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Is the Schengen Area Worth Saving?

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ABSTRACT

The passport-free regime in Europe known as the Schengen Area is comprised of 26 of the 27 European Union (EU) member states plus Norway, Iceland, Switzerland, and Lichtenstein. Signed in 1995, the Schengen Agreement was intended to address the problem of enforcing borders between increasingly connected European countries and has expanded to include non-EU member states since then. This paper will lay out the arguments of those in favor of preserving the Schengen Area, who argue that the benefits of solidarity and free movement of people far outweigh the potential risks, as well as the most prominent criticisms of Schengen, including the perceived failures related to the 2015–2016 migration crisis, the 2015 terror attack in Paris, and the ongoing COVID-19 pandemic. The succession of different crises faced by the EU in the last few years has highlighted the fact that the Schengen Agreement is a product of a different time, and that it is in need of reforms. Whether the Schengen Area can weather these challenges and adapt will have an impact on the future and functioning of the EU as a whole.

KEYWORDS

Schengen Agreement, refugee crisis, Sars-CoV-2 pandemic, borders

1. INTRODUCTION

The Schengen Area began as an intergovernmental organization rather than a European Community project with the signing of the Schengen Agreement on 14 June 1985 by France, Germany, the Netherlands, Belgium, and Luxembourg. The purpose of this Agreement was to gradually abolish checks at the internal borders between the five countries with the intention of creating a closer union, encouraging the free movement of goods and services, and increasing the solidarity between citizens through encouraging the free movement of people (The Schengen Acquis, 1985). The Schengen Convention signed on 19 June 1990 amended the 1985 Agreement and laid down protections for the free movement of people, goods, and services (Migration and Home Affairs - European Commission, 2019). Portugal and Spain joined as signatories to both the Agreement and the Convention in 1991, and it entered into force for all signatories on 26 March 1995. Since then, 19 additional countries have joined the Schengen Area bringing the total number of participating states to 26. In 1999, the Schengen Agreement was formally adopted into the legal framework of the European Union (EU) under the Amsterdam Treaty with the goal that all new EU member states would be obligated to join once they had met specific criteria. The only exceptions to this were the United Kingdom, which is no longer a member of the EU, and Ireland, who had both previously received an opt-out. Due to its origins as an intergovernmental organization rather than part of the European Communities, non-EU countries are able to participate in the Schengen Area and four have chosen to do so: Iceland, Norway, Switzerland, and Lichtenstein.

In the 21st Century, the Schengen Area has remained popular with citizens while also being the target of increased criticism by various nationalists and Euro-skeptics across the EU for perceived failings during recent crises. Many of the critics of the Schengen Area argue that it makes the tracking of individuals within the area difficult, an issue that has become relevant in recent years due to the rising threat of cross-border terrorism and the 2015 Migrant Crisis. The slow and inefficient process of reestablishing border control is another point of contention that has been especially important since the onset of the Sars-CoV-2 pandemic in the spring of 2020. The border reestablishment process continues to cause issues for member states as they attempt to implement and enforce the travel restrictions and quarantines needed to slow the spread of the virus. The overarching argument against Schengen in the academic sector revolves around the idea that the Agreement itself is antiquated and should be revised to make it more adaptable to modern issues. The public sector tends to take a more black-and-white approach with extremists calling for it to be abandoned entirely and border checks reestablished permanently. While there may be vocal opponents to the Schengen Area, it is not without supporters. Academics and governments acknowledge the inherent risks that come with the non-enforcement of internal borders but argue that these risks are more than balanced out by the economic advantages offered by the free movement of people, goods, and services across participating member states, while also promoting a sense of solidarity and unity between all EU citizens. Schengen also enjoys a great deal of support from the general population and some aspects of it are typically taken for granted. The aim of this research is to examine the arguments posed by both sides in the public and academic realms, where available, and weigh the evidence to determine if the Schengen Area is worth preserving in the 21st Century.

