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SCHENGEN, THIRTY YEARS ON: RESULTS, REALITIES, CHALLENGES

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Abstract:

The Schengen Agreement was concluded on 14th June 1985. It led to the creation of a free area of movement of people which is a fundamental achievement of European integration. It is an example of cooperation that originally associated a small number of States before being extended under the treaties, whilst including States that are not EU members. For the implementation of the programme the "Schengen Border Code" set standards and procedures in terms of crossing the Union's external and internal borders. The principle comprises there being no impediment to people crossing the area's internal borders. However the regulation establishing the "Schengen Border Code" provided for the, exceptional, temporary re-instatement of internal border controls on a State's initiative in the event of "serious threats to public order or internal security." Both of the situations provided for were firstly foreseeable events (such as the organisation of a G7 or a major sporting event) and emergency situations (for example, a terrorist attack). Following requests made by France and Italy in April 2011, in the context of the "Arab Spring", legislative proposals were adopted in 2013 to widen the possibilities of re-instating temporary controls on the basis of a Council recommendation and as a last resort in the event of serious failure on the part of a Member State to fulfil its commitments in terms of border control. Moreover this area of free movement cannot exist without strong compensatory measures, which were planned from the start, that enable the strengthening of the external borders. Their effectiveness conditions the security of the Schengen area. They have been improved to rise to new migratory problems. However faced with these unprecedented challenges in a context of serious destabilisation on its doorstep the Schengen area has been called to take further measures to ensure the effective control of its external borders whilst responding to a humanitarian emergency.

I/ AN AREA OF FREE MOVEMENT WITH "COMPENSATORY MEASURES"

1. An area of free movement

- Intergovernmental cooperation

Originally Schengen was born of intergovernmental cooperation. The Schengen Agreement of 14th June 1985 was concluded between France, the Federal Republic of Germany, Belgium, the Netherlands and Luxembourg. These five countries decided as part of their cooperation to gradually do away with internal border controls to allow the free movement of people, whatever their nationality. Simultaneously they concluded that there was a need to strengthen external border controls to maintain the security of the Schengen Area. This combined with a single external border on which entry controls were to be conducted according to identical procedures. Implementation of the agreement took time. The Convention implementing the Schengen Agreement was signed on 19th June 1990. It came into force on 26th March 1995. It took ten years for the Schengen Agreement to be implemented. To date the abolition of internal borders means that more than 400 million European citizens can travel without a passport.

- Integrated cooperation under the European Treaties

The Schengen cooperation agreement became part of the EU's legal framework with the Amsterdam Treaty

of 1997. By virtue of article 67 of the Treaty on the Functioning of the European Union (TFEU), the latter "*constitutes an area of freedom, security and justice*". It "*ensures the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals*." By virtue of article 77 TFEU, "*the Union shall develop a policy with a view to a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders; b) carrying out checks on persons and efficient monitoring of the crossing of external borders.*"
This policy must also aim progressively to introduce an integrated external border management system.

- An area with a specific outline

The Schengen Area now includes 26 States. It does not include any of the EU Member States and associates States that are not members of the Union. 22 EU Member States participate [1] in the Schengen Area. However the UK and Ireland enjoy a specific status enabling them to take part in some of the Schengen measures such as for example the Schengen Information System (SIS). These two States retain the right to control people on their borders. Cyprus has asked for extra time. Bulgaria and Romania which entered the EU in 2007 are not yet part of the Schengen Area. Border controls between these two countries and the Schengen Area have therefore been maintained. [2] The same applies to Croatia which joined the Union in 2013.
Four States that are not EU members are also part of the Schengen Area. Iceland and Norway – non EU Members are part of the Convention due to free movement agreements that link them to other Nordic countries. In 2008 Switzerland and Liechtenstein in 2011 joined the Schengen Area as associate States. Hence Schengen is an example of cooperation that originally included a small number of States within an intergovernmental framework before extending to other Member States under the treaties. It anticipated enhanced cooperation which since the Lisbon Treaty has started to develop – this time – as part of procedures provided for in the treaties. It also allows for the association of non-Member States thereby illustrating the flexibility required of European integration according to the issues in question.

