

CHALLENGE EUROPE

# Yes, we should!

## EU priorities for 2019-2024



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# Safeguarding Schengen

## The next EU leadership should return to fact-based policies

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**MAIN RECOMMENDATION** ► Safeguard Schengen by lifting it out of the negative and factually flawed discourses surrounding it.

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### WHAT TO DO:

- End the spill-over of negative, discursive dynamics in EU affairs. This includes the following:
    - Member states' unsubstantiated justifications for re-extending internal border checks should not be accepted.
    - The Commission should stop copying flawed discourses around the necessity of border controls in the context of its own activities.
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Safeguarding the continued existence of the Schengen zone should be an immediate priority of the next generation of European leaders. At the time of writing (April 2019), the Schengen free movement zone has not been border-control free for more than three years.

If the next institutional leadership fails to bring Schengen back to its normal, that is, pre-2015 state of affairs, the long-term consequences will be grave. In order to do so, EU leaders must counter the distorted discourses that currently surround the EU's valued free movement *acquis*.

**Three years of sustained internal border controls**

Starting in September 2015 and following the large arrival numbers of asylum seekers over the preceding weeks and months, Germany reintroduced checks along its land border

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with Austria. A chain reaction followed. Austria and Slovenia (still in September 2015) were next to re-introduce border controls, initially to avoid becoming ‘*culs-de-sac*’ where asylum seekers could get stranded.<sup>1</sup> Between October and December 2015, France, Hungary, Sweden and Norway (in that respective order) followed suit. In early 2016, Denmark and Belgium decided to reintroduce border controls, bringing the total to nine countries. Of these nine states, six (France, Germany, Denmark, Sweden, Austria and Norway) have continued to uphold border checks until today.

These extended controls have been the subject of much controversy. Criticism relates, first, to states’ practices of accumulating different legal bases for introducing what are intended to be ‘temporary’ controls and, second, to the limited justifications adduced for doing so.

With respect to the first point, what has been particularly contentious is the constant shifting from one legal basis to another for re-introducing (but *de facto* extending) internal border controls once the temporal limits of a certain legal basis have been exhausted. The European Parliament has publically<sup>2</sup> called this out for constituting unlawful behaviour<sup>3</sup>, and certain member states have done so in internal documents as well.

As regards the second point, the justifications provided for re-instating the controls have been weak and fail to meet the legally prescribed necessity and proportionality requirements.<sup>4</sup> Since 2015, states have predominantly cited threats resulting from so-called ‘secondary movements’ of asylum seekers from Greece and other states at the EU external border into northern-western European states as the reason for introducing border checks.<sup>5</sup> Arrival rates of asylum seekers have, however, dropped significantly since mid-2016. While exact figures are hard to come by, secondary movements have in parallel, and as reported by the European Commission, become ‘limited’. The downward trend in secondary movements could, among other things, be observed in the decrease of asylum applications “received at the internal borders of the member states concerned”.<sup>6</sup>

In late September 2018, the European Council reported that arrival rates at the EU’s external borders had dropped with 92% in comparison to the fall of 2015, when border checks were first instated.<sup>7</sup> However, only a few weeks later, France, Germany, Austria, Denmark, Sweden and Norway nevertheless announced that they would, again, re-extend the controls at their internal borders. Three of them (Austria, Norway and Germany) referred, again, to “continuous

significant secondary movements”, whilst other notifications mentioned, e.g., security

threats linked to a “situation at the external borders”.<sup>8</sup>

## Distorted discourses

The more time passes, the more it becomes clear that the internal border controls, repeatedly extended despite sustained low arrival rates, are not grounded in fact-based public policy considerations. Instead, these checks seem to be informed, predominantly, by political considerations aiming to appease the electorate.

It is notable that the six states with extended internal border controls are all governed by centrist or right-centrist governments that are facing considerable heat from (far-)right wing political parties on the topic of immigration. In Germany, mediatised, anti-immigration messaging comes from the AfD (Alternative für Deutschland) or even from certain CSU (Christlich-Soziale Union) politicians. In France, it is Marine Le Pen and her National Rally party that rail against migrants, while in Austria, the anti-immigration rhetoric of the Freedom party (FPÖ) can be highlighted. Further north, in Sweden, Denmark and Norway similar dynamics are at play involving, respectively, the Sweden Democrats party, the Danish People’s party and the Norwegian Progress party.