2. THOSE OPPOSED

Critics of Schengen often point to the security risk posed by a lack of enforced borders. They argue that the inability of member states to track the movements of people across internal borders poses a threat to national security, especially in light of the 2015 terrorist attacks in France. This concern is raised by many Euro-skeptics, including Diane James, a former party leader of the UK Independence Party. James commented in a France 24 panel discussion that the lack of enforced internal borders does not allow for adequate tracking of potentially dangerous persons between countries (France 24, 2015). She highlighted the 2015 terrorist attacks that killed 130 people in Paris, France as a glaring example of the shortcomings of the Schengen Area in allowing the attackers, who came from Belgium, to enter France. James argued that, if a hard border or other checkpoint had been present, the terrorists could have been intercepted by French or Belgian authorities and the tragedy might have been prevented. She did acknowledge that the temporary re-establishment of internal borders is made possible under certain circumstances through Article 26 of the Schengen Borders Code but argued that the current process is too bureaucratic to properly respond to a situation like another cross-border attack. The Schengen Borders Code allows for the conditional reestablishment of borders by a Schengen member state. Countries that wish to extend the period of border reestablishment beyond the initial 10-day period, are able to through a renewal process that allows for borders to remain enforced for up to three 20-day periods. Beyond this, Article 26 of the Schengen Borders Code allows a country to keep its borders in place for a further two years if the circumstances are deemed extenuating (British Broadcasting Corporation, 2016). However, the time required to effectively reimplement borders between member states is insufficient to allow local law enforcement to apprehend perpetrators before they cross the border into another country (France 24, 2015). Such an unwieldy system, James says, poses a national security hazard and countries would be better off policing their own borders (France 24, 2015).

In response to the 2015 terrorist attacks, the EU, represented by Council President Donald Tusk and Commission President Jean Claude Juncker, released a joint statement with the other members of the G20 at the 16 November 2015 summit hosted by Turkey. This statement condemned the terrorist activities in both Paris and Ankara that occurred in 2015 and reiterated that combating terrorism should be a united effort of all nations. It also emphasized that

Our counter terrorism actions must continue to be part of a comprehensive approach based on addressing the conditions conducive to terrorism as stipulated in UN Security Council Resolution 2178, [...] We recognize the need at all levels to work proactively to prevent violent extremism and support civil society in engaging youth and promoting inclusion of all members of society. (G20 Summit Turkey, 2015)

Closer to home, the EU directed EUROPOL to form the European Counter Terrorism Centre (ECTC), whose focus involves “providing operational support upon a request from a EU Member State for investigations; tackling foreign fighters; sharing intelligence and expertise on terrorism financing; online terrorist propaganda and extremism; illegal arms trafficking; [and] international cooperation among counter terrorism authorities” (Europol, 2020). While these measures are a start in the right direction for combating terrorism, the former is a re-affirmation of existing regulations and duties of the wider global community and the latter is primarily intended to assist member states in uncovering perpetrators and

motives after a terrorist attack has occurred.

The negative reaction of several Schengen states in 2015 to the sudden influx of refugees fleeing the civil war in Syria and other areas of the Middle East is explained by Sébastien Platon, a professor of Public Law at the University of Bordeaux. He sees the 2015 terrorist attack and the French response of border closures as the root of a chain reaction of sorts among neighboring countries, some of which also began closing their borders with the intention of warding off large numbers of Syrian refugees (Platon, 2018). The point is also made that the continued closure of French borders was not in response to a new threat but that renewal appeals cited the same initial security threat. Platon calls this a case of improper interpretation of Article 25 Section 4 of the Schengen Borders Code that could have potentially allowed for the perpetual enforcement of French borders since the threat of terrorism is ever-present. He further argues that European Commission's proposal to update the Schengen Borders Code may not be enough to solve the interpretation problems that face it and that while Schengen might survive, there is a real chance that it will no longer function as it was initially intended (Platon, 2018). All Schengen members must therefore work together to find a sustainable approach to the migrant crisis and the other crises that might occur in the next few years in order for the Schengen Agreement to survive. This is possible but must be made a priority to succeed.

