

Kiel **Policy Brief**

30 Years of Schengen

Internal blessing, external curse?

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Summary

We take stock of the Schengen Agreement that celebrated its 30th birthday on June 14th, 2015. We argue that the abolition of internal border controls in most European Union member states is rightly considered a blessing to EU citizens. Internally, the Agreement facilitates social and economic interactions without impeding the security of EU citizens. Externally, the Schengen Agreement has also helped to spread liberal norms and promote EU policies across EU borders, whenever Schengen borders prove permeable enough to allow for legal migration or if the relaxation of Schengen visa requirements is used as a carrot to trigger reforms in EU candidate and neighboring countries. The recent humanitarian crisis at the EU borders reveals that the Schengen system still lacks an appropriate joint asylum policy to counterbalance the loss of internal border controls. This weakness may undermine one of the main achievements of European integration.

This Policy Brief revisits the accomplishments of 30 years of Schengen. We first ask how Schengen has affected member states and their citizens and which effects it has exerted on non-Schengen states outside of the EU's borders. We subsequently elaborate on appropriate reforms of a communitarized asylum policy that is needed to safeguard the accomplishments of the Schengen Agreement in the future.

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What is 'Schengen'?

30 year ago, on June 14th 1985, the heads of states and governments of Belgium, France, Germany, Luxembourg and the Netherlands met in Schengen, a town in Luxembourg. They agreed on a stepwise reduction of controls at their internal borders with the long-term goal to fully abolish them. The Schengen Agreement (also Schengen I) presented a major breakthrough in making the freedom of movement in the EU a good that is felt in everyday life: due to the Schengen agreement, Europeans cross the border to live, work or travel throughout the Schengen area without any border checks (for an overview of the evolution of the freedom of movement in the EU, see Favell and Recchi, 2009).

The Schengen area is not to be confused with the territory of the European Union. While most EU member states are by now part of the Schengen area, the Schengen agreement started out as a purely intergovernmental initiative of a couple of EU member states. Today, it has been incorporated into the body of EU law and has been fully implemented by most EU members. However, the United Kingdom, Ireland and—for the time being—the newly acceded states Romania, Bulgaria, Cyprus, and Croatia are not part of the Agreement, while the non-EU member states Norway, Iceland, Liechtenstein and Switzerland are.

In order to realize the stipulations of the Schengen Agreement in practice, the loss of internal border controls needed to be balanced by countermeasures that eventually resulted in a tightening of external border controls. The 'Convention implementing the Schengen Agreement' of June 1990 (also: Schengen II) established a uniform Schengen visa policy and defined the (national) responsibilities for asylum matters. It also anchored rules and procedures for cooperation in criminal and judicial matters between Schengen states and created the Schengen Information System (SIS) to "to maintain public policy and public security, including national security, in the territories of the Contracting Parties" (Art. 93).

While the freedom of movement as enhanced by Schengen I has figured as one of the most valued accomplishments of the European integration process among EU citizens, Schengen II has attracted a substantial amount of criticism with regard to the tightening of border controls, usually debated under the heading of 'Fortress Europe', and especially with regard to the failures of the EU asylum system to accurately respond to international humanitarian crises. At the same time, populist parties throughout the EU have times and again called for a suspension of the Schengen Agreement and the re-introduction of internal border controls.

Internal blessing: How Schengen affects member states and their citizens

The abolition of border controls affects EU member states in various ways and has so far proved highly beneficial for EU citizens. Opening borders affects individuals and firms in a variety of ways including mobility, trade, and security.

Border regions benefit most

Cross-border commuters are the group which benefits the most from the absence of individual border controls. These are people who live and work in two different countries and who thus pass the border on every typical working day. Were the traditional individual checks in place, working across the border would involve spending considerable extra time during the daily commute, making such jobs less attractive. In border regions, Schengen thus helps connecting national labor markets and helps smooth income differences at national borders of participating countries. As a consequence, both workers and firms in border regions benefit. An EU commissioned study (Nerb et al., 2009) compiled existing data and interviewed experts to draw a detailed picture of cross-border commuting. In 2006/7 Switzerland saw more than 200 thousand employees (or 6 percent of employees in Switzerland) commute over the border to work within the country. Tiny Luxembourg even recorded 127 thousand commuting employees (or 43 percent of the employees in Luxembourg). According to the report cross border commuting was most common in the center of the EU. The citizens of France, the Benelux countries, Germany and Switzerland were found to make up the majority of this particular group of Schengen beneficiaries.

