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# Why Schengen matters and how to keep it

## A five point plan

By Camino Mortera-Martinez

Achtung  
Staatsgrenze



# Why Schengen matters and how to keep it: A five point plan

By Camino Mortera-Martinez

- ★ Schengen, the agreement that abolished national border controls in parts of the EU, may unravel. Unprecedented numbers of asylum seekers and three major terrorist attacks in just over a year have led some member-states to introduce temporary border controls.
- ★ Over the past two months, the flow of migrants and asylum seekers has abated. This is mainly because of an EU-Turkey deal to send back irregular migrants from Greece, and the closure of borders between Balkan countries.
- ★ This improvement may not last long: the EU-Turkey deal is fragile and could crumble for legal, political and practical reasons. And asylum seekers may go back to the more dangerous crossing from Libya to Italy.
- ★ Unless the EU can find a lasting solution to the crisis, there is a risk that national borders will be permanently reinstated across Europe.
- ★ The failure of Schengen would be bad for Europe's economy. The Schengen area makes seamless travel across Europe easier; and it stimulates labour mobility and trade between Schengen countries.
- ★ The end of Schengen would be a major blow to the prestige and credibility of the European Union, which could easily then be exploited by populist parties.
- ★ To save Schengen, the EU needs to regain control of its external borders. Common European migration and security policies are crucial for this, but they will take years to build. In the meantime, Europe must find ways to manage asylum seekers in an orderly way and keep European citizens safe.
- ★ The roots of the current refugee crisis lie in conflicts outside the EU's borders. But until those conflicts are settled, the EU needs to do four things to deal with the influx of asylum seekers:
  - ★ provide 'hotspots' – migrant processing centres in Greece and Italy – with more money, staff and equipment;
  - ★ make sure that every Schengen country takes its fair share of refugees; for that, the EU needs to do more to secure Schengen's external borders;
  - ★ offer asylum seekers legal routes to Europe, by resettling them in Europe from countries close to where refugees come from, such as Turkey or Egypt; and
  - ★ send as many failed asylum seekers home as possible.
- ★ The porous external border makes it easier for criminals, including jihadists, to enter, travel across and leave Europe. To counter this threat, the EU needs to:
  - ★ make better use of existing databases, such as the Schengen Information System, which contains data on wanted and suspicious people, in combination with Eurodac, a database storing the fingerprints of asylum seekers and the Prüm database which contains DNA and fingerprint records.

More than a million people arrived in the EU by sea in 2015. And from January to March 2016, more than 164,000 people entered the EU by crossing the Mediterranean, seven times as many as in the same months of 2015.<sup>1</sup> However, since the EU signed a deal with Turkey to return irregular migrants and asylum seekers to Turkish soil from March 20<sup>th</sup>, the number has dropped dramatically: in April, 12,611 people arrived on Europe's shores, down from 36,923 the previous month.<sup>2</sup>

Despite falling numbers, the refugee crisis could still put an end to Schengen. The European Commission has said that it may allow member-states to re-introduce border controls for a period of up to two years. The Commission has also threatened to suspend Greece from the Schengen area. Some member-states have toyed with the idea of a 'mini Schengen' – a downsized version of the present agreement, which would exclude the majority of the current Schengen countries from the passport-free zone.

The refugee crisis is not only the result of flaws in the Schengen system: at root, it is a foreign policy crisis, arising from failed and failing states around Europe. The EU and its member-states have been reluctant to get involved in civil wars in Libya and Syria, concentrating instead on supporting refugees in neighbouring countries and those who are already en route to Europe. The EU's naval operation against people smugglers from Libya, Operation SOPHIA, has resulted in some arrests, but because the EU cannot return migrants to Libya the operation has also had to bring thousands more migrants to Italy. A NATO operation in the Aegean Sea between Greece and Turkey has provided a link between the Greek and Turkish coastguards, and has worked with the EU's border agency, Frontex, to improve surveillance. But its impact in deterring people from setting sail for EU territory has been limited.

The problem is not only refugees and how to deal with them; it is who else may be able to exploit the disorderly scenes at the borders of the Schengen zone and the pressures on the border control services of many EU countries. On November 13<sup>th</sup> 2015, eight terrorists murdered 130 people on the streets of Paris. In March 2016, three men blew themselves up in Brussels, killing 32 and injuring hundreds. All the perpetrators were European citizens who could move freely between European countries; many had been travelling unnoticed in and out of the Schengen zone.

Schengen was not designed for such crises, and it is near breaking point. If citizens think that their governments cannot control who enters their country, they will turn to far-right parties who want to ban migration altogether. The end of Schengen would also damage Europe's fragile economy: if border controls were to be restored, economic studies estimate that in ten years the output of the Schengen area would be between 0.3 and 0.8 per cent lower.<sup>3</sup>

This policy brief looks at the reasons that have put Schengen at risk; and it offers a five-point plan to save Schengen without compromising Europe's security or the political stability of its member-states.

## Schengen's growing pains

The Schengen agreement, which became operational in 1995, abolished internal borders between those countries who signed it. All EU member-states, except for Britain, Ireland, Romania, Bulgaria, Croatia and Cyprus, are now part of Schengen, while Switzerland, Liechtenstein, Norway and Iceland are members of Schengen but not of the EU (see map on page 3).<sup>4</sup> The Schengen area covers 400 million people, over an area of more than 4 million square km. It has 42,673 km of sea borders, 7,721 km of land borders and approximately 1,800 crossing points.

