

A Europe of Fortresses:
The Securitization of Migration in Europe and the 2015 »Refugee Crisis«

by

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Abstract

This thesis examines the securitization of migration in Europe and the responses to the 2015 refugee crisis – specifically the reintroductions of intra-Schengen border controls. The project explores two central research questions: *In what ways have securitization discourse and European integration shaped migration policies and practices prior to the 2015 crisis? How have the EU and its Member States justified the reintroductions of internal border controls in the wake of said crisis?* It advances the argument that the process of European integration has been deeply implicated in the securitization of migration, and that we need to analyze the responses to this latest crisis through a security lens in order to understand them. Furthermore, building on previous research and a framework of securitization theory, this thesis analyzes notification letters that Member States are required to submit if they decide to invoke the derogation clause under Article 27(1) and Article 28(2) of the Schengen Borders Code. Thus, it contributes to a comprehensive examination of all known cases of temporarily reinstated border controls in the Schengen Area. This work adds to the existing body of knowledge by providing detailed empirical evidence of the expansion of the migration-security nexus, since the derogation clause has recently been used in order to deter migrants from entering Member States' territories. Moreover, it attempts to analyze how these latest events in the EU's longstanding history of securitization are changing the current border regime, and how the balance between the norm and the exception has been affected. The analysis sheds light on a self re-enforcing cycle of rhetoric and practice that has been established that criminalizes and securitizes asylum seekers and migrants and legitimizes last-resort emergency measures that undermine the core values of the EU.

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List of Abbreviations

AFSJ	Area of Freedom, Security, and Justice
CEAS	Common European Asylum System
CISA	Convention Implementing the Schengen Agreement
EC	European Commission
EEC	European Economic Community
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union
Europol	European Dactyloscopy
Frontex	European Border and Coast Guard Agency (former European Agency for the Management of Operational Cooperation at the External Borders)
JHA	Justice and Home Affairs
NGO	Non-governmental organisation
SBC	Schengen Borders Code
SEA	Single European Act
SGP	Schengen Governance Package (Regulation [EU] 1051/2013)
SIS	Schengen Information System
TE-SAT	Terrorism Situation and Trend Report
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System
AT	Austria
BE	Belgium
CH	Switzerland
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IS	Iceland
IT	Italy
LIE	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland

PT	Portugal
SE	Sweden
SI	Slovenia
SK	Slovakia

1. Introduction

»The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.« (Lisbon Treaty, Art. 10A)

1.1 Definition of the Problem

Europe is in turmoil. The values that the European Union (EU) was founded on more than 50 years ago are crumbling under the weight of what has been termed the ‘European refugee crisis’¹ – the great wave of migration, epic and unprecedented in its proportions, which hit the continent in 2015. Both national governments and supranational institutions have failed to ‘manage’ the crisis and resorted to unprecedented measures that have undermined the Union’s commitment to human rights and its fundamental values. One of the most iconic and visible achievements of the European integration process, the Schengen zone, appears to be at stake. The ultimate symbol of freedom, equality, and peace within the Union has been put to test by record numbers of migrants² that have crossed Europe’s external borders irregularly.³ Multiple Member States have reacted by erecting fences and walls, and by reinstating border controls that were thought to be a matter of the past. Indeed, some political actors, such as former French President Nicolas Sarkozy, and the media are eager to point out that Schengen has

¹ This research is critical about the commonly used terms ‘refugee crisis’ or ‘migrant crisis,’ but a detailed analysis and critique of the terminology that has been adopted by politicians and legislators follows in a later chapter.

² I will use the concept ‘migrant’ as a general category including immigrants, asylum-seekers, and refugees. While I am aware of the legal differences between these groups, I argue that clear-cut distinctions between them are difficult to make in most cases.