Source : Toute l'Europe

1. *Added to the original signatory States in 1990 came Italy, then in 1991 Spain and Portugal, Greece in 1992, Austria in 1995, then Finland, Denmark and Sweden in 1996, followed by Estonia, Latvia, Lithuania, Hungry, Poland, the Czech Republic, Slovakia, Slovenia and Malta on 21st December 2007.*
2. *Protocol n°19 annexed to the European Union Treaty and to the Treaty on the Functioning of the European Union, Lisbon Treaty, which concerns "integrated Schengen acquis within the European Union", specifies that it will finally be for the Council to decide, ruling with unanimity of its members, whether the two States are ready to join the Schengen area.*

2. The so-called "compensatory" measures

Free movement has gone hand in hand with so-called "compensatory measures." In order to ensure security within the Schengen Area cooperation and coordination between police services and the judicial authorities were stepped up. This involves common rules for external border crossings and the control of people which focus on the documents requested, the list of countries subject to visa obligation, the harmonisation of the means of control and the processing of asylum requests.

- A common visa policy

A common visa policy was progressively introduced in the period 2004-2009. A regulation in 2009 set the conditions and procedures for the delivery of short-stay visas (a maximum of three months duration over a 6 month period) and the transit of EU Member States and associate States which implement all of the Schengen acquis. This only concerns third country citizens who must have a visa if they cross the Union's external borders. [3] The visa policy clearly distinguishes between short-stay visas which are communitarised and long-stay visas which involve the long term establishment of third country citizens under the Member States' immigration policies. For short stays, a single visa was introduced. It enables free movement for a maximum of three months within the territories of all of the States involved. However States can refuse admission if they believe that the person is a threat to public order, national security or to their international relations.

A regulation dating 9th July 2008 set the Visa Information System's legal framework (VIS). [4] This system facilitates controls on external border crossings by using biometrics and data exchange on visas between Member States. Agreements aiming to facilitate the delivery of visas were concluded with several third countries.

- Measures for external border management

The "The Hague (2004-2009) programme" aimed to consolidate the internal control-free area whilst guaranteeing a high level of security on external borders, and facilitating the movement of people who had a legitimate document (whether they were EU or third country citizens). It also promoted a double principle of solidarity and fair distribution of responsibility between Member States.

For the implementation of the programme several features were developed. "The Schengen Border Code", which came with the regulation of 15th March 2006 [5], came into force. It sets norms and procedures in terms of crossing of the Union's internal and external borders. The principle is the absence of the control of people on the internal land borders. However in some cases it is possible to introduce temporary control of internal borders for a limited time.

The creation of the European Agency for the Management of Operational Cooperation on the External Borders (FRONTEX), in October 2004, comprised a major chapter in the European border management policy. The agency however is still dependent on the Member States for the provision of vital operational means.

On France's initiative the European Council of 15th and 16th October 2008 adopted the European Pact on Immigration and Asylum one whose fundamental undertakings – to be included in the new multi-annual programme - was to strengthen the efficiency of border control. The Stockholm Programme (2010-2014), under the title "the Europe which protects", highlighted an integrated approach to access the Schengen area notably via the strengthening of FRONTEX's coordination role, the development of the European border monitoring system (EUROSUR) and the introduction of an Electronic System for Travel Authorization (entry and exit registration system, ESTA) and a programme for registered travellers.

- A common data base: the Schengen Information System (SIS)

A common database, the Schengen Information System (SIS), was created so that the authorities in the Schengen States could exchange data on certain categories of people and goods. SIS links the States participating in the Schengen agreements together.

Operational since 1995 it allows competent authorities (police, gendarmes, customs, and judicial authorities) to receive information introduced into the system by one of the Member States in real time thanks to an automated consultation procedure. The SIS is subject to strict data protection rules.

3. Regulation (EC) n°810/2009 13th July 2009 establishing a community code for visas (visas code).
4. Regulation (EC) n° 767/2008 9th July 2008 concerning the visas information system (VIS).
5. Regulation (EC) n° 562/2006 15th March 2006, established a community code on people crossing the borders (Schengen border code).