The abolition of borders has made it easier for people and goods to move freely across Europe. Schengen has

increased labour mobility, which, in turn, has boosted trade between participating countries.<sup>5</sup> In 2013, there were 1.1 million people who lived in one Schengen country but worked in another, according to Eurostat, the EU's statistical agency.

But what was once Europe's darling has turned into a can of worms: in the absence of either a solution to the conflicts in the EU's neighbourhood or common European security and migration policies, Schengen's open borders are now creating more problems than they solve.

1: United Nations High Commissioner for Refugees, 'Refugees/migrants emergency response – Mediterranean', 2016.

2: United Nations High Commissioner for Refugees, 'Refugees/migrants emergency response – Mediterranean', 2016.

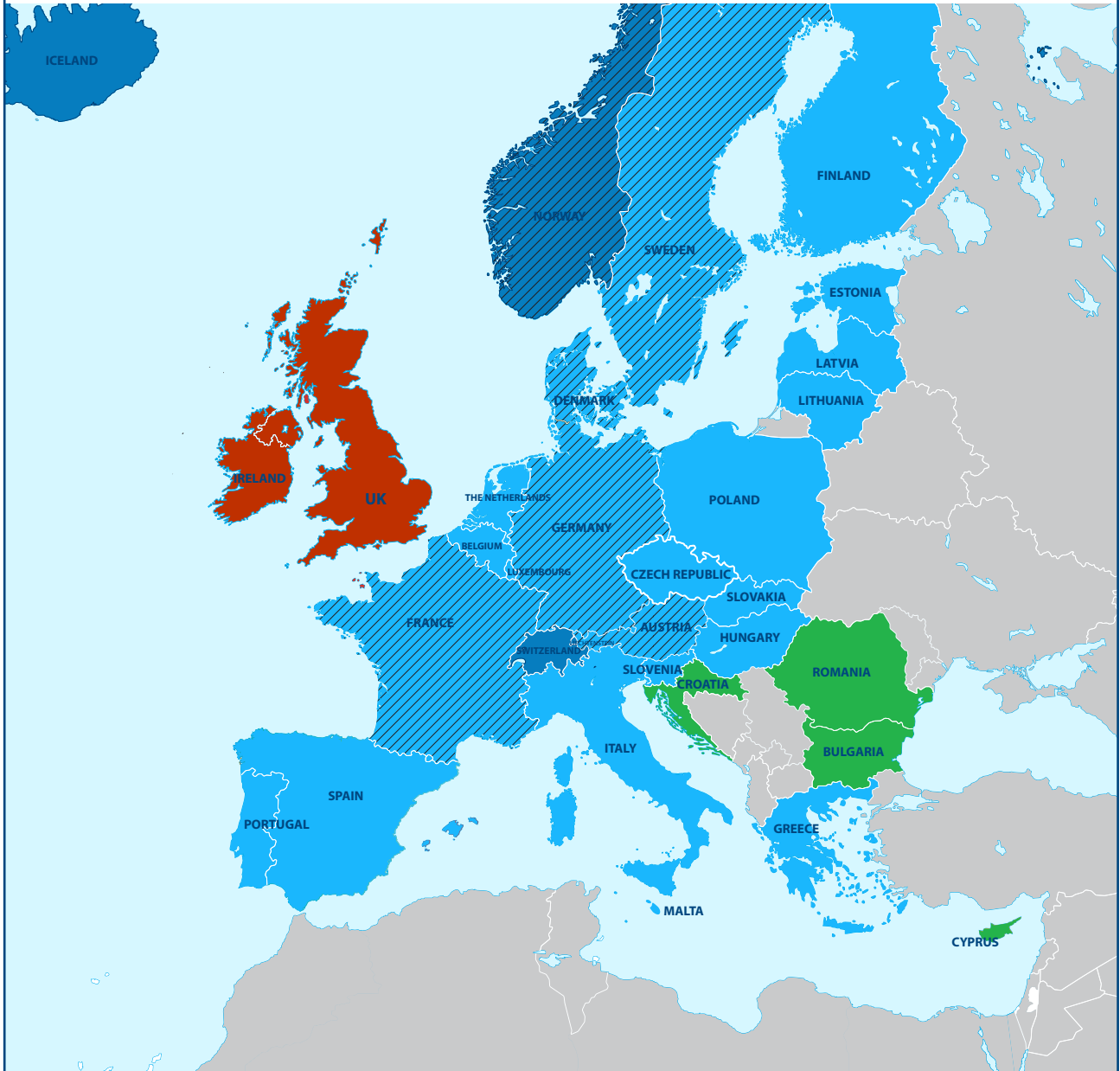
3: Strategy unit of the French government, 'The economic cost of rolling back Schengen', February 2016; Bertelsmann Foundation, 'Cancelling the Schengen agreement, macroeconomic consequences for Germany and other EU countries', February 2016; and European Commission: 'Refugee crisis: Back to Schengen', March 2016.

4: Ireland and the UK have an opt-out from Schengen, and are not obliged to join. Bulgaria, Croatia, Cyprus and Romania are legally required to join the Schengen area once they fulfil all the technical conditions.

5: Esther Ademmer, Toman Barsbai, Matthias Lücke and Tobias Stöhr, '30 years of Schengen: Internal blessing, external curse?', Kiel Institute for the World Economy, June 2015.

## Schengen map

- EU Schengen states
- Non-EU Schengen states
- Non-Schengen EU states
- Schengen candidate countries
- Countries that currently have border controls in place



## The unsolved refugee crisis

According to EU rules on asylum (the so-called ‘Dublin system’), the member-state responsible for processing an asylum application is, in most cases, the one which the applicant first enters. Most asylum seekers crossing the Mediterranean to Greece come from Syria; the nationals of many African countries try to get into Italy from lawless Libya. But the majority do not want to stay in Greece or Italy: they seek to move to more economically

vibrant and migrant-friendly countries, in particular Germany and Sweden.

