

PAPER

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THE FUTURE OF SCHENGEN¹

Contact:

Head of Research Catharina Sørensen

+45 21 54 88 21

cas@thinkeuropa.dk

SUMMARY: This autumn, new controversy surrounded the Schengen border cooperation, as the Danish government decided to extend the border control between Denmark and Germany for a further six months. The European Commission is under pressure to ensure a return to the open borders of the past, and according to Commission President Jean-Claude Juncker's State of the Union address in September: "Where the borders have been reintroduced, they must be removed".

Open borders are a prerequisite for reaping major economic gains from the EU's internal market. Open borders also promote business development in border areas, such as in Schleswig or the Øresund region, and contribute to European cohesion. Nevertheless, it is not straightforward for the Commission to give a thumbs down to Denmark's request; not least because other countries, including Germany, France, Sweden, Austria and Norway, have similar requests. In Denmark there is popular support for border control. The Danish government can therefore be presumed to have limited appetite to abolish it. This is despite the fact that the numbers do not indicate that border control is an efficient use of police resources.

It is uncertain how long Denmark can maintain its temporary border control within the EU's Schengen border cooperation. There are three main scenarios for the future Schengen: the end of Schengen as we know it today, acceptance of the status quo with temporary border controls, or the return to Schengen as we knew it before 2015.

The compromise may be a Schengen 3.0, which defends freedom of movement as much as possible, while at the same time strengthening joint efforts considerably – especially at external, but also at internal, borders.

¹ This paper is an in-house translation, done by Louise Pierrel Mikkelsen, of the Danish original article: <http://thinkeuropa.dk/vaerdier/store-forskelle-i-danskernes-eu-holdninger>. Thanks to Rachel Payne for proof reading.

MAIN CONCLUSIONS:

- Denmark has challenged the Schengen agreement by renewing its temporary control at the Danish-German border. The government has justified the decision with reference to the current security and migration situation.
- However, several Member States and the Commission are increasingly critical of this justification.
- Proponents of border control have used the number of rejected persons and charges made in connection with the control as an argument for its importance. But reviewing the numbers, it is questionable whether border control is an efficient use of police resources.
- Indeed, when comparing the results of the border control with the situation before the introduction of controls, the figures look much less convincing. Moreover, many Danes are among those charged at the border, and most charges are for traffic-related infringements.
- The police's prioritisation of border control has had negative consequences for citizens' safety internally in Denmark. Since border controls were introduced, police response times have risen, while the charge rate for serious crime, vandalism and theft in Denmark has fallen drastically, and the average processing time from charging to sentencing for offenses such as theft has increased by 91 per cent.
- The EU's ability to control external European borders is improving, and this diminishes arguments for continued control at internal borders.
- When Denmark challenges the Schengen rules, it risks creating a negative domino effect with respect to the Dublin Regulation, which enables Denmark to return asylum seekers to the first EU country in which they arrive. Particularly among the southern European countries, the acceptance of the Dublin Regulation is coupled with a return to free movement internally in the EU.
- There is a need for a reform of Schengen into a Schengen 3.0 that will pave the way for enhanced cooperation also on internal borders, in order to reduce domestic policy pressure in member states for maintaining physical, cost-heavy and inefficient national border control.
- The EU's member states would continue to be responsible for exercising potential controls within their own borders, but their efforts could be supported by common European migration and safety assessments in the coordination of such activities.
- In addition, EU funds could be earmarked in the forthcoming framework budget to cover the costly measures of creating so-called Smart Borders at internal borders, including support for number plate scanners and radio frequency identification, for example.

Freedom of movement is one of the elements that most Danes associate with the EU. It is a fundamental right guaranteed by the EU Treaties. "Schengen" is the name of the cooperation that ensures free movement across internal borders in the EU. The Schengen cooperation means that citizens in the EU, as well as in Iceland, Liechtenstein, Norway and Switzerland, can move freely across the borders of member states without having to go through border control. Freedom of movement of goods and labour is an important prerequisite for the EU's internal market, which is crucial for the member states' economies. A Danish analysis shows that the internal market makes the average Danish family approximately DKK 65,000 richer each year.²

The Schengen cooperation has created greater freedom internally in the EU, but the opening of internal borders was accompanied by enhanced control at external borders from the outset and even closer police cooperation across borders. The European police cooperation, Europol, and the Schengen Information System (SIS) were thus launched before Denmark followed the other Nordic countries into Schengen in 2001 to keep the Nordic Passport Union in tact. To strengthen external border control, the EU countries established the European Border and Coast Guard Agency (Frontex) as well as the so-called EURODAC and Visa Information System (VIS) databases for the registration of asylum seekers and visa applicants' fingerprints and facial images.

However, the migration crisis in the summer of 2015, with over a million refugees and irregular migrants crossing the Mediterranean Sea, placed far too much pressure on authorities in the Schengen countries and developed into a political crisis in the member states and the EU as a whole. As a counter reaction, six Schengen countries (Denmark, France, Norway, Sweden, Germany and Austria) introduced temporary border control.

After more than a decade of passport-free travel, the trend started to shift towards closed borders.