Since the publication of Platon's paper, the EU has implemented a number of measures designed to balance addressing the concerns of member states surrounding the refugee crisis with preserving the functionality of the Schengen Area. The earliest one was the 6 June 2019 update to the visa policy intended to "facilitate legitimate travel and fight illegal migration" through creating "better conditions for legitimate travelers ... covering costs of [visa] processing ... [and] better cooperation on readmission of irregular migrants" ("Visa Policy," 2019). The 2019–2024 EU Strategic Agenda also includes a pledge to

[c]ontinue and deepen our cooperation with countries of origin and transit to fight illegal migration and human trafficking and to ensure effective returns. Concerning the internal dimension, we need agreement on an effective migration and asylum policy. A consensus needs to be found on the Dublin Regulation to reform it based on a balance of responsibility and solidarity, taking into account the persons disembarked following Search and Rescue operations. (European Council, 2019).

Most recently, the EU adopted the 2021–2027 Long-Term EU Budget, which includes

[s]pending in the areas of migration and border management that will amount to €22.7 billion over the next seven years. Support for migration and border management has been considerably reinforced, including to fund up to 10 000 border guards at the disposal of the European Border and Coast Guard Agency by 2027. (Multiannual Financial Framework, 2020)

The Sars-CoV-2 pandemic has posed a unique challenge to the functioning of the Schengen Area. The recommended lockdowns and bans on travel between countries necessary to blunt the spread of the virus between countries go against the concept of free movement Schengen is based on, and also require border checks to ensure proper enforcement. In general, the approach to Schengen during the pandemic has been left up to the individual member states although the EU has issued a series of common guidelines for member states to base their responses upon that strongly discourage non-essential travel within the bloc

and a color-coordinated system to map spread and infection rates (European Commission, 2021a). The first of these guidelines was published on 23 March 2020 and focused on the creation of ‘green lanes’ intended to keep the flow of basic goods across the bloc with as few interruptions as possible (“Continuous Flow of Goods,” 2020). On 30 March 2020, shortly after addressing keeping the flow of goods as uninterrupted as possible, the Commission released some practical guidance for member states to take into account as they implement the suggested lockdowns and limit non-essential travel. The guidance also gave advice on how to ensure that critical workers needed to combat the virus are able to move across internal borders unhindered (Free Movement of Critical Workers,” 2020). The color-coded map showing risk levels across member states was jointly released by the Commission and the European Center for Disease Control (ECDC) on 15 July 2020 as a crucial part of the Reopen EU plan intended to help countries gauge the risks of reopening for tourism and other non-essential businesses (European Centers for Disease Control, 2020). These actions were all focused on giving member states a set of tools and guidelines for approaching preventing the spread of the virus that are continuously updated as the situation evolves. Importantly though, they remain just recommendations that the EU has no power to enforce. This has led to an uneven application of restrictions where, as of this writing, only 10 countries have some form of border enforcement directly due to the Sars-CoV-2 pandemic, ranging from barring travel from a few specified states, as Austria has done for the Czech Republic, to complete closures, which are in place for Belgium (European Commission, 2016). Critics like Stefano Montaldo, a law professor at the University of Turin, warn that this uneven and individualistic approach to containment has raised some important areas of focus for updating the Schengen Area Agreement with lessons learned from the pandemic response (Montaldo, 2020). With the recent approvals of vaccines and the number of vaccinated adults growing, the EU has entered into a new phase of pandemic response with the Commission proposal of the EU Digital Green COVID Certificate that will be “digital proof that a person has either been vaccinated against COVID-19, received a negative test result or, recovered from COVID-19” (European Commission, 2021c). This is still a work in progress, although the Commission is aiming to have the program rolled out by summer 2021, so that reopening can safely occur as vaccination rates increase.