The Greek and Italian authorities are required to register and take care of all asylum seekers on their territory, but they are unable (and sometimes unwilling) to do so because of the scale of the inflow. Greece and to a lesser extent Italy, fail to stop the majority of asylum seekers

from continuing their journeys to richer European countries. For example, many try to claim asylum in Austria, as though it were their first point of entry into the EU. The absence of border controls within the Schengen area makes this easier.

In order to reinforce their borders member-states have erected barbed-wire fences and deployed troops. Hungary and Slovenia have built fences along their borders with Croatia. The EU has asked non-EU countries along the so-called Balkan route (Serbia and Macedonia) to shut their borders to refugees. Six out of 26 Schengen countries – Austria, Denmark, France, Germany, Norway and Sweden – have reinstated border controls since September 2015.<sup>6</sup>

In a last-minute bid to reduce the flow before better weather makes the crossing easier, the EU signed an agreement with Turkey on March 18<sup>th</sup> 2016. The aim is to return both economic migrants and asylum seekers to Turkish soil. The agreement is an attempt to break the smugglers' economic model by resettling people from camps in Turkey directly into the EU; and thereby to stop people drowning on the sea journey to Greece.

The deal introduces a 'one in, one out' policy: all new irregular migrants making their way from Turkey into Greece should be returned to Turkey. In exchange for each migrant that Turkey takes back from Greece, the EU will resettle one Syrian refugee already in Turkey into Europe (up to 72,000). The EU will give Ankara €6 billion to help Turkey provide temporary protection to Syrians arriving in its territory. The EU will also speed up the process of allowing visa-free travel to the Schengen area

for Turks, and will open another 'chapter' in Turkey's EU accession negotiations.

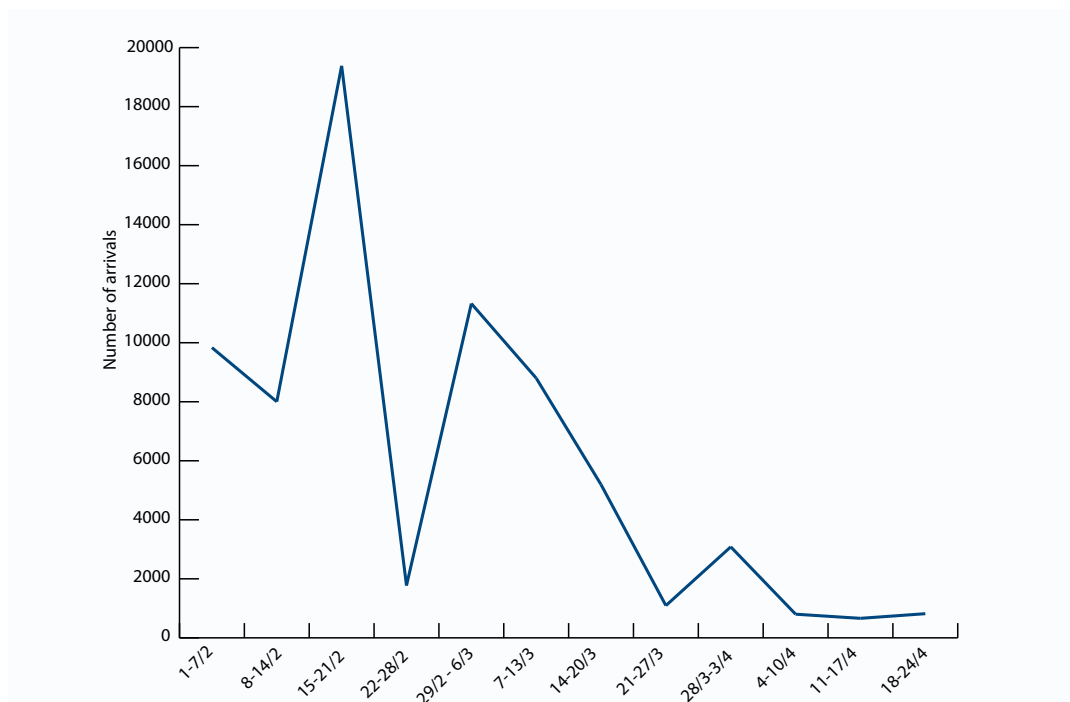
The number of irregular migrants arriving in Greece has fallen since the agreement was signed: on March 20<sup>th</sup>, the day the agreement entered into force, 1,667 people arrived in Greece irregularly. A month later on April 24<sup>th</sup>, only 69 made the perilous journey across the Mediterranean (see graph 1). To keep the numbers down, the deal needs to be legally watertight, and the parties need to implement it properly. It is unclear whether the agreement will hold together in the long run.

*“It is unclear whether the EU-Turkey refugee agreement will hold together in the long run.”*

First, the deal will probably face legal challenges before the European Court of Justice, or the European Court of Human Rights. To comply with EU and international law, Greece must examine asylum applications on a case by case basis, even if it is to return people to a 'safe third country' (in this case, Turkey). So Greece needs to rapidly expand and improve its asylum system, providing more courts, reception facilities and, if necessary, detention centres. But Greece has not had a functioning asylum system for over five years: in 2011, the European Court of Human Rights said that EU countries should stop returning people to Greece, because of the deficiencies in the country's asylum system – including the inhumane conditions of its reception centres.