- Evaluation mechanism

The spirit of Schengen implies that each Member State takes responsibility for the control of its own external borders for all of the other Member States. This is why mutual confidence is vital. It is also central to an effective evaluation mechanism. This has to ensure that the compensatory measures that go together with the removal of border control are effective and that there is good cooperation between police services and the legal authorities in order to protect the internal security of the Member States and ensure that organised crime is countered. This evaluation mechanism distinguishes between the States that are already Schengen Area members which are "continually" evaluated and those which are joining the Schengen area which are subject to an "initial, obligatory" evaluation. In September 1998 the executive committee comprising the ministers responsible set up a permanent evaluation and implementation committee comprising States' representatives. The intergovernmental nature of the evaluation was maintained after the communitarisation of Schengen by the Amsterdam Treaty, since the permanent committee's tasks were transferred to a Council working group. In 2009 the European Commission tried to communitarise the evaluation mechanism by taking over the tasks given to the Council's working group. [6] A compromise was found at a later date.

- Inclusion of the external dimension

The **external dimension** is vital in terms of the smooth functioning of the Schengen area. The Union therefore sought to establish partnerships with third countries which address the issue of return and re-admission in particular.

II/ STRENGTHENED FUNCTIONING IN A NEW, MORE RESTRICTED CONTEXT

1. A new context

The Schengen System was designed for five States. It then underwent unprecedented extension in 2007. Accession by Switzerland (2008-2009) then Liechtenstein in 2011 completed this significant extension of the Schengen area's perimeter. It was therefore difficult to imagine that the latter would continue to function on unreformed foundations. The SIS system as it initially stood in its 1995 version could not guarantee the services required for an area that had been extended to a great number of States and was also unable to integrate new functions.

Enlargement also occurred in a context in which external border management in spite of undeniable progress was still being completed. The management of the area was also impacted by the Lisbon Treaty (2007) that set a new legal framework for most issues relating to the area of freedom, security and justice. As a rule the ordinary legislative procedure now applies which means a qualified majority vote by the Council (and not a unanimous vote as in the past) and co-decision with the European Parliament.

Within the context of the "Arab Spring" migratory pressure increased on external borders. The decision taken by the Italian authorities to deliver Tunisians who had arrived illegally in Italy between January and April 20011 with temporary 6 month residence permits, on humanitarian grounds, triggered a polemic about the possibility of the holders of the residence permit moving freely within the Schengen area and also about the lack of intra-European solidarity regarding migratory flow management. The European Council of June 2011 invited the European Commission to submit a draft mechanism to enable a "*response to exceptional circumstances that endangered the overall functioning of Schengen*."

2. A revised Information System

In 2001 the Commission was asked to develop a second generation system (SIS II). It completed this not easily. [7] SIS II was activated on 9th April 2013. It comprises three elements: a central system, the national Schengen States' systems and a communication infrastructure between the central system and the national systems. [8] It has new features such as the possibility of introducing biometric data (fingerprints and photographs) or new types of information (regarding aircraft, boats, containers and stolen means of payment). The SIS's legal framework sets data protection rules. [9]

6. *Proposed Council regulation (COM (2009) 102 final) and proposed Council decision on the creation of an evaluation mechanism intended to control application of Schengen acquis. This project did not succeed as it was, since the European Parliament responded negatively to the two proposals and invited the Commission to present a new proposal that it could examine in its capacity as co-legislator under the terms of the new provisions in the Lisbon Treaty.*

7. *End of February 2013, budgetary commitment made by the Commission for the SIS II project since 2002, amounted to a total of 167 784 606 euros.*

8. *From 9th May 2013, management of the central system was undertaken by the European Agency for the Operational Management of Large-Scale IT Systems in the area of freedom, security and justice (eu-LISA).*

9. *Regulation (EC) no1987/2006 of the European Parliament and the Council dated 20th December 2006 on the establishment, functioning and use of the second generation Schengen information system (SIS II).*

3. A more effective evaluation mechanism

After the Lisbon Treaty came into force, the European Commission presented a modified draft regulation focusing on the creation of an evaluation mechanism designed to monitor implementation of the Schengen acquis. Unlike the intergovernmental system that had hitherto been in force in which the Commission took part only as an observer, the new measure provided for joint responsibility of the Member States and the Commission. The compromise text provides that each evaluation team will have two main experts, one from a Member State and the other from the Commission. The drafting of recommendations in response to observations made during evaluation in the evaluation reports continued to be the sole responsibility of the Council. Moreover in order to strengthen the efficiency of evaluation, in some cases the Member State under evaluation was obliged to put an action plan forward to the Council and the Commission.