Control measures were subsequently approved by the European Commission as being within the Schengen rules, which allow temporary control in extraordinary situations. But since then, the uninterrupted continuation of the controls has in effect put Schengen on pause. The Schengen agreement is not completely broken, but now that there is better control of the external borders, several member states have raised the point that continued control violates the regulatory framework. In addition, there are countries that have decided to build new physical fences at their borders, such as Hungary. Although these fences do not count as re-introduced border controls, their compliance with the Schengen rules is questionable.³

² The Internal Market's Economic Importance for Denmark, the Danish Commerce and Industry Agency, 25.02.2017, <https://erhvervsstyrelsen.dk/det-indre-markeds-oekonomiske-betydning-danmark>.

³ The Future of the Schengen Area, CEPS, 2018: https://www.ceps.eu/system/files/IPOL_STU%282018%29604943_EN.pdf.

Below is the Commission's overview of the current situation of border controls within the Schengen area and the official reasons given by the six countries that have introduced temporary border controls. The reasons are given with reference to internal security, i.e. the fear of terrorism, and to concerns for secondary movements of migrants or so-called "asylum-shopping".

Existing border controls in the Schengen area

France	30/4-30/10 2018	Persistent terrorist threat; all internal borders.
Austria	12/5-11/11 2018	Security situation in Europe and threats resulting from the continuous significant secondary movements; land borders with Hungary and with Slovenia.
Germany	12/5-11/11 2018	Security situation in Europe and threats resulting from the continuous significant secondary movements; land border with Austria.
Denmark	12/5-11/11 2018	Security situation in Europe and threats resulting from the continuous significant secondary movements; all internal borders with an initial focus on the land border with Germany and ports with connection to Germany.
Sweden	12/5-11/11 2018	Continuous serious threat to public policy and internal security; all internal borders.
Norway	12/5-11/11 2018	Security situation in Europe and threats resulting from the continuous significant secondary movements; all internal borders with an initial focus on ferry connections with DK, DE and SE.

Source: European Commission: Overview of the re-introduction of border controls: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-bordercontrol_en

Denmark announced on 12 October 2018, with the same reasoning, that a further six-month extension of border control would take effect from 12 November 2018.⁴ Similar messages have come from the five other countries.⁵ The Commission must now assess the countries' actions in light of the principle of proportionality. Even though the countries' arguments are similar, the scope of the controls are different. Swedish control is estimated to monitor around 70-80 percent of border crossings, while the Danish controls are estimated to be significantly less comprehensive.⁶ In addition, Germany has occasionally had internal controls at airports.

⁴ Letter from Immigration and Integration Minister Inger Støjberg to EU Commissioner for Integration and Internal Affairs Dimitris Avramopoulos, October 12, 2018 <http://uim.dk/filer/nyheder-2018/letter-for-commissioner-avramopoulos.pdf>.

⁵ "Germany extends border controls with Austria and Denmark", [dw.com](http://www.dw.com/en/germany-extends-border-controls-with-austria-and-denmark/a-45868897), October 12 2018,; <https://www.dw.com/en/germany-extends-border-controls-with-austria-and-denmark/a-45868897>.

⁶ Numbers provided by Danish and Swedish sources at a closed Schengen conference at the German think tank SWP in September 2018

The Schengen debate is coming to a head

There are at least two reasons why the debate on Schengen and the criticism of internal controls from other member states is intensifying today. First, because the continued demands for border control among the states who have requested it are bending the existing Schengen rules. The rules only allow temporary control under special circumstances. Asylum and migration rates are back at the pre-2015 crisis level, and this has spurred the countries that are adversely affected by the internal border controls to put more pressure on the Commission to reject further extensions. At the same time, European cooperation against terrorism, via Euro-pol among others, has been strengthened with positive results.⁷ The number of deaths in terrorist attacks in the EU countries decreased from 151 in 2015 to 68 in 2017. The decreasing numbers of migrants and progress in the fight against terrorism means that one cannot rule out that infringement proceedings could be issued against member states that cannot produce the necessary documentation to extend temporary border controls.

The Commission's own position is also clear. In his annual speech about the state of the EU on 12 September, Commission President Jean-Claude Juncker said: "I am and will continue to be strongly against internal borders. Where the borders have been re-introduced, they must be removed. If they are not, it is an unacceptable step backwards for Europe now and in the future."⁸

Second, the Council's compromise on the new Schengen Borders Code – which is the Commission proposal for future-proofing Schengen – now has to go through so-called trilogue negotiations with the European Parliament. The Parliament is expected to be extremely critical of, *inter alia*, the Danish "red lines", which posit that the new rules must allow for controls of up to one year and without needing approval from the Council. These red lines would probably allow Denmark to continue its border controls in a similar way to today. However, the Justice and Home Affairs opt-out means that Denmark cannot participate in the vote on the final outcome.

Schengen and migration bite each other's tails

Regardless of whether the Schengen Code takes one form or another, or whether the Commission gives the green light to another half-year extension, the challenges of Schengen will not be resolved this autumn. The crisis in 2015 showed how much Schengen and open borders are linked to the asylum and migration debate. That debate is still alive and well in Brussels.