Graph 1:  
Number of  
arrivals in  
Greece, 2016

Source:  
European Commission



6: Data revised on May 9<sup>th</sup> 2016. France has border controls in place due to recent terrorist attacks.

The agreement may also be challenged in court for breaching the principle of 'non refoulement': under international law, asylum seekers can only be sent back to countries considered safe. It is currently unclear whether Turkey can be considered a safe third country under these rules: there are many Kurds fleeing Syria and Iraq, and sending them to a country where there is open conflict between the Kurdish minority and the national government could put them at risk. To be considered a 'safe country', Turkey also needs to offer asylum seekers the possibility of having full refugee status, so that they can work, go to school and access social benefits, in accordance with the 1951 Refugee Convention. Turkey is a signatory of the convention, but has historically applied its rules only to people coming from European countries. Ankara has recently passed laws to extend the protection granted to non-European asylum seekers and refugees but has not lifted this geographical restriction. The Turkish government claims that, de facto, it offers the same level of protection to non-European refugees as do EU countries, but many NGOs, and the UN Refugee Agency (UNHCR) question whether this is the case.

Second, the agreement may also fall apart for other reasons: if the EU does not agree on visa liberalisation for Turks by the June 2016 deadline, Ankara will call off the deal. On May 4<sup>th</sup>, the Commission said that Turkish citizens should be granted visa-free travel to the EU. Frans Timmermans, the Commission vice president, said that Ankara had fulfilled all but five of the 72 'benchmarks' (technical criteria ranging from fundamental rights to document security) required to obtain visa liberalisation in the EU. But Turkey may find it difficult to comply with the five remaining conditions by autumn – the earliest that Turks may travel visa-free – as the Commission demands that they must have biometric passports which will not be rolled out in Turkey before October. Recep Tayyip Erdoğan, Turkey's president, has said that Ankara will not overhaul the country's anti-terror laws to bring them in line with EU standards, a pre-requisite to obtain visa liberalisation. And Erdoğan's firing of his pro-western prime minister, Ahmet Davutoğlu – the man behind the refugee deal – has complicated things further. The Commission's visa waiver proposal will need the agreement of the Council of Ministers and the European Parliament. France has always opposed visa liberalisation for Turkey, and Central and Eastern European (CEE) countries do not seem too pleased with the idea, either.

The European Parliament has warned that MEPs will not even discuss the matter until Ankara has met all the conditions, even though the Commission has asked for a 'special waiver' for Turkey, as it thinks it is 'impossible' for Ankara to fulfil all benchmarks by June.<sup>7</sup> MEPs and EU diplomats are also wary of the way the deal is being

implemented. And they are suspicious of the speed with which Ankara is complying with the Commission's criteria: two months to fulfil 35 demands.

Third, to work as a deterrent, the deal needs EU countries to quickly resettle large numbers of Syrians from Turkey. Otherwise, Syrians will go back to trying their luck with people smugglers. But the EU's resettlement record is poor: only 5,677 people have been resettled into Europe from third countries since July 2015, when the EU agreed a scheme for 20,000 people in need of international protection. Many cases are being held up because of security concerns, in part because of how difficult it is to perform background checks on asylum seekers. The UNHCR, which helps resettle refugees in countries across the world, has very strict procedures for vetting asylum seekers before they travel to a host country. This process usually takes several months. Under the new EU-Turkish refugee deal, the 'coalition of the willing' – those European governments wishing to take refugees directly from Turkey – will have to speed up this process, which may lead to concerns over security.

*“If migrants turn to the longer crossing from Libya or Egypt to Italy, more will die at sea.”*

Even if the EU-Turkey deal more or less works, it may create as many problems as it solves: desperate Syrians returned to Turkey, and asylum seekers from other nationalities who do not fall within the 'one in, one out' scheme, may start using other, more dangerous routes to get to Europe. If they turn to the longer crossing from Libya or Egypt to Italy, more will die at sea, and the EU would have only shifted the problem from Greece to Italy. The Schengen system will still be at risk. In reality, the deal is only a short-term fix. The EU needs solutions that will work now and in the years ahead.

In parallel with the deal with Turkey, the European Commission is trying to change the Dublin system. The first step was the creation of a temporary quota system to distribute asylum seekers among all member-states.<sup>8</sup> On May 4<sup>th</sup>, the Commission announced its plans to reform Dublin: it wants to maintain the 'country of first entry' rule, but allow member-states to activate a contingency plan to redistribute asylum seekers in case of an emergency situation – like the current one. The Commission is also proposing fines on member-states that refuse to take their share of refugees: countries would have to pay €250,000 per asylum seeker whose application they should have processed. Neither proposal is likely to go far:

7: European Commission, 'Third report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap', Brussels, May 2016.

8: The UK has opted-out of the scheme, while Denmark has decided to take 1,000 refugees in the context of the agreement, without formally being part of the mechanism.



Central and Eastern European members of the EU oppose the idea of a permanent relocation mechanism, whereas

front-line states (Greece, Italy, and, to a lesser extent, Spain) do not want to keep the country of first entry rule.

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## The uncontrolled European terrorists

The situation in Syria, the main cause of the surge in migration, remains dire. Syria has attracted large numbers of fighters from other countries. Many of those are European citizens: at least six of the nine terrorists involved in the November shootings in Paris, and one of the three Brussels bombers, had received training in Syria. Though all had European passports, some had re-entered Europe posing as refugees. Both the Islamic State terrorist group and some European populist parties have spread the idea that terrorists are being sent to Europe disguised as refugees. The fear that this might happen was strengthened when Syrian passports were found next to the bodies of two of the Paris suicide bombers. These passports were probably planted, but that did not stop some politicians from claiming that Europe should close its doors to refugees altogether.

