a normally functioning Schengen area¹³⁴ at the latest by the end of 2016,¹³⁵ in order to preserve the European integration.

Conclusion

Luc Frieden, former President of the EU Justice and Home Affairs Council, proudly proclaimed that Schengen had come to epitomise ‘freedom, security, and European success’.¹³⁶ It is certain that Schengen is an excellent example of European integration by bringing Europeans closer. However, the security deficit created by the abolition of internal borders in the EU has not been fully compensated for,¹³⁷ as it has been highlighted by the Refugee Crisis. The later appears to be a challenge for the European states in the twenty-first century. However, this is not the first crisis that Europe has to face, and it will thus not be the end of Schengen. Europe remains to be an united continent with common values, among those the freedom of movement, which has for objective a successful ‘*Europe without frontiers*’. In order to preserve the later, there is an urgent need for the Parties of the Schengen Area to reform this European project.

Consequently, the debate is not focused on *whether* the Schengen system will survive this crisis but rather *how* this system can be improved to still integrate the European peoples while being better prepared to transnational challenges. The scholars and the Commission have presented interesting proposals to reverse the problems in new proposals, such as a truly functioning European border security policy, to mitigate the growing threats.¹³⁸ Indeed, the future will present more pressure on the border security of the European states. There is thus a need to redraw Schengen not only to cope with the current Refugee crisis but also to deal with the multiplication of hazards and threats:¹³⁹ regional conflicts, the threats of international terrorism¹⁴⁰ and climate change.¹⁴¹ If nothing is done, the current

¹³⁴ “In the end, our objective is to put Schengen back in order, which will happen through coordination, solidarity and reinforcement of our mutual resources” has stated the French President Francois Hollande at the beginning of March during a joint news conference with German Chancellor Angela Merkel in Paris ahead of an EU-Turkey summit on the crisis in Brussels on Monday (7 March). ‘EU unveils plan to restore Schengen by the end of 2016’, *EurActiv* (4 March 2016).

¹³⁵ COM(2016) 120 final, ‘Back to Schengen – A Roadmap’, 3.

¹³⁶ Luxembourg Presidency, ‘Twentieth anniversary of the signing of the Schengen Agreements’, Press Release (2 June 2005), in Zaiotti, ‘Performing Schengen: myths, rituals and the making of European territoriality beyond Europe’, *Vol. 37, Issue 02, Review of International studies* (2011), 546.

¹³⁷ Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 267-8.

¹³⁸ Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 267-8.

¹³⁹ This research is provided by the report Global Risks 2010 by the World Economic Forum; ‘Global risks 2010. A global risk network report’, *World Economic Forum* (2010).

¹⁴⁰ Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 267-8.

¹⁴¹ Stern, *The economics of climate change: the stern review* (Cambridge University Press, 2007).

implementation deficit would become a growing issue to face the future climate refugees¹⁴² or the demographic trends,¹⁴³ and Europe would stay a vulnerable target¹⁴⁴ to threats and uncontrolled phenomenon.¹⁴⁵

Nevertheless, the solution lies elsewhere: we can decide to think about Europe and Schengen as a whole and chose to find common answers to common problems. After all, in the diversity,¹⁴⁶ ‘*the European Union is not the problem – indeed, it is the solution*’.¹⁴⁷

S u m m a r y

By promoting closer links between peoples, the Schengen Acquis are based on free movement of persons within the parties to the Schengen area. The removal of internal borders with the Schengen Acquis is thus one of the main achievements of the European integration process. However, this situation has Achilles heels: the external borders of the Schengen area. The Refugee Crisis, starting in 2015, has pointed out the limits of the Schengen Acquis when dealing with considerable flows of population. This article aims at asking the question whether the Refugee Crisis is a new departure or the end of the European integration process. Though there is an urgent need of redrawing the Schengen Acquis to safeguard the European integration process, the author argues that the refugee crisis should be seen as a new departure for more European integration between the Member States parties to the Schengen Acquis.

¹⁴² Climate change may undermine human security by reducing access to essential natural resources (Parry, et al, *Climate change 2007: impacts, adaptation and vulnerability. Contribution of working group II to the fourth assessment report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2007), 81-82. This may in turn result in violent conflict (Barnett, ‘Accommodating migration to promote adaptation to climate change. Policy brief prepared for the Secretariat of the Swedish Commission on Climate Change’, 26(6) *Political geography* (2009), 627-638) and migration (Clark, *Environmentally induced migration and conflict. Externe expertise für das WBGU-Hauptgutachten. Welt im Wandel: Sicherheitsrisiko Klimawandel [World in the change: security risk climate change]*, (Berlin, Heidelberg: Springer-Verlag, 2008) Climate change is likely to be a significant factor leading to mass exodus from increasingly uninhabitable areas, and population shifts stemming from environmental pressures can place significant burdens on migrant-receiving areas (Gleditsch, ‘Climate change and conflict: the migration link. Coping with crisis’, *Working Paper Series - New York: International Peace Academy* (2007), 1).

¹⁴³ Lee, ‘The demographic transition: three centuries of fundamental change’, 17 (4) *The journal of economic perspectives* (2003), 167-190; Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 255.

¹⁴⁴ “If you close down the borders, Islamic State has won”, said Rainer Maring in Traynor, ‘Is the Schengen dream of Europe without borders becoming a thing of the past?’, *The Guardian* (5 January 2016).

¹⁴⁵ Wermuth, ‘The strategic challenge of border security. Testimony presented before the House Homeland Security Committee, Subcommittee on Border, Maritime and Global Counterterrorism of the US Congress on March 8, 2007’, *Santa Monica, CA: Rand Corporation* (2007), 2; Georgiev, ‘Towards a common European border security policy’, *Vol. 19, No. 2, European Security, Routledge* (2010), 262.

¹⁴⁶ ‘United in diversity’ is the official motto of the European Union.

¹⁴⁷ Dassis, president of the European Economic and Social Committee (EESC), in ‘Hands off Schengen ! Georges Dassis urges European citizens not to surrender the benefits of Schengen’, *Euractiv* (5 February 2016).