⁷ European Union terrorism situation and trend report, 2018, Europol. <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2018-tesat-2018>

⁸ State of the Union, 12 September 2018: https://ec.europa.eu/commission/sites/beta-political/files/so-teu2018-speech_da_0.pdf.

Today, we could ask how Schengen worked so smoothly for so long. The open borders, which all EU countries support in principle and which generate huge financial gains, are based on the trust that all other countries have control over their residence permits. That trust today collides with a strong political desire within several member states to better control migration. Migration is the policy area that, according to the Eurobarometer opinion polls, is today's major concern for EU citizens.⁹

In the 1980s and 1990s, the establishment of Schengen was considered a natural extension of the establishment of the EU's internal market for goods. At the same time there was an acknowledgement that in large parts of Europe – with growing connections across countries and growing traffic in general – it was impossible to control the internal borders, unless one could build border controls similar to those that had just been torn down in connection with the fall of the Berlin wall. Furthermore, control at border crossings was, according to large segments of the European police, an ineffective remedy for combating transnational crime. It was almost regarded as telling the criminals where the police would be. Compensatory measures, such as enhanced police cooperation in exchanging information (the beginning of the EU police agency Europol), the possibility of persecution of criminals across the border, control of the hinterland, etc., were seen as far more effective measures.

In 1995, the core countries behind the Schengen cooperation, France, Germany, the Benelux countries, Portugal and Spain established a special database, SIS I, which collected data on criminal and illegal border crossers. It was extended to SIS I+ in 2001 when a number of Nordic countries, such as Finland, Sweden, Norway and Iceland, chose to join the cooperation. Denmark decided to follow, despite the Justice and Home Affairs opt-out, as it was an important Danish interest to preserve the Nordic Passport Union. The entire plan for the creation of the Øresund region was closely linked to passport-free travel and unimpeded border crossing.

With Denmark's entry into Schengen, Danish police gained access to the SIS database. Today, the new SIS II system contains more than 76 million pieces of information, and Danish authorities searched more than 20 million times in the database in 2017.¹⁰ One of the reasons for the many searches is that Danish authorities can use the the SIS II database to conduct automatic searches for number plate scanners on police cars and at border crossings.

⁹The voters have new wishes for what the EU should do, paper, Think Tank EUROPA, March 12, 2018, <http://thinkeuropa.dk/vaerdier/vaelgerne-har-faaet-nye-oensker-til-hvad-eu-skal>.

¹⁰Danish searches in the Schengen database SIS have tripled in two years, Think Tank EUROPA, paper, 3 June 2018, <http://thinkeuropa.dk/politik/danske-soegninger-i-schengen-databasen-sis-tredoblet-paa-aar>.

In 2005, Frontex, the European Border and Coast Guard Agency, was established, to assist Member States with ensuring external border controls. Before the migration crisis three years ago, this Schengen border cooperation existed side-by-side with a very weakly EU-regulated asylum and migration policy. Here, the main initiative was the Dublin Regulation.

The 2003 Dublin Regulation is based on the Dublin Convention of 1990 and the associated EURODAC system is used for the registration of asylum seekers' fingerprints. It determines that an asylum seeker's case must be dealt with in the first EU country in which their entry was registered.

The main purpose of the convention was to avoid "asylum shopping", i.e. the opportunity for an asylum seeker who had been rejected in a country to move on to the next and try their luck there. The refugee and migrant flows were at the time mostly east-west, and Germany was in most cases the first asylum country. For many years, Denmark has used the Dublin Regulation to send more asylum seekers back to other EU countries than Denmark itself has received (Danish participation is secured through a so-called parallel agreement, as the cooperation is covered by the JHA opt-out).

For years, initiatives have been promoted to strengthen both asylum and migration cooperation as well as external border control, but several vital decisions have become drawn out due to disagreements or sluggishness among member states. That is why in 2015 the EU was suddenly in trouble as the major refugee and migration crisis struck the continent. An example of a proposal that was well under way before the crisis struck is the new Exit Entry System (EES), which will build a common IT system to register entry and exit of the Schengen area at the external borders. The idea was initially recommended by the Commission in 2009, but it was only approved by the member states in 2014 – one year before the refugee crisis. After the crisis, it took only a year before a new Commission proposal on the EES was adopted.¹¹

The crisis in 2015 sent a strong signal that the existing EU regulations were far from adequate. Frontex's resources were not sufficient enough to make a real difference to the receiving countries. And the Dublin system almost collapsed under the great pressure placed on receiving countries like Greece and Italy, which either failed to or deemed it unreasonable to register all of the newcomers. Many migrants proceeded to make their way across Europe unregistered, and in September 2015 they also reached the Danish highways. Even though the pressure has now been relieved and the receiving countries have more control over their border situation, many countries are still receiving unregistered migrants. For example, the Dutch migration minister, Mark Harbers, has observed that most of the

¹¹ See the draft proposal with a review of the process here: [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europenne/com/2016/0194/COM_COM\(2016\)0194_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europenne/com/2016/0194/COM_COM(2016)0194_EN.pdf)

asylum seekers who have arrived in the Netherlands up to and including September 2018 have not previously been registered in Europe.¹²

The experience of pressure on the external borders, non-registration of newcomers and reports of asylum shopping is what makes destination countries such as Germany and Sweden keen to revive the EU's internal frontiers, and receiving countries such as Greece and Italy call for solidarity in handling migration. It is a catch-22 situation, where finding solutions to Schengen-related issues relies on solutions in the area of asylum and migration. This is where a political paradox emerges.