The Schengen agreement makes it possible for European terrorists to move freely between EU countries. Information-sharing between Schengen

countries is poor: most of the Paris' terrorists were known to Belgian security services, who failed to inform their French counterparts. One of the suspects, the Belgian Salah Abdeslam, went from the Bataclan attacks in Paris to Brussels and then into hiding without being detained. French authorities stopped his car three times on his way to Brussels but did not arrest him: they simply did not know who they were looking for. At least one of the Brussels bombers, known to Belgian security services, was deported from Turkey to the Netherlands and then travelled back to Brussels undetected. Neither the Dutch nor the Belgians seem to have shared information on him.

The Brussels attacks confirmed what had already become clear after the *Charlie Hebdo* and November shootings in Paris: the Schengen area is ill-designed to deal with European 'foreign fighters' – EU citizens travelling to conflict zones and returning home to carry out attacks on European soil.

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## A five point plan to save Schengen: From managing migration to fighting terrorism

Fixing Schengen is not an easy task. A long-term solution will require common rules and institutions governing the Schengen area's migration and security policies; but these will take years to negotiate and they are unlikely to be

agreed in the state of panic that currently reigns. In the meantime, the EU should take some emergency ad-hoc steps. Here are five suggestions on how the EU can keep Schengen alive.

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### One: Make hotspots work

The EU decided in May 2015 to set up centres for identifying and relocating asylum seekers and returning economic migrants. These centres, so-called 'hotspots', are located in places experiencing mass arrivals of people, mainly in southern Italy and the Greek islands in the Aegean Sea (see maps 1 and 2).

The initial task of the hotspots was to screen and fingerprint asylum seekers so that they could be allocated to other member-states. To do so, the Greek and Italian authorities work alongside Frontex, the EU's border agency, and the tiny European Asylum Support Office (EASO), whose mandate is to help member-states to manage asylum applications but which has no executive powers. The Greek hotspots are now being transformed into detention centres, so that the Greek authorities can fulfil their part of the EU-Turkish deal.

But the European Commission has so far over-promised and under-delivered in its handling of the refugee crisis, and the hotspots have largely failed. Initially, the centres were ill-equipped to register large numbers of

people – so authorities could not relocate many asylum seekers to other member-states. And now, they are also overcrowded: none of them is equipped to host large numbers of people awaiting return. The UNHCR was initially supposed to help Greece to fulfil its part of the deal. But, in late March 2016, the UNHCR withdrew from the Aegean islands, arguing that transforming the hotspots into detention centres was against UN policy (although it has since resumed work in some of them).

*“The European Commission has so far over-promised and under-delivered in its handling of the refugee crisis.”*

Regardless of the EU-Turkey deal, the hotspots will remain an essential tool for Europe's handling of the refugee crisis for the time being. For as long as the Turkish deal holds, Greece needs the hotspots to register and process people before they are sent back to Turkey.

And if the deal fails (or is replaced, once the 72,000 threshold is reached) the Greek and Italian authorities will need to keep using the hotspots to relocate asylum seekers to other member-states, on the basis of the quota system. In any event, they need to be functional very quickly, and operate in line with EU international obligations. Their purpose should be to register and process, not to detain, asylum seekers. Irregular migrants and those with no right to international protection should be kept in purpose-built centres until they are sent back to their countries of origin or transit.

Because of the shortage of personnel, the Greek authorities are over-relying on the work of NGOs and volunteers. Although there has been some progress in the registration procedures, the connections between fingerprinting machines and Eurodac, the EU database of asylum seekers' fingerprints, are not yet secure and reliable. Greek authorities are overwhelmed and failed to register all asylum claims of those arriving in the islands after the March 20<sup>th</sup> deadline. This forced Greece to temporarily stop returns to Turkey on April 5<sup>th</sup> – the day after returns began – because authorities are only allowed to send people back to Turkey if they have not claimed asylum, or their asylum application has been rejected. Returns have since resumed – Greece has sent some 385 people back to Turkey since the deal was signed.<sup>9</sup>

The EU and its member-states need to channel more money, staff and equipment to the Greek islands, where the majority of asylum seekers are arriving. The Commission estimates that Greece needs around 4,000 staff from member-states and EU agencies. EASO says

400 interpreters are needed, but only 67 have so far been sent by national governments. Meanwhile, Frontex needs 1,500 escort officers to accompany returnees, of which only 292 have been deployed so far.<sup>10</sup> The organisation of the teams who have arrived on the ground remains chaotic. Both the Commission and EU countries should also do more to ensure that hotspots in remote Greek islands get the necessary equipment to screen and process refugees. Other member-states also need to send Greece permanent supervisory personnel, if necessary, to ensure that all parties fulfil their obligations. In the short term, this supervisory mission could be part of the assistance mission Frontex sent to Greece in October 2015. In the longer term, this task could be done by the mooted European border guard, which is set to replace Frontex and will have more powers, cash and staff. The EU agreed on an emergency mechanism for civil protection (CPM) in Greece in December 2015, but member-states have yet to fulfil their obligations by sending in-kind assistance (tents, blankets, sanitary products among other things).

Greece is not without blame. The country only asked for EU help in the autumn, and did not use its military forces until January 2016. In the future, Athens should react more swiftly to crises at the border, deploying the army from an early stage if necessary to control and manage large inflows of people. Athens should speed up its slow and cumbersome procurement process too, to buy the necessary equipment (such as fingerprinting machines). The Greek government needs to staff the hotspots properly: it cannot keep on relying on the work of untrained volunteers to register and process asylum seekers.