4. A revision of the "Schengen Border Code"

The regulation establishing the "Schengen Border Code" provided for the possibility of re-introducing – on the initiative of a State, exceptional, temporary internal border controls in the "*event of a serious threat to public order or internal security*". These two situations were foreseeable events (such as the organisation of a G7 or a major sporting event) and emergency situations (for example a terrorist attack). In practice there had been few cases in which border controls had been re-introduced since 2006, and all lasted for less than thirty days and generally for a much shorter time. [10]

Following requests made by France and Italy in April 2011, undertaken in the context of the "Arab Spring", legislative proposals were adopted in 2013 to extend possibilities in terms of re-introducing temporary controls on the basis of a Council recommendation, and as a last resort in the event of serious failure on the part of a Member State in fulfilling its commitments on external border control. [11]

5. Better border surveillance

Introduced in December 2013 the European border surveillance system (EUROSUR) is intended to help strengthen external border management. It promotes a common technical framework to develop knowledge of the situation on the external border as well as the response capability of the surveillance and control services. Hence it is also a tool for the protection of migrants' lives.

The "smart borders" project provides for the use of new technologies to strengthen external border control whilst facilitating their crossing for legal travellers. [12] To this end in February 2013, the European Commission proposed a "smart border package". The new European Commission did however state that it would put forward modified proposals at the end of the year, taking on board the results of the pilot project which will have tested various options. [13]

From the budgetary point of view the multi-annual financial framework 2014-2020 provides for the creation of a chapter to include "external border and visa policy" within the funds for internal security which will have a budget of 2.7 billion €.

6. Stronger governance

In its conclusions dated 8th March 2012, the Council established, after a request from France, a procedure intended to strengthen political governance within the context of Schengen cooperation. A mixed committee, composed of European Union Member States and associate Schengen States, will, at ministerial level, provide details of the political orientations required for the Schengen area. It must also hold political discussions on the main questions linked to correct functioning of the Schengen area. These discussions must also cover cases where evaluation reports show serious shortcomings and detail what action plans have been decided on to correct these shortcomings. The Council has also praised the approach used by the Commission which consisted of periodically presenting reports, at least once a year, to the European Parliament and the Council on the functioning of Schengen cooperation and the application of Schengen acquis. [14] These reports must act as a basis for political and strategic discussions at the mixed

10. *See Semestrial reports produced by the European Commission for the Parliament and Council on functioning of the Schengen area.*

11. *Regulation (EU) n°1051/2013 dated 22nd October 2013 modifying regulations (EC) n°562/2006 in order to establish common rules on the temporary reintroduction of controls on internal borders in exceptional circumstances.*

12. *European Commission communication dated 25th October 2011 COM(2011) 680 final.*

13. *Moreover, regulation (EU) n° 656/2014 15th May 2014 specified the rules on the surveillance of external maritime borders within the context of operational cooperation coordinated by Frontex, particularly for the landing of migrants.*

14. *See Sixth semestrial report by the European Commission to the European Parliament and the Council on functioning of the Schengen area 1st May to 31st October 2014 (COM (2014) 711 final).*

committee. They should also be a way of examining the means by which to remedy the shortcomings linked to Schengen and, where necessary, indicate possible solutions on a practical and operational level, or submit new initiatives, notably legislative proposals intended to remedy these shortcomings.