The countries that speak most warmly for a return to Schengen – such as Poland – are also among the most reluctant towards new asylum and migration policies in the EU. As the sender of a considerable proportion of migrant workers to other EU countries, Poland wants freedom of movement. On the other hand, any form of distribution mechanism of asylum seekers is excluded for domestic political reasons.

The strong opposition on a principal level in several countries towards obligatory distribution mechanisms means that the EU Heads of State and Government are strongly committed to finding common asylum and migration ground in other areas that could one day spill-over into greater distributive solidarity. So far, the target is that the EU should collectively contribute more to strengthening external borders. For example, a proposal has been made to significantly boost this effort through the next EU framework budget, including employing 10,000 new Frontex staff, setting objectives for common migrant processing camps, enabling interoperability of asylum and crime databases, and working to finalising agreements with third countries on migration management and readmission.

The long-term future of the Schengen area is linked to this work. It will only be when the asylum and migration situation in the EU becomes well-managed and stable that the push from several member states for internal border controls will subside. As we outline below, there are three overall scenarios for the future of Schengen, which range from the prospect of the Schengen area's collapse, to an attempt to maintain status quo, to a demand for a 'return' to Schengen.

Scenario 1: The end of Schengen

In the wake of the immediate migration crisis, the total collapse of Schengen cooperation was seen as a real risk. According to a report from European Council on Foreign Relations, six EU countries, including France, considered in the spring 2016 that this could potentially happen before the summer.¹³ Today there is no

¹² Politico Brussels Playbook, 19 September 2018.

¹³ The Future of Schengen, ECFR, 2016: https://www.ecfr.eu/specials/scorecard/schengen_flash_scorecard.

prospect of the Schengen cooperation facing a collapse. It would probably need a crisis of at least the same magnitude as the migration crisis in 2015 before talks of a collapse would resurface.

A collapse scenario implies, in principle, that checks would be made at all internal EU borders. This situation is so far from what several EU countries want that, most likely, a collapse of the common Schengen agreement would instead lead to one or more "mini Schengen" agreements among groups of like-minded neighboring countries (e.g. the Iberian Peninsula, Benelux, and the Nordic countries).

A less dramatic, but still unlikely, development for the EU could be that some countries resign – or are thrown out – from the Schengen cooperation. In Denmark the Danish People's Party (DF) has long expressed its resentment of the Danish membership, not least due to its desire for permanent border control. The DF's Schengen resentment could become even more intense if a Danish decision to extend its border control gets rejected by the Commission as being contrary to the Schengen Agreement.

In addition, in an extreme case, a court case against Denmark for breaking the rules could lead to its expulsion from Schengen. This would mean that all Danish borders would be considered as external Schengen borders, including the borders of the Nordic countries, demanding extensive controls such as ID checks of all travelers. Danish access to the many Schengen-related compensatory measures such as the comprehensive SIS-II registry would disappear. And the Danish special agreement to participate in Europol would cease as it is tied to Schengen membership. In addition to decreasing the value of the internal market for Danish households, it would also be a serious loss for Denmark's efforts against illegal migration and serious crime, which would far outweigh any security benefits gained from border controls. An exit would, in principle, cause Denmark to lose access to all of the EU's central migration and crime databases.

Only opponents of the principle of free movement will see something positive in a complete Schengen collapse. This would be a very serious defeat and a setback for the EU and Denmark, both economically and symbolically.

However, as mentioned, it is unlikely that most EU countries would accept a Schengen collapse. An end to the common Schengen agreement would therefore be likely to be replaced by one or more mini-Schengen agreements. This scenario may even not be seen as a threat in the "EU core", i.e. France and the Benelux countries.

These countries could be interested in a mini-Schengen agreement as an opportunity to intensify integration, bypassing more foot-dragging countries. Dutch Prime Minister Mark Rutte officially introduced the idea of a mini-Schengen in November 2015, which would consist of the Benelux countries as well as Germany

and Austria.¹⁴ French President Emmanuel Macron is also known as an advocate for a smaller Europe, and in September this year he said after the informal summit in Salzburg that Schengen should be only for the "willing". "Countries that don't want more Frontex or solidarity will leave Schengen," he said.¹⁵

Scenario 2: Status quo

An approximation of the status quo could be achieved if both the Commission and the Council choose to overlook the fact that individual member states – even without solid evidence of migrant pressures or security threats – wish to extend their border controls indefinitely, refusing to bring proceedings against the countries at the European Court of Justice for infringement of the Treaty. This would allow further extensions of border controls in the six countries with current controls (although there are quite consistent assessments that Germany will be for phasing out control). The average citizen must, as a rule, remember her passport when travelling in the EU, and queues may occur during peak hours or periods of extra travel activity. At the same time, the controlling countries would continue to incur significant border control costs without thereby establishing anything that resembles full security against illegal immigration or cross-border crime.