Positive effects on trade and economic integration

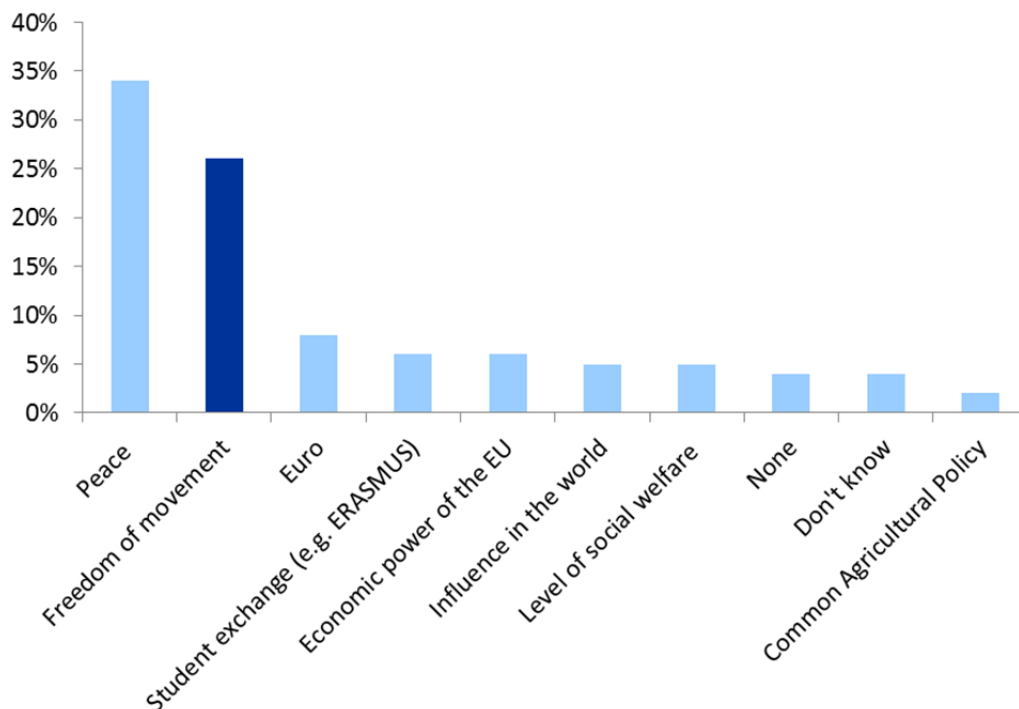
Davis and Gift (2014) are the first to provide a detailed scientific study of the effect the Schengen Agreement had on trade. The authors show that member countries of the Schengen zone become more closely linked trading partners. They argue that this is a consequence of increased labor mobility which can increase demand for foreign goods, can spread information about foreign trading partners who might be cheaper suppliers and can lower the risk of doing business abroad, for example by easing cross-border contracting and improving trust. Davis and Gift show that both imports and exports increase due to Schengen membership. It can be expected that other economic flows in addition to trade are fostered even though they have not yet been studied for the Schengen area in particular. For example, it is now well known that increasing cross-border migration is associated with more foreign direct investment (Javorcik, 2011) and higher cross border financial flows (Kugler et al., 2013) as well. Schengen thus helps participating countries integrate their labor, goods and financial markets more generally and can therefore be considered an important stepping stone on the road to a single market within the EU.

A widely valued good

The freedom of movement that is further facilitated by the Schengen agreement has come to feature as one of the distinctive and most valued achievements of European integration among EU citizens – even in times of crises. As the latest Eurobarometer data show (82.3/ QA13), most citizens in the EU-28 mention the freedom of movement, when asked what the

EU means to them personally. In addition, the freedom of movement is named as the second most positive result of the EU integration process, right after the securing of peace (Figure 1).