7. Common European asylum system

Implementation of a common European policy on asylum has been a stated European Union objective since the multi-annual programme in 1999. The "The Hague" programme in 2004 planned for the setting up of a Common European Asylum System (CEAS). This common system should enable increased harmonisation of European policies, whilst ensuring a high level of protection. All the texts in the new "asylum package" were adopted and published in June 2013. They cover asylum procedures, reception conditions and the reasons for which international protection can be granted ("Qualifications" directive). The revised Dublin regulation seeks to reinforce the protection of asylum seekers during the process of defining the State responsible for examining the request and clarifying relations between Member States. The revised Eurodac regulation also allows for access by police authorities in strictly limited circumstances, to the European Union databases that contain the fingerprints of asylum seekers, in order to prevent and detect the most serious criminal acts, such as murders or terrorists offences, and to carry out investigations into such crimes.

III/ AN AREA FACING MAJOR CHALLENGES

1. Greater migratory pressure

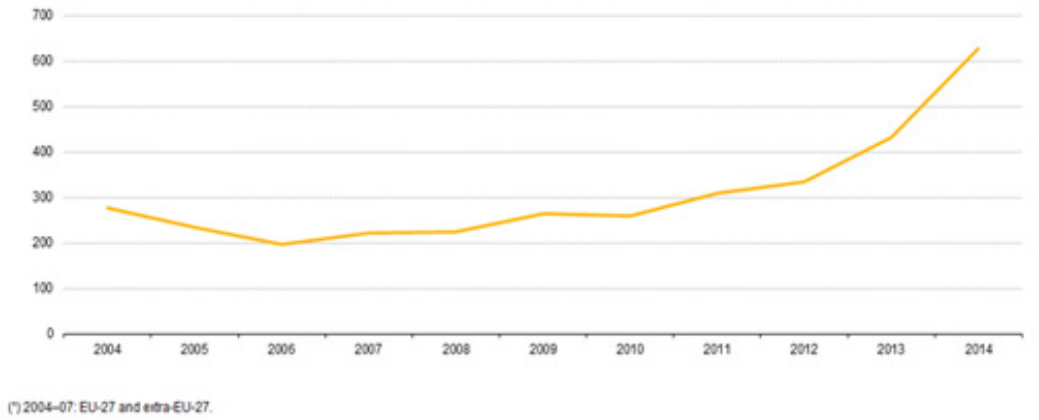
Around 720 million people cross the external borders every year, 334 million of whom are third-country nationals. Illegal crossings are increasing massively. In all, the number of illegal crossings detected in 2013 amounted to 107 365 compared to 72 437 in 2012. This migratory pressure increased massively in 2014. According to FRONTEX [15], the number of detections of illegal border crossings reached a new record at over 280 000 detections (+ 164% compared to 2013). This flow of illegal migrants, which is without precedent, is due to the fighting in Syria which has led to the worst refugee crisis since the Second World War. Most of these detections have been during operations in the Mediterranean, where the total number of detections exceeded 170 000 (+ 277%). Thousands of lives have been saved by border control authorities. The latest catastrophes that took place at the beginning of 2015 are enough to demonstrate the urgency of the situation. This clandestine migration is in large part in the hands of criminal organisations that constitute a threat to existing border security. Between 2013 and 2014, the detection of people traffickers increased from 7 252 to 10 234 (+ 41%). The number of nationals actually returned to third countries amounted to 161 309 in 2014, i.e. a figure comparable to that of 2013. The geopolitical situation underlines the fact that Syria will remain the main source of illegal immigration for people seeking asylum in the European Union. The position of migrants would appear to be extremely fragile in Libya, particularly for those that find themselves in combat zones.

This increased pressure can be observed in the number of asylum seekers registered in the European Union, which has increased by 191 000 (+44%) to reach the record number of 626 000 asylum seekers in 2014. In particular, the number of Syrians has increased by 72 000, increasing from 50 000 asylum seekers in 2013 to almost 123 000 in 2014. The largest number of asylum seekers was recorded in Germany (202 700 asylum seekers, i.e. 32% of the total), followed by Sweden (81 200, i.e. 13%), Italy (64 600, i.e. 10%), France (62 800, i.e.10%) and Hungary (42 800, i.e. 7%). It will be noted that the number of asylum seekers in 2014 nearly doubled compared to the 2013 figure in Italy (+143%) as well as in Hungary (+126%) and increased significantly in Germany (+60%) and Sweden (+50%), whereas in France it was down by 5%.