³ The term ‘irregular’ is used throughout this thesis to indicate such migratory movements that “[take] place outside of the regulatory norms of the sending, transit, and receiving countries” (International Organization for Migration 34). In this sense, irregular migrants are individuals who have entered, settled, or worked in a country without the necessary authorization by the host country. “Illegal”, “undocumented”, or “clandestine” are also common descriptors of this category. Borrowing from Carens’ terminology and reasoning, I will be using the terms ‘irregular’ and ‘unauthorized’ when necessary, as they are arguably less heavy with association than ‘illegal’ and ‘undocumented’ (130).

fallen victim to the crisis (Martin 2016; Tandonnet 2016; Traynor 2016), as national governments turn to internal border controls to reinstate public order, security, and trust in their own capability of managing the crisis. Indeed, the future of the EU and the Schengen zone is unclear. Right-wing and Eurosceptic parties across the continent have gained public support through questioning the integrity of the EU and promising a tougher stance on borders and border controls, which are seen as an enhancement of internal security. Moreover, Brexit, whose ‘Leave’ campaign was based on a rhetoric that framed migrants as a burden to public services and a threat to British workers, has shaken the community of Member States to its core. Mainstream public discourse has been pushed to the right and continues to frame migrants as threats to national security. Acts of terrorism such as 9/11 and, more recently, the attacks in France, Belgium, Germany, and the United Kingdom (UK) seem to have triggered a wave of anger, anxiety, and frustration among Europeans, which has resulted in increasing acceptance of such discourse.

Against this backdrop, this thesis seeks to critically analyze this ‘crisis’ and the responses it has triggered. I attempt to answer the following research questions: *In what ways have securitization discourse and European integration shaped migration policies and practices prior to the 2015 crisis? How have the EU and its Member States justified the reintroductions of internal border controls in the wake of said crisis?* Overall, I will argue that the process of European integration has been deeply implicated in the securitization of migration, and that we need to analyze the responses to this latest crisis through a security lens in order to understand it. Furthermore, I will argue that the recent events symbolize a crisis of European borders, a crisis of European solidarity, and a crisis

of the moral foundations of the Union. Following well-established traditions, security has been chosen over freedom and equality yet again in this latest episode of humanitarian emergencies on Europe's doorstep. A political spectacle has taken precedence over the normative vision of a Europe that lives up to its founding principles and honours human rights. The basic freedoms that have become enshrined in European institutions and the everyday lives of their citizens are threatened. However, as I will argue, they are not threatened by terrorists, extremists, or migrants, but rather by those who are supposed to be the guardians of these core values and freedoms.

It is significant to examine this problem through both a theoretical and practical lens, as securitization theory provides an analytical framework through which to understand how emergencies and crisis are defined and manufactured through matching a discursive rhetoric to securitizing actors' strategies. An analysis of migration policies through this theoretical framework shows how migrants and refugees alike have been framed as threats by governments and security professionals in order to legitimize their authority and existence. Therefore, I deem it necessary to provide both a theoretical and practical analysis in order to create a well-rounded approach to my research questions.

1.2 Research Design

In this subchapter, I will present and discuss the research design that I have chosen, justify these choices, and acknowledge the limitations of my research.

A theoretical framework will be laid out in chapter 2, through which the development of European migration policies and current events will be analyzed in the light of securitization theory. The body will consist of two main components: an

historical backdrop that will provide a contextual analysis of European integration and how these processes relate to the migration-security nexus, and a document analysis which will critically examine the EU and the Member States' responses to the 2015 crisis. Regarding the latter component, I will turn to the 2015 crisis and critically examine the responses it has triggered. Here, I will use one specific aspect as a case study: I will analyze when and why the derogation clause of the Schengen Borders Code (SBC) has been triggered, which enables Member States to reinstate internal border controls if their public order or internal security is at stake. Finally, the last chapter attempts to offer an outlook on Europe's future and to conclude this thesis.

This work employs predominantly qualitative research methods, specifically archival and discourse analyses, examining diverse sources of data. Primary sources such as treaties, agreements, other legislative documents, public communications, and speeches of EU officials will be analyzed in order to gain an understanding of the formal positions that EU institutions and Member States have adopted in regard to the issues under review. Most of these sources were acquired directly through EUR-Lex, the EU's official database of EU law and related documents, and the European Commission's website which publishes reports, press releases, and related informational materials. Other materials were retrieved from other EU institutions such as the Council's public archives. Moreover, a large body of secondary literature was used in order to establish an appropriate theoretical and conceptual framework through which to analyze the recent developments in Europe and answer the guiding research questions.