3. ARGUMENTS IN FAVOR

One of the most important benefits offered by the Schengen Area is a sense of solidarity among participating states. The EU itself often uses solidarity “in the context of social protection” (EurWORK, 2011a) and with regards to workers’ rights (EurWORK, 2011b). The lack of internal borders necessitates a high level of trust between member states that travelers entering the Schengen Area in Italy for personal or business reasons have been properly vetted and pose no threat to Denmark or the Netherlands. Due to the nature of Schengen, external border security is very important, with cooperation between nations on visas and other permits necessary to ensure foreigners within Europe are held to the same background and security checks regardless of the country they obtain their visa or entry stamp from. The solidarity that comes with that level of trust allows the EU, of which most member states are also Schengen states and any new member states are obligated to eventually join, to present a united front in the face of the crises that arise. The migrant crisis of 2015 and the ongoing SARS-CoV-2 pandemic have tested the effectiveness of Europe’s asylum policy, its external border preparedness, and the solidarity between member states which is important to ensure that the system continues to adapt to new situations.

Schengen supporters also claim that it is a vital part of the success of the European Union. Renate Weber, a Romanian Member of the European Parliament argues that Schengen is the single most visible and successful thing to come out of the European Union (France 24, 2015). It has enjoyed massive success and has been a popular policy since it was first implemented in 1995, with a majority of citizens across the Area viewing Schengen favorably (Special Eurobarometer 474, 2018). The ability to cross internal borders without needing to go through checkpoints and present a passport allows citizens of one country that live near the border to work in a neighboring country with little hassle and facilitates easy leisure travel across the bloc. To address the potential issues of unmonitored movement of individuals of concern, law enforcement agencies across Schengen member states are able to exchange information on matters of importance to national security via a law enforcement collaboration program known as the Schengen Information System (SIS). All agencies that the EU has deemed to be “competent authorities,” including customs, police, national border control officers, and visa authorities, have access to the database. These authorities use an alert system to ensure security across the borders of the countries that participate in the Schengen Area since there are no physical boundaries. SIS is important to the successful functioning of the Schengen Area because it allows for the tracking of persons of interest, which is a need that has become more urgent in the modern world (Dontu, 2014). Three major regulations ensure the proper functioning of the Schengen Information System: Regulation (EC) No 1987/2006 oversees the visa process for third-party nationals that need a visa to travel within the Schengen Area, Council Decision 2007/533/JHA deals with the creation of alerts about missing persons and the location of individuals or objects related to criminal offenses, and finally Regulation (EC) No 1986/2006 is the section that allows vehicle registration services of countries perform checks on the legal status of a vehicle an individual wishes to register to ensure it was legally purchased. Of the 27 countries in the EU, 25 have access to the System, with Ireland and Cyprus being the only exceptions. As with the Schengen Area, EU membership is not a requirement for access to the Schengen Information System, and Norway, Lichtenstein, Switzerland, and Iceland are included in the 30 countries with access. Several countries, namely Bulgaria, Croatia, and Romania, have limited access to the SIS since they are still going through the application process to join the Schengen Area (European Commission, 2018a). The ability of the Schengen Information System to provide a Europe-wide database on potential threats and persons of interest who already are under surveillance by law enforcement agencies in certain countries, means that while there are no hard borders, law enforcement is not without substantial tools to combat crime regardless of the suspect’s location. Without the shared database created by SIS to mitigate the risks associated with open borders, Europe would be less safe because there would be no way to share information between states. Cross-border communication between law enforcement agencies and organizations is key to an overall reduction in crime. A safer Europe is an important goal of the Schengen Agreement and checkpoints at the most common and largest crossing points would only catch the most amateur criminals that make the mistake of attempting a crossing at well-guarded points. Simon Calder, a writer for the British paper *The Independent*, quotes a British ex-patriate who chose to remain anonymous saying “[o]f course, anyone intent on crossing the border with a bag of drugs or arms needs only walk over the nearby pedestrian bridge, with no surveillance” (Calder, 2016). There are simply too many potential crossing points for the complete border closing of a country to be either economically feasible or even possible without massive increases in

personnel and at great inconvenience to citizens and businesses.