At first glance, status quo can be seen as an attractive scenario. It allows a country like Denmark to maintain its current level of border control as long as there is an internal political demand for it. According to key actors, the Danish random sampling control has not caused significant delays at the Danish-German border.¹⁶ Principally and symbolically, border control challenges the ideal of free movement, but in reality it would be an exaggeration to say that the current level of limited random checks undermines people's mobility or the gains of the single market.

Border control has been declared a great success in the domestic debate – typically without including in this context the significant downgrading of police action in other areas.¹⁷ The assessment of success is based in particular on numbers that

¹⁴ Dutch government floats 'mini-Schengen' idea to EU partners, Reuters, 19 November 2015, <https://www.reuters.com/article/us-europe-migrants-netherlands/dutch-government-floats-minischengen-idea-to-eu-partners-idUSKCN0T81J720151119>.

¹⁵ Politico Brussels Playbook, 19 September 2018.

¹⁶ "Transport giant drives border fears away: No problems at all", Jyllands-posten, 3 June 2018: <https://finans.dk/finans/erhverv/ECE8726878/transportgigant-maner-graensefrygt-i-jorden-ingen-problemer-overhovedet/?ctxref=ext>.

¹⁷ "New records: Border control reveals extensive crime" BT, 23 August 2017: <https://www.bt.dk/danmark/ny-opgoerelse-graensekontrol-afsloerer-omfattende-kriminalitet>; "Border control: almost 5500 foreigners rejected at the border over the last two years", Berlingske, March 14, 2018: <https://www.berlingske.dk/politik/graaensekontrol-knap-5500-udlaendinge-afvist-ved-graensen-paa-toaar>; og 'Now it is clear that border control works', Fyens Stifttidende, 16 March 2018: <https://www.fyens.dk/debat/Nu-er-det-helt-tydeligt-Graaensekontrollen-virker/artikel/3239380>.

show that border controls since 4 January 2016 have led to more than 6,400 people being rejected and around 5,000 charges being made.¹⁸ However, this does not in itself reveal whether the border control is an efficient use of resources, as any such claim would depend on a comparison with the situation before border control.

Status quo is an option in the short term (e.g. for the next six months or so), but it is unlikely to prevail in the long term if the current migration and security situation does not worsen. There are so many critical voices against border control in several member states and the Commission that it seems unlikely that countries persisting with border control will be able to avoid infringement procedures. In a country like Spain, tourism and export sectors are largely linked to free movement.¹⁹ And because of the close links between border, asylum and migration co-operations, the continued bending of the rules in one area means that the rules in other areas could also erode. In other words, Denmark and other countries bending the Schengen Agreement risk creating a negative domino effect with regards to the Dublin Regulation, which several southern European countries already experience as not serving their interests. Indeed, a country such as Denmark is likely to be far better served by a well-functioning Dublin System than with border control and an eroded Dublin System.²⁰

Additionally, the results of the border controls in terms of the numbers of rejections and charges that have been highlighted in the Danish public debate as evidence of the success of the control measures have not been compared with the situation before their introduction.

The police were not passive spectators of attempted illegal immigration or smuggling before Denmark introduced formal border controls. Even before 2016 it was possible to carry out random controls. Unfortunately, it is quite difficult to assess whether these random sample checks were as successful in stopping people from attempting to travel illegally into Denmark as there are no comparable numbers.

Think Tank EUROPA's analyses show that the term "rejection" is used exclusively when and if border controls have been introduced. For the time period prior to 2016 there are only extradition figures available – and here the term 'administrative expulsions' covers issues such as lack of residence permit. But even with these reservations, it is interesting to note that the number of these administrative expulsions was exceptionally high in 2015, when there was no border control. That

¹⁸ Between 4 January 2016 and 5 August 2018, 6,394 people were rejected at the border, corresponding to approx. 2,475 people a year. Between 4 January 2016 and 22 July 2018, 4,913 people were charged in connection with border control - this corresponds to approx. 1935 people annually. Sources: <https://politi.dk/da/aktuelt/presse/graensekontrol/graensekontrol.htm?WBCMODE=Pr> and <https://www.ft.dk/samling/20171/almdel/uui/spm/792/svar/1506559/1930430.pdf>.

¹⁹ The future of Schengen, report, SWP, October 2018: <https://www.swp-berlin.org/en/publication/the-future-of-schengen/>.

²⁰ The future of Schengen, report, SWP, October 2018: <https://www.swp-berlin.org/en/publication/the-future-of-schengen/>

year, 2,778 administrative expulsions were made, which was higher than the average number of people rejected in connection with border controls in 2016 and 2017²¹.