In such political environments, sustaining internal border checks and imparting – in that way – an image of a tough immigration policy could seem like an intuitively sensible response to far-right discourses. Even if the controls provide little merit from a public policy point of view – given the low rate of migration movements – at least their symbolic value may provide a counterweight to the highly emotionalised anti-immigration or ‘loss of control’ messaging expounded at the far-right end of the political spectrum.

In the long run, however, buying into such flawed discourses is self-defeating for two reasons:

► First, in doing so, governments risk reinforcing and thus legitimising, even if only indirectly, the kind of rhetoric they seek to outdo. On that basis, they also widen the potential for such rhetoric to gain further traction and wider acceptance at later stages.

► Second, the end goals of these discourses, e.g., “full control over the EU’s external borders” or “zero immigration”, are unattainable. While there is scope for a better control of migration flows, a certain degree of unpredictability will continue to define the volume and the direction of migration flows, as it has always done. Accordingly, it will always be possible to claim that the control is not “complete” or “fully effective” and to continue promoting, on that basis, a retrenchment into nationalist, populist solutions at the expense of EU cooperation.

Domestic developments in Germany around the introduction and later extension of internal border checks provide a telling example of such discursive, repeated-game dynamics. The first introduction of internal border checks, in September 2015, was, to a large extent, a response to the political pressure and mediatised claims from right-wing CSU politicians. Faced with rising immigrant arrival rates along the Bavarian-Austrian land border at that time, politicians such as Markus Söder, Bavaria’s then-finance minister (now state premier), publicly stated that “when the EU’s external borders are not protected, the German government needs

to think about how it will protect German borders”.<sup>9</sup> Responding to these calls by introducing internal border controls and, afterwards, continuously re-extending them, did not help in assuaging the demands. If anything, the opposite happened when in the spring of 2018 the then-leader of the CSU and Germany’s minister of the interior, Horst Seehofer, started advocating for even wider as well as intensified internal border checks. He envisaged an increased number of border control posts, which were to be upheld for an undefined period of time; or at least “so long as the EU fails to effectively control the external border” which, as he added, he didn’t “see it being able to do” anytime soon.<sup>10</sup> These and other demands

he made would have, effectively, implied a dismantling of Schengen.

Seehofer’s calls provoked a domestic political crisis that almost brought down the then newly-formed German grand coalition government and spilled over onto EU level, leading to a tense political atmosphere ahead of, and during, the June 2018 EU Summit. Eventually, through bilateral negotiations between Germany and several southern member states, the dust settled. Nevertheless, and on a broader level, these kind of discursive, repeated-game dynamics, registered in Germany and elsewhere, continue to jeopardize the future of the Schengen zone.

## Risks of losing Schengen

A Europe without Schengen, or with a hollowed-out version of Schengen, would come at a high cost. At least three immediate effects can already be gauged on the basis of the effects of the sustained internal border checks of the past three years.

► First, in economic terms, a study commissioned by the European Parliament on the set-up and operationalisation of the border checks estimates that costs range between €1 to 3 billion in annual operating expenses, and can potentially run up to €19 billion in one-off costs.<sup>11</sup> The broader costs connected to the obstacles for the road transport of goods (accounting for more than 70% of good transport) are much larger.<sup>12</sup>

► Second, there have, and continue to be, immediate and obvious consequences for tourists and other travellers as they are subjected to prolonged identity checks. Several media have reported on difficulties, for instance, in German airports as travellers from Greece were subjected to protracted

passport controls and connected waiting times. In this context, the Financial Times also reported on incidents of racial profiling.<sup>13</sup>

► Third, the sustained controls are a source of political tension between different member states. For example, the above mentioned increased controls targeting Greek airlines and travellers led to a row between German and Greek authorities.<sup>14</sup> In addition, the internal controls, and the economic costs they entail, have been criticized repeatedly – and sometimes very vocally – by other European states, including Poland, Hungary and Slovenia, who are feeling the impact of the controls on their goods transport sectors and who question the sincerity of the stated public policy considerations underpinning them.<sup>15</sup>