Map 1:  
Identified  
hotspots in  
Greece

Source: CER.



<sup>9</sup>: European Commission, 'Implementing the EU-Turkey agreement – questions and answers', Brussels, May 2016. Latest updated data from May 4<sup>th</sup> 2016.

<sup>10</sup>: European Commission, 'Implementing the EU-Turkey agreement – questions and answers', Brussels, May 2016. Latest updated data from May 4<sup>th</sup> 2016.





## Two: Make the relocation mechanism work

In a hard-fought but as yet largely unimplemented compromise reached in September 2015, EU countries agreed to relocate 160,000 people from Italy and Greece, under the so-called quota system. At the time of writing, 1,441 people have been relocated (565 from Italy and 876 from Greece).<sup>11</sup>

EU capitals cannot continue to drag their heels on this issue: they should start taking in asylum seekers as soon as they are assigned to them in Greece or Italy. National leaders, particularly from CEE countries, should stop blaming Brussels for ‘forcing’ them to take in migrants who would otherwise have gone elsewhere. The Schengen agreement cannot work without burden sharing. The problem is not only that CEE countries are taking in few to no refugees – others, like Spain, have been very slow, too. It is also that their governments are using the refugee crisis to put their countries on a collision course with the EU. After the Brussels attacks, Poland announced that it would no longer be accepting asylum seekers relocated from Greece. In Hungary, Viktor Orbán is introducing laws that will make it virtually impossible for asylum seekers to integrate and work in the country, even if they obtain refugee status. The EU’s leniency towards these muscle-flexing exercises help Orbán’s and others’ to advance their populist agendas and increase citizens’ reticence to take in refugees.

So far, dialogue and diplomatic channels to persuade CEE countries to accept their fair share of refugees have failed. The Commission has suggested fining countries which

do not take their share of refugees. But the EU has a poor record of imposing fines on member-states, as the serial breaches of the Stability and Growth Pact show. Instead, the Commission should use other available remedies to enforce EU law: it should bring EU countries – not only from Central and Eastern Europe – to court for breaching EU rules on asylum, including quotas. The Commission and EU leaders should also try harder to counter the narrative that conflates terrorists and asylum seekers: reminding citizens that all the terrorists involved in the latest attacks in Europe were born and raised in the EU.

*“The quota system will only become a credible crisis mechanism when the EU fully secures the external border.”*

If the Commission wants the relocation mechanism to become a credible alternative in times of crisis, it needs to focus on strengthening security screening at the external border. Member-states might then be somewhat more willing to accept quotas and speed up the process of taking in their share of refugees, because their security concerns would be allayed. Greece and Italy need to start systematically checking everybody who arrives irregularly in the EU against security databases, such as SIS or Interpol’s database for lost and stolen passports. Currently, they enter the fingerprints of newly arrived asylum seekers into Eurodac, but rarely perform further

<sup>11</sup>: European Commission, ‘Member-states’ support to emergency relocation mechanism’, Brussels, May 2016. Latest updated data from May 3<sup>rd</sup> 2016.

security screenings. The EU could help by providing and financing a simpler way to connect Eurodac, SIS and other national and international security databases (such as Europe's Prüm databases). Greece and Italy have constrained public finances – so it is difficult for their governments to invest money in expensive IT infrastructure. The European Commission could provide much of the cash needed to make these systems work.

Some non-EU intelligence agencies have information which could be useful (though the EU could not ask repressive governments like that in Syria for information which might be false or obtained by torture). If Eurodac could be checked against the US-operated database containing fingerprints found at the sites of terrorist attacks in conflict zones, such as Iraq or Syria, European

countries would be more likely to catch terrorists before they enter the EU.

Security screening at the border would improve if and when the proposed European border guard starts operating. Unlike Frontex, which is not allowed to use security databases and cannot even purchase its own fingerprinting machines, the border guard would be granted access to security databases. However, the proposal will certainly meet resistance in many European capitals, not least Athens, which thinks the EU would in effect take control of its borders. But a European border force would help the EU to strengthen its external border when a member-state is struggling to cope and reduce the risk of terrorists and other criminals getting in and out of the Schengen area.

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### Three: Give asylum seekers safe and legal ways to come to Europe

Irregular migrants and asylum seekers will continue to come to Europe. While the EU may be able to reduce the numbers of those crossing the Mediterranean, it will not be able to stop people smugglers completely. To curtail smuggling, the EU should offer asylum seekers legal channels to get into Europe. This is the idea behind the EU-Turkey deal, but the EU should not only focus on Turkey: it should give all asylum seekers better, and clearer, legal ways to come into Europe.

Currently, member-states resettle refugees with the support of the UNHCR. But EU countries have been very slow to resettle asylum seekers: only 15 member-states have so far taken part in the EU resettlement project signed in July 2015. And since the EU-Turkish deal, resettlement efforts have focussed on moving Syrians from Turkey. Resettlement from Turkey has already begun, but only around 135 people have been resettled to five countries (Finland, Germany, Lithuania, the Netherlands and Sweden).<sup>12</sup> The resettlement of refugees into Europe should be a co-ordinated effort: the EU should aim to set up EU-operated resettlement centres in Egypt, Jordan and Lebanon as well as Turkey.