One must assume that the number was high in 2015 because there was indeed extraordinary pressure on Denmark's borders that year. This indicated that the absence of border control would not necessarily mean that many of those rejected at the borders today would not have been expelled anyway. Today's figure for the number of people rejected at the border also covers forgotten and expired passports, and it also includes EU citizens. This means that some of the 6,400 people who are included in the statistics of rejected entrants may have the right of entry and could have subsequently entered the country.

Then there are the approximately 5,000 charges that have resulted from border controls in the period up to August 2018, including 367 for people smuggling. The list of those charged, including Danes, shows that the number includes sentences under the Road Traffic Act and that no-one has been charged under the Terror Act.²² So far, one of the most used Danish examples of the border control's ability to capture potential terrorists is the so-called "matchstick man", who was rejected for not having valid papers – not because his backpack was full of matches, which presumably were intended for a terrorist attack.²³ It was not the Danish, but the German police who, back at the man's asylum centre, revealed the contents of the backpack containing 17,000 matches and fireworks.

When the charges are viewed from the broadest perspective to detect potential connections to illegal immigration or any criminal activity (i.e. including minor thefts and vandalism), less than 2,000 of the charges, below half, fit this category. Most of the charges are for traffic-related violations.

Again, a realistic assessment of the value of border control relies on making a comparison with the situation prior to its introduction, but here, too, in the absence of border-specific numbers before 2016, direct comparisons are difficult. An inventory of all criminal charges over the past five years from the Danish police could show whether there has been a development in the number of charges in the two border districts, South and Southern Jutland, and South Zealand and Lolland-Falster in the period before and after the border control was introduced (i.e. throughout the district and not only at the border). In general terms, the national average represents a slight increase in the number of charges over the five years, but this development does not apply to the South and South Jutland police districts. In this region the number of charges in both 2016 and 2017 were at about the same level

²¹ Ministry of Immigration and Integration, <http://uim.dk/nyheder/2016/2016-10/ekstraordinaert-mangeblev-udvist-i-2015>.

²² Answer to Question No. 792 from the Parliamentary Immigration and Integration Committee, Ministry of Justice, 24 August 2018: <https://www.ft.dk/samling/20171/almdel/uui/spm/792/svar/1506559/1930430.pdf>.

²³ "Syrian charged with bombing in Copenhagen to be sentenced on Wednesday", tv2.dk, 11 July 2017: <http://nyheder.tv2.dk/krimi/2017-07-11-syrer-tiltalt-for-bombeplaner-i-kobenhavn-dommes-onsdag>.

as before the border controls in 2013 and 2014. In the South Zealand and Lolland-Falster police districts, 2016 marked an increase in the number of charges, which became higher than the national average for the first time in the period. In 2017 the number of charges in the district was, however, below the national average again. This is a development that also characterises the available figures for the first quarter of 2018.²⁴

Scenario 3: The return to Schengen

The third scenario is a return to Schengen as we knew it before the 2015 crisis – a time when you did not need to remember your passport, even if you took your car from Kiruna in northern Sweden to Coruña in Western Spain, and when the likelihood of having your car trunk checked at the border crossings was minimal.

Immediately after approving Denmark and the other countries' original arguments for border control, the Commission on 4 March 2016 launched a roadmap on how to "return" to Schengen: "Restoring the Schengen area, without controls to internal borders, is (...) of paramount importance for the European Union as a whole," it has asserted from Brussels right from the start.²⁵ The rhetoric remains the same and was strengthened under the President of the Commission, Jean-Claude Juncker, in the abovementioned speech from September. The Commissioner for the area, Dimitris Avramopoulos, also stated regarding the latest extension of border control in spring 2018: "We want to get back to a normally working Schengen. It is the principle we are working on with all countries – and I believe that we will very soon be back to normal."

Simultaneously with the rhetoric of "returning" to Schengen, a comprehensive reform of the cooperation, especially regarding external border controls, has started to accelerate.²⁶ This includes, for example, so-called Smart Borders²⁷ using new technology to make the controls as effective as possible and less extensive for the individual. This means strengthening Frontex, the entry and exit system (EES) for the registration of third-country travelers, and so on.

In addition, there is a focus on ensuring interoperability of all relevant databases

²⁴ Denmark has 12 police precincts. The calculations are based on police statistics: https://statistik.politi.dk/QvAJAXZfc/opendoc.htm?document=QlikApplication%2F2999_Public%2FPublic_IndsatsResultater.qvw.

²⁵ Back to Schengen. A Roadmap, European Commission, 4 March 2016: https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/docs/communication-back-to-schengen-roadmap_en.pdf.

²⁶ Inspired by reports like 'The Future of the Schengen Area', CEPS, 2018: https://www.ceps.eu/system/files/IPOL_STU%282018%29604943_EN.pdf and 'Smart Border 2.0', Europa-Parlamentet, november 2017: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596828/IPOL_STU\(2017\)596828_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596828/IPOL_STU(2017)596828_EN.pdf).

²⁷ Smart Borders: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders_en.

on migration control, border surveillance and serious crime and terrorism (including member states' own databases, and EU databases EIS, SIS II, VIS, EURO-DAC, and EEA), as well as linking the Schengen Agreement not only with EU migration and asylum policy, but also with the EU's trade, foreign and defence policies. This applies to, for example, contemporary trade partnerships with several African countries to prevent poverty and climate migration, continuing work on migration agreements with third countries (including joint reception centres and returning migrants), reinforcing the role of Europol in combating terrorism and serious crime in general, and flexible defence actions to tackle smuggling boats.