Figure 1:
Which of the following do you think is the most positive result of the EU?
(% of EU-28 total, only one answer possible)

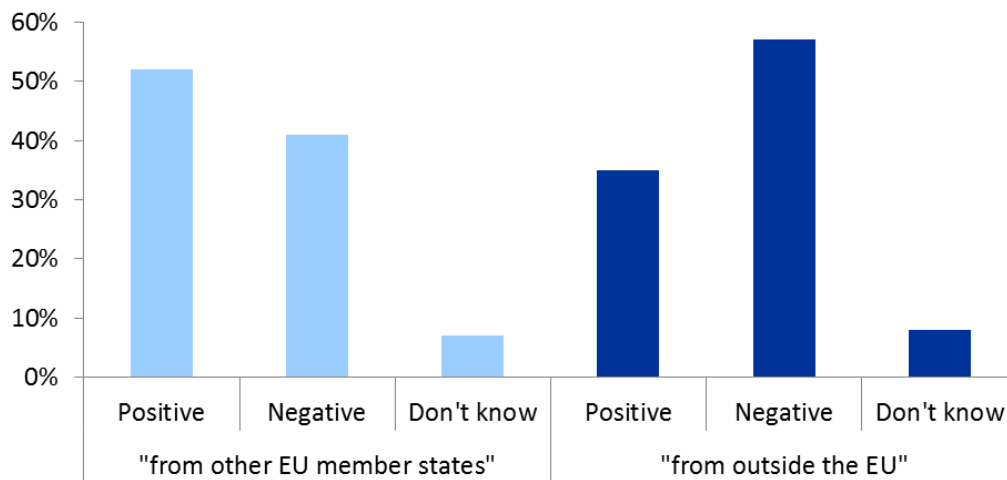


Source: European Commission (2015): Eurobarometer 82.3 (QD4a); own illustration.

In addition, EU citizens consider cross-border movements within and outside of the EU as two different cups of tea: while immigration from other EU member states is on average considered as a positive thing, immigration from outside of the EU is not (Figure 2).

These attitudes may at least partially be driven by the experience of the EU's freedom of movement itself. Recent research has shown that transnational interactions and cross-border mobility generally exert a positive effect on citizens' attachment to Europe: they strengthen the EU identity of individuals and decrease Euroscepticism (Kuhn, 2012; Kuhn, 2011a). Furthermore, EU citizens have been shown to frequently cross borders for social rather than only economic interactions; a motivation that has been considered key in shaping (positive) attitudes towards the EU (Favell and Recchi, 2009; Kuhn, 2011b). By facilitating cross-border mobility, the Schengen Agreement could thus be expected to further boost positive attitudes towards the EU. One impediment to this mutually reinforcing effect, however, is the divergence in mobility between individuals from different social strata: those who already

Figure 2:
Please tell me whether immigration of people from other EU member states / from outside the EU evokes a positive or negative feeling for you.
(% of EU-28 total)



Source: European Commission (2015): Eurobarometer 82.3 (QA11.1/2.); own illustration.

hold a relatively well-developed EU identity and belong to more privileged groups of a society, are also more likely to use the opportunity to cross borders (cf. Kuhn, 2012). One of the risks associated with this finding is a greater polarization among EU citizens, into those who feel European and make use of the benefits of European integration, and those who are critical towards EU integration and do not profit from it to a similar extent. Irrespective of the freedom of movement's general popularity, it has times and again featured prominently in debates among Eurosceptics, as seen in threats by France in 2012 to suspend the Schengen agreement or the re-introduction of border controls by Denmark in 2011 (Vasilopoulou, 2013); moves that are frequently driven by right-wing and populist parties claiming that border controls are needed to accurately safeguard (national) internal security.