Syria (122 800 asylum seekers, i.e. 20% of the total number) remains the main country of origin of asylum seekers. Of the 122 800 Syrians who asked for asylum in the Union in 2014, around 60% were recorded in two Member States: Germany (41 100) and Sweden (30 800). Syrians also represented the main nationality of asylum seekers in Belgium, Bulgaria, Denmark, Spain, Cyprus, the Netherlands, Austria, Romania and Slovenia. [16]

15. *Frontex: Annual risks analysis 2015.*

16. *In 2014, 45% of first instance decisions concerning requests for asylum were positive. Syrians were the main recipients.*



(*) 2004–07: EU-27 and extra-EU-27.

Source : Eurostat (online data codes: migr_asyctz and migr_asyappctza)

Faced with the strong increase in migratory pressure and the human catastrophes it is causing, the European Union and Member States have not remained idle. [17] FRONTEX has launched over 9 operations to come to the aid of countries facing this new influx of migrants from the sea. After a dramatic shipwreck in October 2013 in Lampedusa, which cost the lives of 366 migrants, Italy decided to implement a vast military and humanitarian operation. The "*Mare Nostrum*" operation, which came to an end on 1st November 2014, represented a cost of over 9 million € per month for Italy, i.e. a total of some 114 million €. Launched in November 2014, the new "*TRITON*" operation led by FRONTEX but placed under Italian command, is closer to European borders. Its cost was initially estimated at around 2.9 million € per month. Whereas "*Mare Nostrum*" was a search and rescue operation, "TRITON" aims to focus on border control, although this does not exclude rescue operations. [18]

However, the intensity of migratory pressure raises basic questions regarding the management of external borders. The principle that has prevailed so far, according to which each State is responsible for managing its portion of external border, is limited to the extent that some States, such as is the case currently for Italy, are particularly exposed as the "front door" to the European Union. Italy is also facing the double challenge of rescue operations and controlling its external borders. The *Mare Nostrum* operation was also, against its will, a factor that encouraged people traffickers who were able to play on the proximity of Libya to the *Mare Nostrum* field of operations. To overcome this double challenge, the Union must provide itself with the means by which to block action by people traffickers and criminal organisations at source, since it is exposing the lives of these migrants to serious risk.

The security challenge linked to external border control became particularly acute within the context of the terrorist attacks committed in Paris (January 2015) and Copenhagen (February 2015). Efficient control is one of the challenges to be met to ensure the safety of the European space.

2. Towards a more integrated area?

Presenting its agenda for migrations on 13th May 2015, the European Commission started the debate on greater European solidarity in the management of external borders and the responsibility for growing numbers of migrants.

- European solidarity in the control of external borders

Greater solidarity at European level means an increase in resources for FRONTEX. The European Commission proposes allocating 25 million € to it, with a view to reinforcing the TRITON and POSEIDON operations. This would result in a tripling of the number of operations over the final months of 2015. For 2016, the provisional budget of 22.5 million € for these two operations will be tripled since an amount of 45 million € has been added. TRITON'S geographic area will be extended southwards as far as the limits of the Maltese search and rescue area, in order to encompass the area that was covered by *Mare*

17. *See Jean-Dominique Giuliani, «The Challenge of Illegal Immigration in the Mediterranean », European Issue n° 352, Fondation Robert Schuman, April 2015.*

18. *Since the beginning of 2015, around 34 000 migrants have been rescued when crossing the Mediterranean, a third of which by ships deployed by Frontex.*

Nostrum. [19] In parallel to this, resources mobilised will be increased following commitments made during the Council meeting on 23rd April. [20]

The revised proposal concerning "smart" borders, which the European Commission intends to present between now and the start of 2016, should make it easier to combat illegal immigration with the creation of a register of cross-border movements by nationals from third countries. This register should comply with a principle of proportionality. The Commission intends to launch in 2016 a debate on the future development of operational cooperation at external borders. This debate should raise the possibility of creating a European border-guards system as well as a new approach to the functions carried out by European Union coastguards.