As a first step, member-states should increase the number of humanitarian visas they issue through their embassies in third countries. Humanitarian visas grant asylum seekers the right to travel legally to a member-state with the purpose of claiming asylum. The EU visa code, which sets up common standards for visa procedures in the Schengen area, implicitly allows Schengen member-states to issue these documents. The EU is currently reforming the visa code and could use this opportunity to explicitly allow and request member-states' embassies in the neighbourhood to issue humanitarian visas to greater numbers of asylum seekers.

This could help to slow the numbers taking the Libyan route if the Aegean is closed off.

*“The EU should move towards a centralised system, by establishing EU-operated asylum processing centres in third countries.”*

Ultimately, the EU should move towards a centralised system to process asylum applications, as the Commission has already suggested. EU-operated processing centres should be different from hotspots: they should be permanent, and a better organised first point of arrival for asylum seekers fleeing war-torn countries. In these centres, EU authorities would select those who have a legitimate basis to apply for refugee status in Europe. Such centres must not turn into de facto detention facilities: the EU should provide the necessary staff and infrastructure so that applications are processed as quickly as possible, and that those asylum seekers awaiting a decision are kept in humane conditions with their fundamental rights respected.

A new EU office to process asylum seekers (replacing EASO) could help to deal with applications and distribute asylum seekers to different EU countries. Centralising asylum procedures would be the best way to ensure that the EU sets up 'future-proof' policies to protect Schengen – so that countries will not close their borders as a result of deficiencies in the way other countries deal with asylum seekers. But it will take years to agree on such procedures. In the meantime, the EU should make sure that all Schengen countries take their fair share of refugees from outside Europe, and that countries

<sup>12</sup>: European Commission, 'Implementing the EU-Turkey agreement – questions and answers', Brussels, May 2016. Latest updated data from May 4<sup>th</sup> 2016.

doing so follow stringent, harmonised procedures to screen and process people, in line with those set up by the UNHCR. Otherwise, it will be back to square one,

with only a few countries taking the majority of asylum seekers and a deficient system to process and vet those coming to Europe.

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## Four: Agree on a fair and effective return policy

A sound return system is crucial for the EU's asylum mechanism to work: by deporting those with no right to be in Europe, member-states can focus on those in real need of protection. A fair and effective return policy also deters smugglers. Voluntary return should be preferred, as it often proves to be more sustainable, but EU law also allows countries to forcibly return migrants to their country of origin or transit. To do that, authorities must abide by some rules: they should not send people to a place where they can be in danger (principle of 'non refoulement'); and they should also respect the basic rights of the returnee, by, for example, giving them the possibility to challenge the decision in court.

But deciding how and whether to return migrants to their country of origin is one of the most difficult issues in migration policy. Currently, fewer than half of all failed asylum seekers in the EU are sent back. Return policies fail for several reasons: there are ethical, legal and operational limits to what a national government can do to force people to leave a country; many failed asylum seekers abscond; and, without the co-operation of countries of origin and transit, it is very difficult to implement a decision to return someone. For example, if a failed asylum seeker has no passport or identity card, and the country from which they come refuses to issue them with documents, the EU cannot send them back.

That is why readmission agreements are important: they help the EU to send irregular migrants back, by laying down clear obligations and procedures for third countries to take back those with no right to be in the EU. To improve the record on returns, the EU should focus on concluding current negotiations on readmission agreements, and on making existing agreements work better. To improve the application of readmission agreements, the EU should emulate successful national policies. The UK has an effective bilateral readmission

agreement with Pakistan, as does Spain with Morocco. In each case, patient diplomacy and extensive resources (human, financial and otherwise) were needed to make the agreements work. To improve long-term effectiveness, returns should be complemented with reintegration projects. The European Commission should commit additional financial resources to help returnees integrate in their countries, and provide them with social support and employment perspectives.

*“To improve the record on returns, the EU should focus on making readmission agreements with third countries work.”*

As shown by the EU-Turkish deal, it may be time for Brussels to start reshaping the incentives it gives for third countries to accept failed asylum seekers: for example, in return for a readmission agreement, it could offer Tunisia a long-sought open skies agreement with Europe, which would allow EU and Tunisian airlines to operate to and from any point in Tunisia without major restrictions. This would strengthen the country's economy through increased trade and tourism.

Data on returnees should also be shared at the EU level, particularly by Britain. Currently the UK, which accounts for 50,000 returnees a year, the most in the EU, cannot put this data into the Schengen Information System (SIS), since it is not a Schengen member. So, if a failed asylum seeker – returned to a third country by the UK – decides to take another chance and try to enter Schengen, there is no way for other EU governments to know that this person has already been sent back by another EU country. The EU, and Britain, should find a way of enabling the UK to share its data with all Schengen countries.

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## Five: Make better use of Schengen databases

Schengen countries can use a number of databases to identify EU citizens and third country nationals who pose a threat, and who seek to move between Schengen member-states or across the external border (see table). But, as the recent attacks in Paris and Brussels showed, governments are not making good use of the available information. To have a better chance of keeping terrorists

and criminals out (or in prison) the EU and its member-states need to exploit these databases more effectively.

The SIS is the main database of the Schengen area, as it helps police and border forces to fight against cross-border crime, including terrorism.