For my case study in chapter 4, I have built on two specific pieces of research: Kees Groenendijk's study on the history of temporary reinstatements of border controls

in European travel free zones, in which he collected data on all publically known cases of temporarily reintroduced border controls up until 2003; and Maartje van der Woude and Patrick van Berlo's work, which analyzes the use of the SBC's derogation clause in a similar fashion until March 2014. In particular, I have adopted Van der Woude and Van Berlo's methods in order to deliver consistent, comparable findings that should seamlessly build on their data and contribute to a comprehensive examination of all known cases of temporarily reinstated border controls in the Schengen Area. My primary data source for this section are the notification letters that Member States are required to submit if they decide to invoke the derogation clause under Article 27(1) and Article 28(2) of the 2016 SBC (and formerly Article 25 of the 2006 SBC, Article 24[1] and 25[2] of the SGP, as my sample period encompasses both versions of the SBC). Following Van der Woude and Van Berlo's methodology, the letters were retrieved from the Public Register of the Council (68). Upon my request for access to the documents, the Transparency Service produced an exhaustive list of all the notification letters received between April 2014 and November 2017. The timeframe of the study was chosen for two reasons. Firstly, Van der Woude and Van Berlo collected and analyzed data from January 2000 to March 2014, rendering earlier samples unnecessary for my study, as overlaps can be avoided. Secondly, my timeframe incorporates not only the duration of the 2015 'migrant crisis' but also an entire two year period of controls, which was initially set as the maximum limit for 'temporarily' reintroduced border controls (Art. 29 SBC). For the first time since the inception of Schengen and the SBC, countries have exhausted and even surpassed the legal time limits for temporary border controls under the SBC. As of the time of writing this thesis, six Member States (Austria, Denmark, France, Germany,

Norway, and Sweden) have arguably broken the regulations of the SBC by having border controls in place for over two years; however, this is currently somewhat of a legal grey zone that will be discussed later on. Nevertheless, we are undeniably on uncharted territory, where precedents have ceased to exist and the SBC has been pushed to and beyond its limits. Therefore, the period under examination is the first of its kind and promises original findings.

A total of 125 letters were examined. The notification letters are addressed to the Secretary-General of the Council of the European Union or to the Working Party on Frontiers, as well as the EU delegations of Iceland, Liechtenstein, Norway, and Switzerland. Moreover, the originating Member State usually informs its neighbours of its decision to temporarily reintroduce border controls, by formal or informal means (Van der Woude & Van Berlo 69). The 125 letters I examined cover 94 unique cases of temporary reinstatements of border controls. Van der Woude & Van Berlo define a unique case as “an individual Member State’s decision to temporarily reinstate controls at its internal Schengen borders for a delineated reason and for a specific period of time” (69). Consequently, in cases where Member States prolonged internal border controls, each prolongation was considered a unique case, since both the timeframe and sometimes the cited reasons for the controls change (Van der Woude & Van Berlo 69). Follow-up letters, such as reports or termination notices, that contain additional information on already established cases, were not treated as unique cases (Van der Woude & Van Berlo 69). Of these 94 identified unique cases, the following information was gathered in unison with Van der Woude and Van Berlo’s approach: (1) the issuing country, (2) the reason for the temporary reinstatement of internal border control, and (3) the duration and

dates of the temporary reinstatement (69). Moreover, I have decided to add (4) the type of documents that were examined, and (5) the articles of the SBC that were invoked.⁴ I have decided against documenting the geographical delineation and the type of border control, as I do not deem this information to be essential to either Van der Woude and Van Berlo's, nor my own findings. Another change that I have made from the authors' original research design is my classification of events that have triggered the temporary reinstatements of internal border controls (subchapter 4.3.1). While Van der Woude and Van Berlo recorded each unique case under one specific category, I have decided to record all justifications that were provided in the notification letters, since a considerable number of letters mention more than just one ground for the Member State's decision.