The combat against people traffickers and criminal organisations is a priority. It is specifically by attacking those who exploit human misery, and put the life of migrants directly at risk, that the European Union could dry up the uncontrolled flow of migration at source. The European Commission will put forward a plan of action that will accelerate investigations, disorganise networks, bring people traffickers to justice and seize their assets. The Union also intends to be able to carry out operations under the Common European Security and Defence Policy (CSDP) intended to capture and destroy the boats and other craft used by people traffickers. These operations should be implemented in compliance with international regulations. They will be supported by increased cooperation between EUROPOL and FRONTEX.

Greater efficiency in the implementation of repatriation could also act as dissuasion against migrant trafficking. According to Eurostat, of the 425 000 people for whom repatriation was ordered in 2013, only 167 000 left the European Union. This means that Member States must apply the "repatriation" directive [21] which should enable proportional reconciliation of the concern to have a quick and efficient repatriation system and the desire to treat those concerned in a dignified and humane manner. The European Commission wants to extend the legal foundation of FRONTEX in order to strengthen the agency's role in this field. It also wants to evaluate the best way in which to use the SIS for execution of repatriation decisions, for example by obliging States to register access bans in the SIS so that they can be applied across the whole of the Union. In this regard stronger cooperation with third countries would appear to be a determining factor, notably through the conclusion of readmission agreements. [22]

External border control meets a security challenge that was dramatically highlighted by the terrorist attacks in Paris and Copenhagen. In their declaration on 12th February 2015, Heads of State and government asked that the Schengen framework should be fully exploited in order to reinforce and modernise external border controls. They stressed their agreement on the implementation of systematic and coordinated controls of people benefiting from freedom of circulation by the use of databases of relevance to the combat against terrorism, based on common risk indicators. They also declared themselves prepared to examine a targeted change to the "Schengen borders code" where necessary to permit permanent controls. In March, Justice and Interior Ministers indicated that the systematic control of documents and people based on an evaluation of risks at external borders should be implemented without delay and at the latest in June 2015. It would not appear that this measure is in place as yet. On the other hand, progress has been made with the definition of risk indicators and with cooperation between Member States through the use of SIS and Europol. [23]

- Better management of refugee flows

Only one State is responsible for examining a request for asylum. The Dublin regulation establishes the rules that are used to define which State is responsible for processing a request for asylum, using criteria that mean that responsibility lies with the first State in the Schengen area in which the asylum seeker arrives. [24] This means that the States located on the periphery of the area are more particularly exposed [25] even though it should be noted that Germany, Sweden and France between them concentrate nearly 2/3 of requests. This also raises the question of the capacity of the country of first arrival, a question that was asked in fact with regard to the problems arising with the asylum system in Greece. The European Court of Human Rights and the European Court of Justice required Member States not to proceed with the transfer of asylum seekers when the latter risk being subjected to inhumane or degrading treatment in the transfer State. [26] Member States did not however accept the transfer suspension mechanism proposed by the European Commission for emergency cases where an exceptionally heavy load is placed on the reception capacities of a State,

19. Note that ships and planes used by TRITON are already taking part in rescue operations outside the intervention area when called on by the sea rescue coordination centre with jurisdiction.

20. The operation will include 10 maritime units, 33 terrestrial units and 8 air units, as well as 121 people. The number of patrollers deployed on the high seas will be increased from 3 to 6 during the summer season and then to 5 for the winter period.

21. Directive 2008/115/EC of 16th December 2008 relating to common standards and procedures applicable in Member States to the repatriation of nationals from third countries who do not have the necessary papers.

22. In its agenda for migrations, the European Commission suggests strengthening cooperation with transit countries, initially Niger and Mali and furthering regional development and protection programmes, as a priority for North Africa and the Horn of Africa. It also wants to consolidate bilateral and regional cooperation in terms of migrations (notably the Rabat process).

23. See Europolitics n° 5106 10th June 2015.

24. Regulation EC 343/2003 18th February 2003 establishing the criteria and mechanisms for defining the state responsible for examining a request for asylum presented in Member States by a third-country national.