Effects on security and crime: The case of German border regions

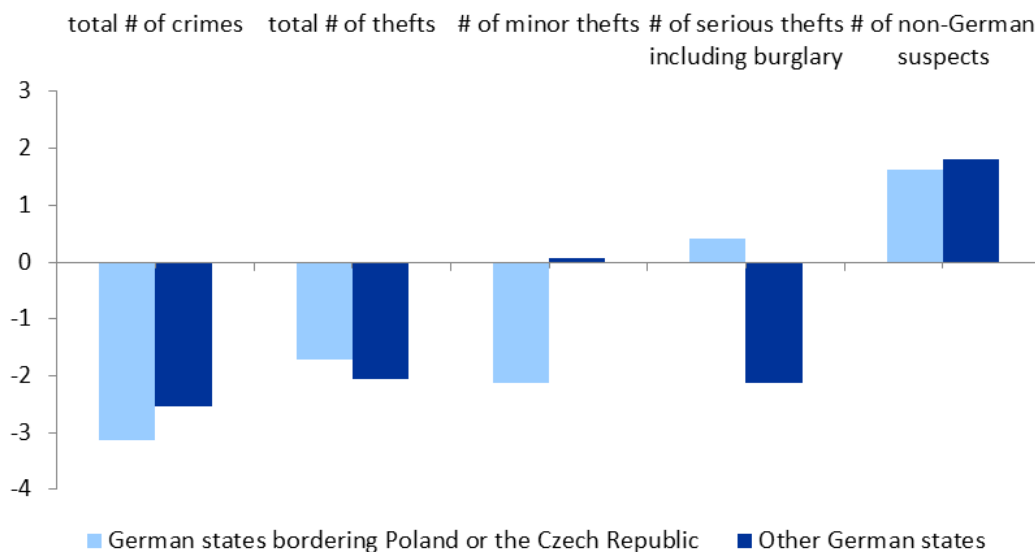
But are these worries about a decrease of internal security warranted? The loss of internal border controls may allow criminals to operate in one and hide in another member state, thus making legal prosecution difficult and costly. To prevent such activities, Schengen II and subsequent legislation has greatly strengthened the cross-border collaboration of national police and law enforcement agencies. These countermeasures include quick and standardized exchange of information through the Schengen Information System as well as legal mutual assistance and, under specific circumstances, the right for cross-border police surveillance and pursuit.

So far, no rigorous scientific evidence exists on the effect of Schengen on cross-border criminal activity and the effectiveness of the countermeasures. To provide some suggestive evidence, however, we conduct a small case study of German regions bordering the Czech

Republic and Poland. In 2004, the Czech Republic and Poland joined the Schengen area. Since the end of 2007, the Czech-German and Polish-German borders can be crossed without checks. Four states (“Bundesländer”)–Mecklenburg-Vorpommern, Brandenburg, Saxony and Bavaria–have a border with the Czech Republic or Poland. If the reduction of border controls has indeed led to an increase in cross-border criminal activity, these four states are likely to be more affected than the other German states which do not border the Czech Republic or Poland.

Is this the case? Figure 3 distinguishes between the two types of German states and plots changes in criminal activity between 2006, when border controls were still in place, and 2014. Over this period, the four states in the East saw a decrease, not an increase, in the total number of crimes by about three crimes per 1,000 inhabitants. The number of crimes also decreased in the other states, but only by about 2.5 crimes per 1,000 inhabitants. This overall result does not indicate that the abolition of individual border controls has increased criminal activity in German states at the Eastern border by more than in German states further away from the Eastern border.

Figure 3:
Changes in criminal activity in Germany, 2006–2014
(all per 1,000 inhabitants)



Source: Polizeiliche Kriminalstatistik 2006 and 2014, own illustration. The number of crimes is scaled and weighted using the population of each state in 2006. Base rates for 2006 for German border/non-border states are as follows: total number of crime (65/81), total number of thefts (24/34), number of minor thefts (14/18), number of serious thefts (10/17), number of non-German suspects (5/6).

The picture looks similar if one focuses on property crime, which may be a particularly lucrative type of cross-border crime. According to Figure 3, the total number of recorded thefts decreased by similar amounts across Germany between 2006 and 2014 (by 1.7 cases per 1,000 inhabitants in the four states in the East and two cases in the other German states). However, disaggregating cases of theft into minor cases (without aggravating circumstances) such as shoplifting and more serious cases (with aggravating circumstances)

such as burglary reveals some differences. In the four border states, the incidence of minor thefts decreased both in absolute terms and also relative to the non-border states. The incidence of serious thefts, however, increased slightly in the four border states, while it decreased in the non-border states. None of these differences are statistically significant though. These figures hence provide inconclusive evidence on the potential effects of Schengen on property crime in German border regions.