Table 1: Schengen, national and international databases			
Name of database	Scope	Purpose	Who can access it
Schengen Information System (SIS)	Centralised EU database	Stores 'alerts' (information on people and objects), so that countries can: control people at borders, identify and detain criminals, including terrorists, track persons of interest and stolen goods.	Full access: borderguards; police bodies; custom officers; judges. Partial access: Europol; Eurojust; visa and migration authorities
Eurodac	Centralised EU database	Stores fingerprints of asylum seekers, to determine the country responsible for their application. It can also be used for law enforcement purposes, to identify criminals.	Full access: asylum and migration authorities; partial access: police
Visa Information System	Centralised EU database	Stores fingerprints and digital photograph of those applying for a Schengen visa. Upon entry in the Schengen area, countries can check visa holders against the database, to verify their identity, detect potential fraud and fight against crime.	Full access: competent visa authorities, border guards; partial access: asylum authorities, Europol, national bodies dealing with counter-terrorism, and third countries (in specific cases)
Prüm databases	National databases, accessible to all EU countries <sup>13</sup>	National databases storing DNA profiles, dactyloscopic data and certain national vehicle registration data. EU countries should make available this data to other member-states. They should also provide information in relation to major events, and to fight terrorism.	National law in each member-state determines who has access to this data. This can include police forces, and security and intelligence agencies.
Interpol database of stolen and lost travel documents	Interpol centralised database	Stores details of lost and stolen passports. National law enforcement, immigration and border control authorities can interrogate the database to check whether the passport of an individual travelling internationally has been reported as lost or stolen.	Interpol national liaison officers; immigration authorities; border guards.

Source: Centre for European Policy Studies and the Centre for European Reform's own research.

Up to now, EU citizens have not been systematically checked against SIS when entering or leaving the Schengen area. The Schengen Borders Code, the law that governs the passport free zone, only allows random checks, and EU countries are not allowed to check EU citizens when they are moving within the Schengen area. Bringing national borders back throughout the Schengen area would not solve the problem of European terrorists travelling across the EU: policing long land-borders is costly and disruptive, and criminals find ways to avoid controls. But, as the Paris and Brussels attacks have

shown, there is a strong case for introducing systematic checks on all EU citizens at Schengen external borders.

After the attacks in Paris, the Commission suggested reforms to the Schengen Borders Code, so that all EU citizens crossing the Schengen external border would be subject to systematic checks. Critics argue that these would create lengthy queues at borders and be impossible to implement in practice. The European Commission has said that, if the controls disrupted passenger flows, national governments could replace

<sup>13</sup>: The UK opted back into this measure in December 2015 and will not be able to join before 2017.

them with targeted checks instead (on specific people or travel routes, for example). But targeted checks could lead to other problems, such as racial discrimination or security gaps, with the authorities failing to check persons of interest or monitor all routes into Schengen.

Checking EU citizens at external borders need not disrupt passenger flows, if it is done in a sensible way. The UK, which checks people going in and (sometimes) out of the country, as it is not part of Schengen, received more than 18 million visits from European citizens between January and October 2015. Passengers come by air, sea or through the Channel tunnel, and they are all checked, except for those traveling from Ireland – the UK and Ireland have an agreement whereby there are no passport checks between the two countries.<sup>14</sup> And these controls at airports, stations or ports, while sometimes tedious, have not caused the UK's system to collapse.

But to screen EU citizens effectively at the border, authorities need to have fast and efficient access to multiple databases (for example, information from SIS and national security databases such as Prüm, which contains DNA and fingerprint records): they need to be able to interrogate these databases only once per passenger, and obtain as much information as possible, in one go. The complexity of the EU's system of databases precludes this: currently, authorities need to perform several checks on the same person to obtain comprehensive information on them.

Though it would be expensive, EU member-states should invest in technical solutions to connect all Schengen databases, so that all countries can get comprehensive information on people quickly. After the Brussels attacks, the Council of Ministers said this was a priority for the EU. The centralised databases exist, but EU countries are not making full use of them, and so miss information vital to stopping terrorists. The EU applies the so-called purpose limitation principle, whereby databases can only be consulted for the purposes they were built. The EU should also make the requirements for checking certain databases (such as Eurodac) more flexible: at present, national authorities can only check Eurodac if they have exhausted all other means of looking into someone. It is equally important that data are up to date and accurate, and that checks comply with EU privacy rules.

But a database is only as good as the information it contains. If EU countries want these checks to work, they should add more information to EU-level databases. As a rule, national governments fail to input information on terrorist suspects – for example, only five EU countries currently share information on foreign fighters with Europol. They worry that they will lose control of this information once they transfer it into the Schengen Information System and other bodies or databases. But these gaps make it possible for terrorist suspects identified by one member-state to travel freely to another and carry out an attack there.

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## Conclusion

The EU has lost control of its borders. The Schengen agreement's abolition of internal borders was intended to go hand in hand with a stronger external border. Because some member-states are unwilling or unable to live up to their responsibilities in protecting the external border, public support for free movement is starting to crack. But the collapse of Schengen would have only two winners: terrorist organisations and populist parties; Europe's citizens and businesses would be the losers.

The ability of terrorists to exploit weaknesses in the Schengen system threatens Europe's hard-won freedoms. As Europeans try to find someone to blame for what they regard as an imminent threat, they will become increasingly wary of their Muslim compatriots and of foreigners, while demanding resolute government action, such as closing borders. In a vicious cycle, terrorist groups may find a fertile recruiting ground among disgruntled European Muslims, open to being persuaded to fight against what they consider

an increasingly anti-Muslim West. Populist parties will also benefit from fear of outsiders, and will offer a lazy solution to scared Europeans: close the borders, and Europe will be safe.

If the EU wants to save Schengen and protect people's freedoms, it needs to secure Schengen's external borders. Europe needs to know who gets in, and why. It has to be possible for the EU to distinguish between those who should be welcome, and those who should be kept at bay. Achieving this ambition is of fundamental importance, because the end of Schengen could be the end of the EU.

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<sup>14</sup>: Data from Visit Britain, the UK's national tourism authority.

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