By relying on the original notification letters rather than secondary sources such as news reports or other official Union publications, it should theoretically be assumed that this approach is comprehensive, as there is an obligation for Member States to incorporate this information in their notification letters under Art. 27(1) and 28(2) of the SBC. However, both Groenendijk (158-59) and Van der Woude and Van Berlo (69-70) came across one case each in which border controls were temporarily reinstated by a Member State without a corresponding letter of notification. I found one such case in the secondary sources I consulted: in October 2015, Hungary allegedly reintroduced controls at its border with Slovenia and started building a fence (the measures were quickly abandoned and later described as mere roadwork), but no corresponding notification letter could be traced in the Council's registry (Guild et al. 43). I cannot rule out that more such cases have occurred during my study, since there is no mechanism to check for

⁴ Note that the reference to articles of the SBC replicate the information that was provided by the Member States in their notifications. Absence of detailed information is due to a lack thereof in the source material.

non-notified instances of temporary border reinstatements (Van der Woude & Van Berlo 70). Moreover, most of the reports that were submitted by Member States are not accessible through the Public Register. In those cases, as much data as possible was gathered, usually the dates concerned and – when available – the article of the SBC that was cited. While I am certain that these documents contain valuable information that would have shed even more light on the implementation and official reasoning for these temporary internal border controls, since they are follow-up documents on already recorded cases, I believe that my research model is still satisfactory and my findings as comprehensive as possible. Another limitation of this research design is the fact that it relies on official notification letters and follow-up documents entirely, and can therefore only identify Member States' official justifications for invoking the derogation clause. However, since securitization is a rhetorical act, analyzing these official documents and the language they are using should still yield valuable results, and whenever possible or necessary, secondary sources (such as Europol publications) have been consulted in order to read between the lines. Except for these identified margins of error, my study incorporates all officially known cases, which allows me to present the issues at hand, and therefore answer my research question, in its entirety.

It should be noted that I will only discuss numerical data that I have deduced from my samples in subchapter 4.3.1, as well as some selected letters individually, but that the Appendix to this thesis contains detailed information on all examined documents.

I hope to add to the existing body of knowledge in research on my topic by providing detailed empirical evidence of the expansion of the migration-security nexus, since the derogation clause has recently been (mis)used in order to deter migrants from

entering Member States' territories. Moreover, I attempt to analyze how these latest events in the EU's longstanding history of securitization are changing the current border regime, and how the balance between the norm and the exception has been affected. Given the currency of this case study, not a lot of peer-reviewed material has been published on the particular subject matter of this thesis, which presented both a challenge, but also an opportunity to contribute original material to academia.

2. Framework

»To put migration on the security agenda, or to speak of the migrant as a security problem, is not simply to describe a given reality. In speaking of the migrant as a security problem, he/she becomes an actor in a security drama.« (Huysmans, “Migrants” 63)

This chapter will demonstrate how securitization theory serves as the most effective and appropriate theoretical framework through which to analyze the recent developments of European common borders. I argue that the most fruitful analysis of the “migrant crisis” can only occur through a lens of securitization, through which we can contextualize recent events, understand why some Member States re-introduced border controls, and how they justified their actions while staying within the legal constraints of the SBC.

Sharing a close affinity with social constructivism, securitization theory seeks to understand the social construction of threats and security issues through the examination of language. Methodologically, it relies heavily on discourse analysis, which has inspired my approach and yielded the results that I am about to present. Other theoretical frameworks that were considered include neofunctionalism, as well as Zaiotti’s framework of border cultures.