The Schengen Area is also a major promoter of tourism for the European Union. Tourists arriving in the EU on vacation or professionals visiting for business purposes from countries that require visas, such as Turkey, do not need to apply for an individual travel visa for each country they plan on visiting. Instead, a common Schengen Area Visa can be issued by any participating state and used for travel within the border-free zone without restrictions. Many other countries, including the United States, are exempt from this visa requirement, and citizens of those nations receive either a physical or virtual passport stamp from border control in the country they arrive in and are free to travel throughout the Schengen Area with no further documentation for up to 90 days within a 12-month period (Schengen Visa Info, 2018). This free movement greatly reduces hurdles to tourism and results in Europe being a popular travel destination for many people since the majority of the continent is open for exploration. The exact economic benefits resulting from the unrestricted movement of people across borders are hard to calculate, but it is undeniable that the continued existence of the Schengen Area is very important to the tourism industry, which many European countries rely on. This is especially the case in many southern and eastern countries, like Greece, where tourism provides nearly 20% of GDP (Central Intelligence Agency, 2021). The reintroduction of borders within Europe might cause tourists to decide to travel to cheaper destinations since the lure of being able to easily visit multiple countries in one trip would be gone. Foreign tourists are not the only ones traveling within Europe. A Eurostat survey of the number of European citizens that vacationed within the continent for four or more nights consistently met or exceeded 80 million people between 2012 and 2018 (Eurostat, 2021b), while the total for all trips taken by both EU and non-EU citizens reached close to 3 billion nights spent in accommodations specifically for tourists (Eurostat, 2021b). Reintroducing border controls between member states would significantly reduce this number, with many EU citizens possibly choosing to stay within their own country, harming the tourism-based economies of many southern and eastern countries.

Large companies and smaller businesses have also greatly benefitted from access to a larger pool of employees they can pull from, which allows them to fill open positions with the best possible candidates, regardless of their country of origin. Aleksej Heinze, a writer for *businessculture.org*, also argues that the benefits to businesses from the free trade and movement area means that goods produced in Europe are more competitive when compared to goods imported from overseas. He also highlights that, because there are no border crossings where trucks are forced to stop, the transportation costs of goods are significantly reduced between countries which, in turn, allows prices to be lower on the shelves (Heinze 2015). This is important because approximately two-thirds of the business transactions completed in the European Union occur between member states and border reintroduction would cause the costs currently avoided thanks to the Schengen Agreement to be passed down to consumers via price increases. A sudden increase in the price of goods that people are used to purchasing at a low cost would encourage those individuals to purchase potentially poorer quality imported goods rather than European-made products. This would harm smaller, family-owned businesses which would no longer be able to compete as effectively with cheaper, imported goods.

The Schengen Area's value ultimately lies in its visibility as one of the most effective forms of European integration. While the typical EU citizen might not be aware of the actions of the European Parliament, it is not a stretch to assume that everyone knows

travel between countries across most of the continent without the need for border checks is possible. The resulting economic benefits for companies and personal convenience for average citizens are by far the biggest successes of the Schengen area and alone make it worth preserving.

4. MOVING FORWARD

The Schengen Area is an integral part of the continuing functioning and further integration of the European project, but the recent crises related to migration and security, followed by a global pandemic, have underscored the need for some reforms. One set of such reforms has been proposed by Young European Federalists (YEF), a coalition of people dedicated to the continued unity of Europe. Their vice president, Jacopo Barbati, lays out his party's proposals for reforming the way Europe approaches borders as follows. Firstly, YEF proposes that "the European Commission [be given] the appropriate tools to strictly control the suspensions of the Schengen Agreement made by Member States." Secondly, the "[i]mplement[ion] [of] a European border force for external borders" is needed to help fight any illegal activity that is happening on the external borders of the European Union. Third, they recommend "single migration and asylum policies" and the "creation of a single European migration agency" to enforce the new policies. Lastly, YEF reiterates that "[t] here should be no more internal borders in the EU; free travel should be a right of every EU citizen. The implementation of the above common policies will allow all EU Member States to join and respect the Schengen Agreement" (Barbati, 2016).