It is indeed difficult to interpret the changes in criminal activity as there is no evidence that the number of non-German suspects per 1,000 inhabitants changed differentially. It does not look like German border states have become relatively more attractive for foreign criminals. Both border and non-border states witnessed a similar increase in the frequency of non-German suspects. Overall, this very simple analysis does not suggest that the Schengen agreement has had a large impact on cross-border criminal activity in Germany. Our evidence is, however, only suggestive and a more rigorous analysis is necessary to substantiate this finding.

The findings of the analysis of crime data are consistent with the subjective perception of crime in Europe. European citizens feel generally safe. According to data from the latest Eurobarometer (82.3/QA1.1-1.3), 89 percent of EU-28 citizens think their city, town or village is a secure place to live in, 82 percent think their country is a safe place to live in and 79 percent think the EU is a safe place to live in. This view is shared by citizens of both the old and new member states.

Engine of change? How Schengen affects non-EU states and their citizens

While cross border migration within the Schengen area becomes faster and thus more attractive, the tightening of the outside borders is likely to have decreased some of the positive effects of migration for citizens of non-participant countries. This is particularly true for non-EU citizens in the neighborhood of the EU who had been able to benefit from seasonal but often illegal labor migration into the richer EU or Schengen zone before the tightening of external border controls (e.g., as agricultural laborers). Although illegal, such migration can be very attractive for both migrants and their employers in the receiving countries as implied by the flourishing illegal labor migration into most rich countries. Having raised standards towards non-Schengen countries meant that these workers often miss out on the large poverty-reducing effect of migration.

Easing Schengen visa requirements: an effective foreign policy tool

The Schengen Agreement has also provided the EU with a substantial amount of leverage in its relations to third countries, as it can block or allow access to a much larger geographic area. For many non-EU citizens, especially on the EU's Eastern and Southern borders, the process of obtaining Schengen visa has usually been a tedious and expensive exercise,

while travelling to or working in the EU is highly attractive. Consequently, the easing of Schengen visa requirements presents a tangible improvement for citizens of neighboring countries and a politically sensitive reward for their political elites.

The EU has deliberately used this attractiveness as a means to pursue its foreign policies towards third countries. Candidate countries, such as the Western Balkan states, that wish to accede to the EU need to implement substantial reforms in the area of Justice and Home Affairs to profit from visa facilitation and liberalization to the EU even prior to their eventual accession. This form of policy conditionality has been found to even allow for domestic reforms in candidate countries for which the ultimate accession perspective is a distant or temporarily less credible (Trauner, 2009).

Likewise, the EU uses this form of policy conditionality to externalize internal border controls: it ties, for instance, the prospect of visa facilitation and liberalization for countries included in the Eastern Partnership (Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus) to a detailed set of reforms. These reforms comprise inter alia the improvement of document security and border management, the adoption and implementation of readmission agreements, and a reform of the ENCs' asylum policies in line with EU standards. The EU also presses for fighting corruption, organized crime and terrorism before negotiating on detailed visa liberalization with neighboring countries. Recent research demonstrates that this form of policy conditionality is relatively effective in triggering domestic reforms in third states, at least when it comes to a more formal adherence with EU promoted standards (Börzel and Langbein, 2014). Whether reforms remain paper tigers or are indeed implemented in practice, however, crucially depends on the political will of the governments of neighboring countries (Ademmer and Börzel, 2013).

Making liberal norms travel

Yet, there may also be a long-term, but supposedly more sustainable way to enact domestic changes in third countries with the help of visa facilitation and liberalization. "Travelling broadens the mind": This saying summarizes the potential, more indirect consequences of Schengen visa liberalization on political attitudes. There is growing evidence that being exposed to different political institutions and economic systems has a profound impact on an individual's socio-political values. For instance, Careja and Emmenegger (2012) show that temporary migrants from Eastern Europe to the European Union display more democratic and pro-European attitudes than their non-migrant peers. By sharing the insights they acquire abroad, migrants are also likely to influence the views and values of their peers in the countries of origin. Barsbai et al. (2014) find that Moldovan voters from municipalities with migrants in the European Union have significantly changed their electoral preferences in favor of pro-democratic and pro-European political parties.