Of a less direct but potentially much more problematic nature are the larger, long-term negative effects on public opinion on the European project. A Eurobarometer survey on ‘European Perceptions on Schengen’ published in December 2018

documented that a large majority of European citizens (seven in ten respondents) agree that the Schengen area constitutes one of the EU's main achievements.<sup>16</sup> This confirms trends in broader Eurobarometer polls of the past few years, which have repeatedly shown that a majority of European citizens consider the “free movement of people, goods and services” to be the Union's most important achievement, even surpassing that of bringing about “peace among the member states”.<sup>17</sup> Accordingly, a Europe without Schengen would entail fundamental legitimacy risks for the European project as a whole.

## The way forward: Lifting Schengen out of negative discourses

Safeguarding Schengen is an immediate priority. This needs to start by changing the negative and factually flawed discourses surrounding the EU's valued free movement *acquis*.

► Border checks need to be lifted at once: the currently low number of arrivals and connected secondary movements can no longer be used as a sincere justification for sustained internal border controls. The six countries upholding checks should thus abolish them as soon as possible. Whilst this may look like a political hard sell, there is hardly any alternative. As the past three years have shown, buying time, hoping for the dust to settle or the political pressure from the (far-)right to ease is not a viable strategy. If anything, the sustained nature of these controls, plays – for the reasons described above – into the hands of those advocating for a return to nationalist approaches and, ultimately, a Europe without Schengen.

Collective and coordinated action involving all six states that still uphold controls may make this task easier. As is clear from the simultaneous and coordinated announcements to the media on national decisions to re-extend border controls in October 2018, acting in unison on this file is possible. Such unity can, and should, now move in the opposite direction, towards a restored Schengen zone. Member states should stop referring to one another's continued border checks when framing separate national decisions to that effect.<sup>18</sup> They should apply the opposite strategy, jointly

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conveying the message that the need for internal border controls is no longer there.

► The spill-over of negative, discursive dynamics into EU affairs needs to be stopped. Responsibility in this respect rests, first and foremost, with the European Commission. The next Commission should have two priorities:

First, member states' unsubstantiated justifications for re-extending internal border checks should not be accepted. The Commission should make stronger use of the proportionality and necessity control tools available to it under the Schengen Borders Code. This would include sincere reviews of the need for sustained border checks against the low volume of migration movements. Similarly, the repeated allegation that these controls amount to unlawful behaviour under EU law, including by the European Parliament and other member states, merits a stronger and more detailed response from the Commission.

The Juncker Commission's poor record in terms of procedural control within the current framework also casts doubts on whether we should expect much from the reform of the Schengen Borders Code, which the Commission proposed in September 2017.<sup>19</sup> One of the stated aims of these reforms is, precisely, to increase procedural control over (re-)introduced border checks. However, as the past period has made clear, procedural control tools do not provide solutions if the will to use them is lacking. Political resolve will need to come first.

Second, the Commission should stop copying flawed discourses around the necessity of border controls in the context of its own activities. A particularly problematic instance of imitating such discourses was recently observed in the Commission's proposal to strengthen the European Border and Coast Guard (Frontex), among other things, by creating a "standing corps

of 10,000 border guards".<sup>20</sup> According to the Commission, an increased mandate and resources for Frontex would lead to a more effective management of migration flows and help to guarantee a high level of security within the Union. This constituted, in the Commission's words, a "key condition to preserve the Schengen area".

Buying into these flawed discourses constitutes a self-defeating strategy. For instance, and to the visible frustration of the Commission's leadership<sup>21</sup>, and that of other member states<sup>22</sup>, the proposal immediately led to opposition – again – from nationalist, populist forces within the European Council as Italy and Hungary voiced objections related to possible infringements on national sovereignty.

At the same time, this road to nowhere carries further risks as, in copying such discourses, the Commission implicitly acknowledges and thus reinforces the flawed logic that internal border checks continue to be necessary. This then also hinders the creation of political opportunities for lifting these checks in future. The next Commission should urgently return to factually correct messaging and to drawing the obvious and correct policy conclusions from such facts.