One area not addressed by the YEF is the Dublin Regulation, which is out of date and must be reformed if Schengen is to survive. The Dublin Regulation, currently on its third revision, "establishes the Member State responsible for the examination of the asylum application" (European Commission, 2018a). Recently, this has proven inadequate in dealing with the large numbers of refugees fleeing the Syrian civil war that began in 2015, with the system quickly becoming overwhelmed and causing serious problems for those countries where many refugees initially entered the EU. A fourth revision of the Dublin Regulation was proposed in 2018 which would, most notably, "[e]nsure fair sharing of responsibility between Member States by complementing the current system with a corrective allocation mechanism in cases of disproportionate pressure" (European Commission, 2018a). This update will be essential in providing much-needed aid to countries still receiving a large portion of the refugees bound for Europe, which are often struggling to process all the applications within a reasonable timeframe. The revision also adds a procedure for determining the maximum number of refugees a country can process and, if that number is reached, transferring excess refugees and their applications to neighboring countries that are below their determined maximum number and are able to complete the asylum process (European Commission, 2018b). By adding these measures to the Dublin Regulation, the pressure currently felt by member states such as Greece and Italy, where most of the refugees are arriving, will be relieved and the refugees themselves will experience a more organized and efficient process towards asylum rather than the current quagmire they are experiencing at the hands of an overloaded system (Atanassov et al., 2018).

Lastly, the ongoing Sars-CoV-2 pandemic has taught the EU and Schengen member states some valuable lessons about the flexibility that needs to be present to respond to situations where border enforcement is necessary for public health. This can be addressed by a reform of the Schengen Borders Code to include guidance for quarantine and travel restrictions in response to any future outbreaks or similar fast-spreading public health threats. It

should be pointed out, however, that it is not within the competences of the EU to dictate to the member states when they may close their borders. Any changes to this would be a large step towards the member state ceding more of their sovereignty to the EU, which is something they have been historically unwilling to do without direct benefit. For now, and in response to the current pandemic, the EU Commission is instead proposing an EU-wide Digital Green Certificate coupled with a central database to which all member states would have access, which are hoped to allow borders to reopen safely and facilitate a return to a semi-normal pattern of operation by the end of the year. This will be an especially useful tool for tourist-destination countries as they begin to reopen and recover from summer 2020 tourism rates at 52% of their 2019 pre-pandemic levels (Eurostat, 2021a).

5. IS SCHENGEN WORTH IT?

The conclusion we can draw from the discussion above is that the Schengen Agreement is a complex integration experiment that cannot and should not be easily labeled as “good” or “bad.” Its critics make valid points about the Schengen Area’s weakened ability to keep track of and control the movement of people between countries as compared to countries with enforced borders, and they are justified in questioning its overly complicated procedure for reestablishing borders in the event of a security threat or a health crisis. However, these problems in and of themselves do not mean that the Schengen Agreement is a failure and must be abolished for the good of the member states. For its supporters, the benefits that the Schengen Area offers in the economic sector and its prominence as one of the most visible and successful projects to come out of the European Union far outweigh any potential risks. Like its defenders, I believe that the Schengen Agreement is worth preserving, but I also agree with the voices calling for reforms. These should include clear guidance on temporary suspension of the Schengen Agreement by member states, strengthening of external borders so that internal borders can stay open, as well as revising the Dublin Regulation coupled with unifying migration and asylum policies and procedures. These and other necessary reforms can help transform the Schengen Area from the fair-weather system it was initially designed to be, into a more crisis-proof entity.

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