Neofunctionalism is one of the most prominent theoretical and analytical frameworks for explaining and describing European politics and integration.⁵ Neofunctionalism’s main tenets suggest that once states initiate multilateral cooperation in economic or political sectors, integration can become a process of its own through

⁵ See Ernst B. Haas’ work *The Uniting of Europe* (1958) for an in-depth discussion of early neofunctionalist theory, as well as Leon Lindberg’s *The Political Dynamics of European Economic Integration* (1963). Philippe Schmitter (1970) and Niemann (2010) later reviewed and revised the theory, and scholars such as Wayne Sandholtz and Alec Stone Sweet (1998; 2012) and Ben Rosamond (2000; 2005) have further contributed to neofunctionalist theory and literature. Wolf & Ossewaarde (2018) have used a mixed framework based on neofunctionalism and liberal intergovernmentalism to examine political visions for future integration during the 2015 refugee crisis.

positive spill-over effects which lead to further integration in related sectors or deepened cooperation in the same sector. While this approach could have been fitting for examining how the latest amendments to the SBC can be categorized in terms of European integration, for instance whether they have allowed for national governments to implement unilateral decisions more easily than under the previous legislation, it was ultimately dismissed because I deemed an analysis of the subject matter at hand (humanitarian migration framed as a security issue) more important than a process-oriented approach.

Ruben Zaiotti's concept of "cultures of border control", which he formulated in his 2011 book of the same name, adapts a "cultural evolutionary approach" (29) in order to describe, analyze, and explain the changes and evolution of European borders and the political and social culture enabling them. He argues that his theory allows for a dynamic rather than a static analysis (27). Zaiotti's approach also adds a practical dimension to this understanding of culture; it not only symbolizes a set of collectively shared ideas and values, but also entails "a more concrete social dimension constituted by this group's activities" (22). Therefore, practices constitute the visible and quantifiable dimension of culture and need to be taken into consideration when attempting a comprehensive analysis of border culture. While Zaiotti's understanding of the term border culture as a constantly changing and contested set of background assumptions and corresponding practices that inform actors within a particular historically and spatially situated polity or community is rather appealing and compatible with my research questions, the lack of a clear cut approach and the fact that an analysis of the EU's past and current border

culture towards third-country-nationals would have led us to securitization eventually, has prompted me to dismiss this approach as well.

I selected securitization theory since its methodological approach was most fitting to my research design, and the overall argument and phenomenon that I hope to explore in this thesis. Nevertheless, I fully acknowledge that this framework has also been frequently critiqued and certainly has weaknesses, which will be considered in more detail in the following subchapter.

2.1 Critical Security Studies

The end of the Cold War marked a formative period for the field of International Relations that witnessed the emergence of constructivism, a strand of political theory that emphasizes the socially constructed character of the discipline. Since then, the field of security studies in Europe has become divided into traditional and critical camps. While military issues, force, and an exclusively state-centered view had traditionally defined the discipline throughout the Cold War, its end marked a stimulus for “the spread of objectless fear” (Faist 5). Not only did the West lose a powerful external enemy and threat to its security, but also a source of cohesion that unified the diverse actors that made up the “Western” world (Faist 5). The collapse of the Soviet Union opened up political space for actors and academics alike to focus on diffuse, transnational non-state threats such as organized crime, environmental degradation, terrorism, drugs, and migration. This emphasis on “new” or “soft” security issues fostered new approaches in the field of International Relations, which now constitute the subfield of critical security studies. However, critical approaches to security are far from homogenous, Ole Wæver has suggested that they can be further distinguished into different schools of thought, the

most prominent of which are (associated with their places of emergence) the Welsh (or Aberystwyth), Copenhagen, and Paris School (2004).⁶

Wæver himself is associated with the Copenhagen Peace Research Institute where he, along with Barry Buzan and other colleagues, developed the concepts of sectors, regional security complexes, and securitization, which examines how discursive practices invoke security-driven responses to particular issues. Moreover, the Paris School with Didier Bigo as one of its leading figures established a sociological approach that concentrates on actual everyday security practices based on empirical investigations and is inspired by the works of Bourdieu and Foucault. Nevertheless, Peoples and Vaughan-Williams point out that the schools metaphor is also problematic as it implies a cohesion between some scholars, while it excludes those who do not fit into these neat categories (10). Thus, “critical security studies in Europe is better thought of as an extensive network with overlaps, and dialogue between different schools generally outweighing their distinctions” (Peoples and Vaughan-Williams 10). Critics of this threefold field of security studies in Europe identify two substantial shortcomings: the fact that it lacks post-colonial and feminist approaches, and that these European theories are context-bound and not relevant or useful in non-European cases (Peoples and Vaughan-Williams 10; Wæver 2004). Although I am aware of these limitations, I will focus my theoretical framework on securitization theory as brought forth by the Copenhagen School and modified and complemented by its critics and the Paris School for the purpose of this thesis. By utilizing both discourse analysis and a more practical approach towards current