In sum, at the national level, and against the background of continuously low migration numbers, border controls need to be lifted at once. Sustaining these checks to counter far-right, anti-immigration narratives is a self-defeating strategy. In the long run, governments risk reinforcing and thus legitimising, even if only indirectly, exactly the kind of rhetoric they seek to outdo.

At EU level, efforts should, as a priority, go towards preventing the further spill-over of these national dynamics into European affairs. This will require, first, a more critical stance on national governments' unsubstantiated justifications for continued internal border controls. Second, EU actors,

notably the Commission, should refrain from taking over flawed discourses themselves; e.g., in presenting a strengthened mandate for Frontex as “key” to preserving the Schengen area. Failing to do so reinforces the negative, repeated-game dynamics at national level, and hinders the creation of political opportunities for collectively lifting internal border controls in future.

There are no alternatives. As the past three years have shown, buying time, hoping for the dust to settle or the political pressure from the (far-)right to ease is not a viable strategy. What is at stake is the EU’s most important achievement in the eyes of its citizens.

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<sup>1</sup> Pastore, F. & Henry, G., (2016), “Explaining the crisis of the European migration and asylum regime”, *The International Spectator*; Italian Journal of International Affairs, 51 (1), p. 54.

<sup>2</sup> European Parliament (2008), “Report on the annual report on the functioning of the Schengen area”, A8-0160/2018. See also: “[EU Parliament targets unlawful border checks](#)”, *EUobserver*, 29 May 2018.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.; Carrera, Sergio; Stefan, Marco; Ngo, Chun Luk; and Vosyliute, Lina (2018), “The Future of the Schengen Area: Latest Developments and Challenges in the Schengen Governance Framework since 2016, Study for the European Parliament”, Brussels: LIBE Committee.

<sup>5</sup> European Commission (2018), “Full list of Member States’ notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code”.

<sup>6</sup> European Commission (2017), “Communication from the Commission to the European Parliament and the Council on preserving and strengthening Schengen”, COM(2017)570.

<sup>7</sup> European Council (2018), “[Informal Meeting of the EU heads of state or government, 19-20 September 2018 in Salzburg, Austria](#)”, Press Background Note.

<sup>8</sup> Ibid., footnote 4.

<sup>9</sup> “[CSU streitet über Grenzzäune](#)”, *Die Spiegel*, 1 October 2015.

<sup>10</sup> “[German Interior Minister Horst Seehofer calls for more internal border controls](#)”, *Die Welt*, 18 March 2018,

<sup>11</sup> European Parliament Research Service (2016), “[The Costs of Non-Schengen. Impact of border controls within Schengen on the Single Market](#)”.

<sup>12</sup> Auf dem Brinke, Anna (2016), “The economic costs of Non-Schengen. What the numbers tell us”, Berlin: Jacques Delors Institut Berlin, Policy Paper 162.

<sup>13</sup> “[Anti-immigration mood drives fear of racist profiling on EU borders](#)”, *Financial Times*, 26 August 2018.

<sup>14</sup> “[Greeks condemn controversial German airport checks](#)”, *Die Welt*, 28 November 2017.

<sup>15</sup> “[Slovenia says border control with Austria makes no sense](#)”, *Euractiv*, 7 September 2017.

<sup>16</sup> Eurobarometer (2018), “[Europeans’ perceptions of the Schengen Area](#)”.

<sup>17</sup> Eurobarometer (2017), “[Public opinion in the European Union](#)”.

<sup>18</sup> See, e.g., Sweden’s most recent [announcement](#) to continue extending internal border checks.

<sup>19</sup> European Commission (2017), “Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border controls at internal borders”, COM (2017) 571 final.

<sup>20</sup> European Commission (2018), “Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard”, COM (2018) 631 final.

<sup>21</sup> European Commission (2018), “[President Juncker at the European Council, 14 December 2018](#)”.

<sup>22</sup> European Council (2018), “[Arrival and Doorstep by Jean Asselborn, JHA Council Meeting, 11-12 October 2018](#)”.