From a national perspective, these are measures that will require a confrontation with the justice and home affairs opt-out, and defence opt-out, if Denmark is to be able to participate fully.

There are strong arguments for the Commission's return scenario, which has wide support across the EU, as well as within the European Parliament. Absence of border control allows, in addition to having significant symbolic significance, the smoothest free movement. This results in the greatest possible gains from the internal market and shorter travel times. The latter is of particular importance to the EU's approximately 1.7 million border workers, i.e. people who cross a border to work every day.²⁸ Companies that export perishable foods, like the Danish dairy Arla, estimate that even a minute of extra waiting time at a border has significant cost.²⁹ In addition, the acute migration crisis is now over, with numbers of asylum seekers and illegal entries currently at the pre-crisis level.³⁰

In addition, considerable resources are used on border control. There are figures available representing the direct costs spent on the Danish border between 4 January 2016 and 31 August 2017, and this amounts to DKK 275 million. During the same period, the deployment spent 1,101,950 working hours (of which 213,776 were spent by the Danish Home Guard)³¹. The police found personnel resources for border control primarily by re-prioritizing staff time away from general police work. This has had noticeable consequences for citizens. While border controls have been in place, police response times have increased, there has been a double-digit decline in the charge rate of serious crime, vandalism and theft in Denmark, and the average duration from charging to sentencing or penalties for crimes such as theft has increased by 91 percent.³²

²⁸ The Economist, 2018: <https://www.economist.com/europe/2018/06/23/europes-passport-free-zone-faces-a-grim-future>.

²⁹ Peter Giørtz-Carlsen, Executive VP Europe, Arla, at Think Tank EUROPA's conference October 8 2018.

³⁰ See Eurostats Asylum statistics here: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics.

³¹ Sources: Police hourly allocations, <https://www.ft.dk/samling/20161/almdel/reu/spm/863/svar/1427814/1794336/index.htm>. Costs: <https://www.ft.dk/samling/20161/almdel/reu/spm/868/svar/1427819/1794350/index.htm>.

³² The need for a general increase in the fight against terrorism is part of the picture, although the use of resources on border control speaks for itself. Report on police work following strengthened terrorism

In addition, it is an illusion that the border control we have today is a solid defence mechanism against illegal immigration, terror and other crime. According to the Road Directorate and Scandlines, more than 10 million vehicles cross the border from Germany to Denmark each year. This includes passenger cars, buses and freight cars (not trains), and it is therefore difficult to assess the total number of people crossing the border as passengers of these vehicles. According to police reports, in 2016 and 2017, when there was border control, an average of 3.17 million checks on persons were made (often only to request passports).³³ According to Think Tank EUROPA's information, this corresponds to approximately five per cent of all people who crossed the border from Germany. In addition, there are no internal border controls at Danish airports. And even when controls are conducted there is no guarantee that criminals will be detected. A Swedish report has revealed a significant lack of qualifications among Swedish border guards. For example, many were not trained to spot a fake passport.³⁴

The former head of Europol's anti-terrorist centre, Troels Ørting, stated at Think Tank EUROPA's annual conference in 2015 that it would in effect require GDR methods to achieve a significant increase in security though these types of border controls. What is more, is that the open borders have been accompanied by several mitigation measures. A review of crime statistics before and after the introduction of the open borders shows that a number of crimes, including burglary, theft, car thefts and robberies, have fallen in the years after the EU countries joined the Schengen cooperation, and that the rate of detection of cross-border crime has risen.³⁵ This could, among other things, be due to increased police cooperation across borders.

But there are also challenges to the "return" scenario. The after effects of the crisis in 2015 are still strongly felt in several member states, not least among the wider public. Today, migration and terror have emerged as the two undisputed major

preparedness and the introduction of temporary border control, the National Audit Office, 26 April 2018: <http://www.rigsrevisionen.dk/publikationer/2018/152017/statsrevisorernes-bemaerkning-til-be-retningen/>.

³³ According to the Road Directorate's automated measurements at the seven most used road crossings, about 19 million cars cross the Danish-German border in both directions each year. Scandlines, which operates the ferry service along the routes of Rødby-Puttgarten and Gedser-Rostock reported traffic of 2,383 million vehicles in 2015. If it is assumed that traffic is equally strong in both directions, this equates to annual traffic from Germany into Denmark of approximately 10,692,000 vehicles. In 2016 and 2017, an average of 3,170,000 vehicles were controlled. Ferry services from the German island of Sylt are not included. Sources: Road Directorate's Statistical Catalog, Carriers 'Shipowners' Association (Annual Report 2016) and [Politi.dk](http://politi.dk).

³⁴ <https://www.berlingske.dk/internationalt/medie-graensekontrollen-i-sverige-er-saa-daarlig-at-der-erbrug-for-eu-hjaelp>.