While these findings stem from the analysis of (temporary) migration, they may well extend to short-term visitors with a Schengen visa. Clingingsmith et al. (2009) demonstrate that even very short exposure to different environments can have a lasting impact on socio-

political attitudes. Making it easier for citizens of non-EU member states to travel to the Schengen area may therefore bring a democratic dividend and make a potentially important contribution to the convergence of political views between the EU and its neighboring countries. In this sense, a more permeable outside border could also reduce the longer run security challenges in the EU's neighborhood.

To sum up, the Schengen agreement has not only exerted positive effects within, but also beyond its borders whenever Schengen borders proved to be sufficiently permeable. However, the recent humanitarian crisis on the EU borders reveals the shortcomings of the Schengen system that still lacks a "communitarized" asylum policy to counterbalance the loss of internal border controls; a shortcoming that may eventually call the Schengen agreement into question; and thereby undermine one of the main achievements of European integration.

What remains to be done? The current refugee crisis and the need for a joint asylum regime in the Schengen area

From its early days, the Schengen system has included rules for how individuals from third countries may apply for political asylum and which member state is responsible for processing their applications and providing material support in the meantime. Apparently, Schengen governments felt from early on that open internal borders implied a common responsibility to protect to refugees as well as a need to share the associated administrative burden and fiscal cost fairly across member states.

The recent surge in irregular immigration to the Schengen area, mainly across the Mediterranean, has not only led to humanitarian concerns because so many refugees have died. It also demonstrates that the EU asylum system that has evolved over the last three decades has become dysfunctional. It puts a very uneven burden on EU member states in terms of administration, fiscal costs, and labor market impact, leads to some countries abdicating their responsibilities to protect, and produces adverse outcomes for many refugees.

The Schengen area as a space without internal borders needs a unified asylum system with joint responsibility for administration, funding, and ultimately repatriation or integration. This would be a very far-reaching change from the current focus on assigning responsibility for the implementation of a common policy to individual EU member states and their budgets. It would be desirable for all EU countries (whether or not they are part of Schengen) to participate in a "communitarized" asylum system (Hatton, 2011 formally explains the rationale for such cooperation). In the case of the Schengen countries, open internal borders among render a joint system indispensable.

Current system

In any signatory state of the 1951 Convention Relating to the Status of Refugees, including all EU member states, refugees may request political asylum if they are unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (UNHCR, 2010, p.3). Political asylum implies the right to live and work in the host country, to receive social transfers when needed, and to be re-united with family members. When applicants cannot document persecution but conditions in the country of origin do not permit their safe return, they may receive “complementary protection” for as long as adverse conditions persist.

To apply for political asylum, refugees have to present themselves to authorities in the territory of the signatory state. However, Schengen countries do not grant visa to third country citizens for the purpose of seeking protection. Quite on the contrary, conditions for obtaining any Schengen visa are usually so restrictive that many persecuted individuals do not qualify. Therefore, refugees who seek protection in a Schengen country usually travel without valid documents. Since airlines or other regular transport carriers will not admit such passengers, most refugees attempt to reach Schengen territory irregularly at considerable risk to their lives, such as by crossing the Mediterranean in small boats or walking across the land border.

At the same time, obtaining asylum is one of very few options for many third-country citizens to live and work legally in the EU. Therefore, many individuals from countries where political and other persecution are not particularly prevalent also apply for asylum. Even if their applications are ultimately turned down, many manage to stay in their host countries for a long time because repatriation is difficult to enforce.