25. According to the European Commission in 2014 Italy recorded an increase of 177% in the number of illegal border crossings. This increase was 153% in Greece. The two countries represented 19% of the total number of illegal border crossings across the whole of the European Union in 2014

26. ECHR, 21st January 2011, M.S.S. v. Belgium and Greece n° 30696/09; EUCJ, 21st December 2011, "N.S. v. Secretary of State of the Home Department", aff. C-411/10. As justified as they are in substance, these decisions highlight a heterogeneity of the systems of Member States damaging to the correct functioning of a common area.

its asylum system or its infrastructures. They preferred an early warning system that provides for the implementation of corrective mechanisms when the functioning of the asylum system of a State risks compromising application of the Dublin regulation. [27] In view of the emergency situation in the Mediterranean, the agenda for migrations proposed by the European Commission suggests activating the emergency relocation, leaving from Italy and Greece, of 40 000 people (24 000 from Italy and 16 000 from Greece) who are clearly in need of international protection. [28] Based on article 78§3 TFUE [29], this procedure will last for 24 months. Distribution will be based on capacities for absorption and integration. It will be based mainly on population size and total GDP. [30] The European Commission also invites Member States to intensify their efforts at reinstalling people who have obtained the status of refugee. Currently only 15 Member States have reinstallation programmes and 3 others use reinstallation on an occasional basis. According to the Commission's recommendation, Member States would jointly commit to offering 20 000 places. The programme would last for a period of 2 years. Italy also put forward the idea that the international community should set up reception centres for people wishing to cross the Mediterranean in several African countries in order to process requests for asylum on site and decide whether they are acceptable. Such centres could be under the responsibility of the UN High Commission for Refugees (UNHCR). In its agenda for migrations, the European Commission envisages the creation of a pilot, multi-function centre in Niger by the end of this year. [31] The Commission also proposes three directions for considerations for the future, involving the setting up of a common asylum rights code, mutual recognition of asylum decisions and the establishment of a single decision-making process on asylum aiming to guarantee equality of treatment for asylum seekers throughout the whole of Europe.

- The challenge of legal migration

Organising legal migration can be a way in which to reduce the pressure on illegal immigration. Member States retain exclusive jurisdiction concerning admission of nationals from third countries. However, common challenges can be identified and the European Union can play an important role in contributing to meeting them. In its agenda for migrations, the European Commission states that the development in skills required between 2012 and 2025 should result in a 23% increase in the proportion of jobs for a labour force with higher education qualifications. The number of people of working age will fall by 17.5 million in the Union over the next decade. Ageing of the population will also create new requirements, notably in terms of care workers. The European Commission is set to launch a public consultation on the future of the "blue card" directive which, in two years has resulted in the issue of just 16 000 cards. [32] The legal migration policy must also be designed in step with the development of countries of origin, as suggested by the sustainable development objectives that the UN is set to adopt in the near future. Something that the European Union is already seeking to implement through mobility partnerships. [33]

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27. An operational plan for the deployment of "asylum" support staff in Greece was signed on 1st April 2011 with a view to helping the Greek authorities to implement modern and efficient asylum and reception systems.

28. Concerned here would be asylum seekers of a nationality for which the rate of recognition of international protection at EU level is equal to or more than 75%. In practice, two nationalities present this recognition rate: Syrians and Eritreans.

29. Article 78 § 3 of the TFUE: " If one or several Member States finds itself in an emergency situation characterised by "a sudden influx of third-country nationals, the Council, on proposal by the Commission, can adopt provisional measures in favour of the Member State or States concerned. It rules after consulting the European Parliament."

30. With the following ponderations: 40% for the population, 40% for total GDP. Two corrections would be added to these two criteria: the number of requests for asylum received and reinstallation places offered over the past five years (10%) and the unemployment rate (10%).

31. In collaboration with the International Migrations Office, the High Commission for Refugees and the Nigerian authorities, this centre would provide information, ensure protection at local level and offer reinstallation possibilities to people in need.

32. Directive 2009/50/EC of 25th May 2009 establishing conditions for third-country nationals to enter and stay to work in high qualified jobs.

33. Communication from the European Commission: "Maximising the positive effect of migrations on development" (COM/2011/743) and Council decision on migrations within the context of cooperation in the development of the European Union, 12th December 2014.