³⁵ A Research Paper on the Costs of Non-Schengen from a Civil Liberties and Home Affairs Perspective, Rand Europe, June 2016. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581387/EPRS_STU\(2016\)581387_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581387/EPRS_STU(2016)581387_EN.pdf).

concerns in many EU countries.³⁶ In focus groups conducted by Think Tank EUROPA, several Danes have expressed great concern about what they themselves call "the new security situation", referring to the experience of terrorist attacks on European soil, an aggressive Russia in the east, a Turkey that is increasingly turning away from the EU, and an African continent where the push factors for migration are expected to grow in the coming years.³⁷ In this context, a major challenge to the return scenario is that a majority of 60 percent of Danes, according to Think Tank EUROPA's polls³⁸, believe that border control can protect them against organised crime. "The new security situation" has resulted in an acceptance that more control – in one form or another – is here to stay.

Another argument against the return scenario is that even random border checks (as opposed to a lack of checks all together) could make it a little riskier to be a criminal on the move through the EU. There are, for example, Swedish references to incidences of petty theft in southern Sweden having fallen since border control was introduced in Denmark – allegedly because international gangs have been more cautious to avoid their vans being checked on Øresund Bridge.³⁹ But to achieve these results, it has also meant that police border control has had to remove resources from other areas at the same time.

Conclusion: Schengen 3.0

When the Commission and several member countries' demands for a return to Schengen collide with Denmark and other "control countries'" insistence on maintaining their border controls, the many reforms of the cooperation are often overlooked. Sometimes there is a polarisation of the debate as if it is a simple black and white debate between supporters of borderless movement and supporters of control, thus eliminating the nuances between the two positions. But one can still defend freedom of movement across internal borders whilst being responsive to requests for more control. In reality, most people are supporters of a successful Schengen cooperation that protects the goal of free movement across the EU borders, whilst effective control of illegal migration and current security threats are strengthened at the same time.

It is obvious to see the ongoing Schengen reforms as more than a naive return to the old Schengen, and rather as a new and reformed Schengen – a Schengen 3.0.⁴⁰

³⁶ The voters have new wishes for what the EU should do, paper, Think Tank EUROPA, March 2018: <http://thinkeuropa.dk/vaerdier/vaelgerne-har-faaet-nye-oensker-til-hvad-eu-skal>.

³⁷ The sovereign, Denmark, Report, Think Tank EUROPA, 2017: <http://thinkeuropa.dk/vaerdier/suveraene-danmark>.

³⁸ Based on a representative measurement of 1000 respondents by YouGov for Think Tank EUROPA, April 2015.

³⁹ "Sweden's government renews border controls, again", News Øresund, 4 May 2018: <http://www.newsoresund.dk/sveriges-regering-forlaenger-graensekontrollen-igen/>.

⁴⁰ The Hungarian Prime Minister, Victor Orban, called his 10-point proposal on Schengen's reform needs 'Schengen 2.0' <http://abouthungary.hu/news-in-brief/here-it-is-hungarys-10-point-action-plan-for-the-management-of-the-migration-crisis/>.

This work has long been under way. However, in the face of the migration crisis, a sense of emergency has been created, so it has become easier to adopt tightened measures that were difficult to pass a few years ago. This momentum should be utilised.

The work to create a Schengen 3.0 is dynamic and far from complete, and there are good opportunities for Denmark and other countries to contribute with ideas for modernisation. In a future Schengen agreement, a central component could be to include internal control in the EU as an area of cooperation. Cooperation on internal control would be a natural development of an EU that already works together on the joint monitoring and handling of external borders.

By strengthening the Europol police agency, the EU will be centrally placed to monitor the secondary movements of third-country citizens across EU borders and patterns of terror and crime. Through this the EU could assist with ongoing assessments of where it would actually matter to establish temporary control bodies – whether at country borders or elsewhere, such as traffic nodes, or particularly exposed areas. Countries would continue to be responsible for exercising control within their own borders but could be supported by common European migration and security assessments when planning these checks.

In addition, the EU's Smart Borders package, which is today oriented towards the EU's external borders, could be extended to include internal control measures. There could be specific EU funds earmarked in the forthcoming budget framework for costly actions such as ePassport gates, biometric driver licences, license plate scanners, radio frequency identification and EU smartphone apps that allow police and border guards to search directly in the databases. Smart Border Technology continues to have its shortcomings, but there is a current focus on the area due to Brexit and the Irish border dispute.

A future Schengen agreement should also include enhanced possibilities for tackling potentially unintended negative consequences of ongoing and new supervisory mechanisms. Ethnic profiling is, for example, not compatible with fundamental European values of non-discrimination and equal treatment of the Member States that have signed the EU treaties. In a Schengen 3.0 there should be effective complaint handling bodies that have the power to intervene in the event that fundamental rights are violated and to ensure the Data Protection Act is followed.

Joint European support for internal control bodies may be controversial in countries that are requesting less EU. But an enhanced cooperation could help reduce the domestic political pressure in several Member States to introduce physical, costly and not very effective border controls. The aim should be for a more holistic and efficient use of resources for the benefit of public safety.