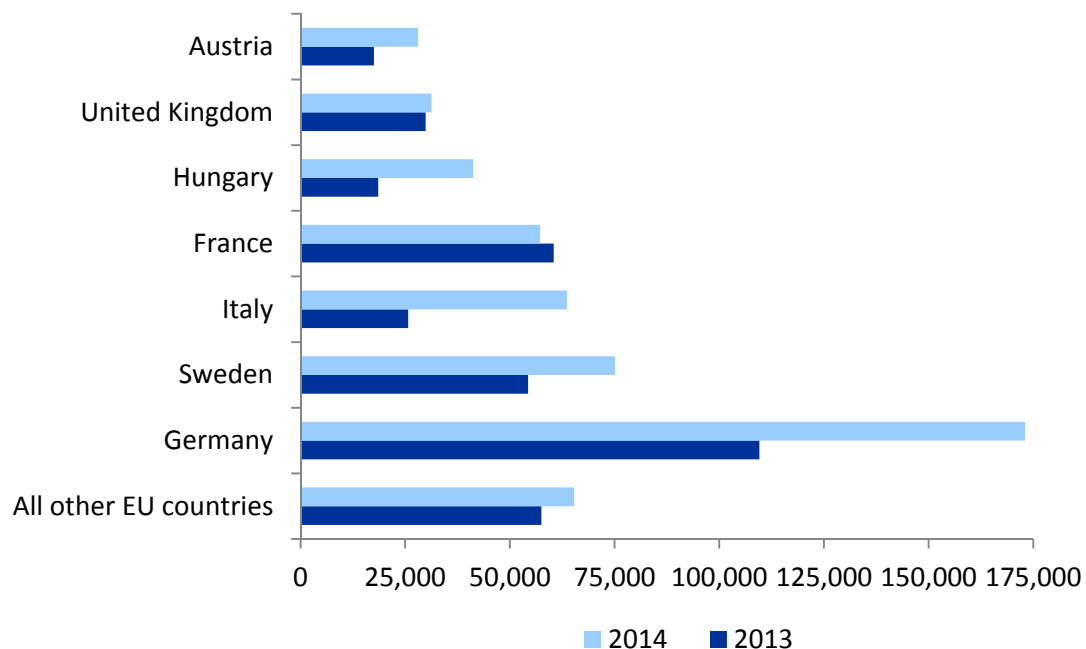
Furthermore, the level of material, financial, and administrative support for asylum seekers and the chance of being granted asylum differ across Schengen host countries (European Asylum System, 2014). This raises the specter of “asylum shopping” where refugees move disproportionately to those countries where the level of support and the chance of obtaining asylum status are highest. To counter the consequent risk of a race to the bottom in support for refugees, Schengen rules have always required refugees to apply for asylum in the first Schengen country that they enter. Enforcement efforts have been tightened over the years; currently, under the Dublin III regulation, refugees must have their finger-prints taken upon arrival and, in principle, no other Schengen country will process their application for asylum.

The present refugee crisis

In recent years, lawlessness following the Arab spring revolutions, particularly in Libya, and large humanitarian crises such as the war in Syria have combined to produce a surge in irregular migration across the Mediterranean and in the number of asylum applications. As a result, the existing asylum system has become dysfunctional in many respects. Refugees

from countries at war and with dismal human rights records (Syria, Eritrea) have to travel at great (extra) risk to their lives to seek protection. Many immigrants subsist under deplorable conditions in Greece and Italy while their applications for asylum are processed. Immigrants who have moved on from Italy across open borders to other Schengen countries find themselves in a legal limbo because they cannot apply for asylum in their new host countries. Overall, asylum seekers are distributed across EU member states in a highly uneven fashion, not reflecting at all the countries' size or ability to shoulder the fiscal cost involved, or their labor market situation which is crucial for long-term integration, or the preferences of the refugees themselves (Figure 4).

Figure 4:
New asylum applicants by EU member states, 2013 and 2014



Source: Eurostat.

The European Commission has recently invoked an emergency provision to redistribute a limited number of refugees away from Italy and Greece across the remaining EU member states (with the exception of the UK, Ireland, and Denmark that have secured an opt-out from such re-distribution). However, this is no more than a small, ad-hoc step in the right direction.

The way forward

A comprehensive reform needs to address several fundamental concerns. The traditional understanding of the right to asylum implies that only those at risk of persecution qualify for unconditional admission. This traditional notion has been disputed from several angles.

Some economists have argued that there are no sound economic reasons for the EU not simply to open its borders to any and all immigrants (e.g. Legrain, 2015). Immigrant numbers would be smaller than expected by most, if borders were credibly and permanently opened. In any case, immigrants would bring economic benefits to their host countries. Irrespective of the merits of these economic arguments, admitting any and all immigrants to the Schengen area is unlikely to be politically feasible. The Gallup World Poll (Esipova, Pugliese, Ray, 2014) suggests that if everyone on this planet could live anywhere they wanted (this question closely approximates the concept of permanently open borders), immigration would swell the population of Schengen countries by between 23% (Germany) and 136% (Switzerland). These results imply further that if not all countries worldwide open their borders, those that do will face even higher immigration.

Other observers have argued that if someone risks her life in order to live and work in Europe that should be sufficient reason to admit her. At the same time, there is evidence that many individuals in developing countries whose personal situation is not especially dire by the standards of poor countries will accept great risk to their lives in the course of irregular migration as the price for a chance to live and work in a rich country (Mbaye, 2013).

Therefore, a functional Schengen asylum system will have to be based on the notion that immigration will be regulated and access under political asylum limited to those who show evidence of persecution. On this assumption, far-reaching changes are still required, which may be summarized in these key demands. All applicants for asylum that arrive at the Schengen external border must receive a fair hearing and adequate material support while their applications are processed. Those granted asylum or complementary protection should be comprehensively supported as they settle down and rebuild their lives in a Schengen state. Bona-fide refugees should no longer have to risk their lives in the course of unsafe travel to seek protection. EU policies need to take the wider context of war and persecution in the „European Neighborhood“ (especially, the Middle East and North Africa) into account. Far more bona fide refugees in this region need protection than those who currently manage to travel to the Schengen external border.

Jointly regulating, administering, and financing (in short, „communitarizing“) the EU asylum regime is key to achieving these objectives. Standards for protection and minimum material support have already been defined in principle by European and international law. In fiscal federalism terms, if responsibility both for defining asylum policy and for implementing and funding the asylum system is allocated to the EU level, this will eliminate negative external effects of diverging national policies and possible attempts to free-ride (see also Hatton, 2011). Naturally, EU revenues (which are based mostly on national GDP and hence on each member state's ability to pay) would have to be increased in line with these additional tasks. Back-of-the-envelope calculations suggest that asylum-related expenditures would become a sizable item in the EU budget, but remain far smaller than support for agriculture and rural development or structural and regional policies.

When overall responsibility for the asylum regime is located at the EU level, national governments, regional bodies, and municipalities will still have an important operational role

to play (for example, in the provision of housing for refugees). However, the distribution of refugees across Schengen states would be far less controversial if the full fiscal cost of providing for them until they can earn their own living was borne by the EU budget. In particular, this would make it politically easier to settle recognized asylum seekers in those Schengen regions where their integration into economic and social life is facilitated by favorable labor market conditions and existing family and ethnic networks.

In addition to assuming responsibility for the funding of the asylum regime, the EU would need to be more pro-active in addressing the needs of potential asylum seeker in the Middle East and North Africa. Individuals who wish to seek protection should be able to apply for asylum or complementary protection and a corresponding visa at any EU diplomatic mission in the region, particularly in typical transit countries.

In this scenario, many migrants may still attempt the journey across the Mediterranean and some irregular migrants who arrive in the Schengen area may have a right to asylum or complementary protection. Nevertheless, the presumption would be that most irregular immigrants come for economic reasons – or else they would have applied for protection earlier on their journey. There should be a credible expectation that those who cannot show evidence of persecution will be repatriated. Some labor migrants might possibly be enticed away from irregular migration through more legal migration and employment opportunities in the EU for third-country nationals. These could be tied to migrants' education, skills, and other indicators of employability in Schengen countries.

In the case of large humanitarian disasters like the war in Syria with millions of internal and external refugees, the EU should help to design a comprehensive strategy for addressing the needs of refugees jointly with countries in the affected region. A comprehensive strategy should also focus on generously assisting regional partners and neighboring countries that usually bear most of the burden of receiving refugees and providing temporary homes. Building on the experience of jointly providing for refugees may also help to create a willingness to cooperate in the larger task of resolving the underlying conflicts that drive people from their homes in the first place.

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Responsible Supervisory Authority: Ministry of Social Affairs, Health, Science and Equality of Land Schleswig-Holstein

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