⁶ More such schools or approaches are competing in the field of security studies in Europe: There are also radical post-modernist, feminist, and realist positions that contribute to a vibrant debate (Wæver, “Aberystwyth” 4).

practices and performances of security, I hope to provide a well-rounded analysis of the current events in Europe.

2.2 Securitization Theory

The early development of securitization theory as an analytical framework has mainly been credited to Wæver and Buzan and their 1998 work *Security*. Beyond broadening the formerly narrow concept of security to include “new” issues and referent objects from different sectors, the Copenhagen School’s main purpose is to illustrate threat constructions through analyzing securitization in discourse and to critically question these processes (Nyman 51). Their approach offers a “constructivist operational method” (Buzan et al. vii) for examining under what circumstances traditional non-security issues are transformed into urgent security issues. Securitization, then, is the process through which issues are labelled as security threats by political elites as a consequence of securitizing speech acts, which are thereby moved from ‘low politics’ to ‘high politics’, where the notions of exception, urgency, and emergency justify decisions and tools that would otherwise be considered outside of “the established rules of the game” (Wæver, “Aberystwyth” 9). Following this reasoning, the Copenhagen School argues that security issues and threats are not external or objective, but rather “determined by actors [...] [as well as] intersubjective and socially constructed” (Buzan et al. 31). Therefore, securitization “is always a political choice” (Buzan et al. 29) by elites and policy makers that shape the prevalent discourse to include what they have identified to be a threat to the state or society.

Buzan and his colleagues recognize five main elements in their approach: referent objects, securitizing actors, security speech acts, audiences, and functional actors. A

referent object is an entity that has a ‘legitimate’ claim to survival and is, in the process of securitization, perceived or depicted to be existentially threatened (Buzan et al. 36). While this has usually been the state, the Copenhagen School extended this concept to include a wide range of possible referent objects, such as the environment or society, depending on the sector under examination (Nyman 53). *Securitizing actors* are those who securitize issues by declaring them threats, usually individuals in positions of authority, such as members of the political elite, state officials, or security professionals. This declaration needs to be framed through a very distinct rhetorical structure, the “grammar of security” (Nyman 54), that includes references to survival, urgency, and priority of action (Buzan et al. 26). Thus, the process of securitization is – in linguistic terms – a speech act, and is referred to as a *security speech act* (Buzan et al. 26). Discourse analysis is therefore a crucial tool in the study of securitization. However, the enunciation of security is not sufficient to create successful securitization by itself, “the issue is securitized *only if and when* the audience accepts it as such” [emphasis added] (Buzan et al. 25). The *audience* as a “separate category” (Buzan et al. 41) was relatively understudied in the original framework and depicted as a passive entity that provides or denies legitimacy for securitizing moves, but not much else. Balzacq criticizes this one-directional relationship between these actors that the Copenhagen School proposes and argues that securitization should rather be seen as a context-specific, strategic practice that needs to be attentive to the power that both the speaker and the listener bring to the interaction (172). Last but not least, *functional actors* are neither referent objects nor securitizing actors, but still significantly influence decision making in the security field under study, such as the media for instance (Buzan et al. 36).

Now that we have laid out the basic tenets of securitization theory, it is important to scrutinize two of its key concepts: The notions of threats and security, both of which are intertwined with each other in the Copenhagen School's approach. One could argue that security is the freedom from both perceived and real threats, but for Buzan and Wæver, they are primarily defined in relation to survival (Buzan et al. 1998; Wæver 1998). Threats are seen as 'existential', when they affect the sovereignty and self-determination of a unit (Wæver, "Securitization" 43). As a result, security problems are threats that challenge the independence of a unit, or developments that can potentially undermine its political order and thereby "alter the premises for all other questions" (Wæver, "Securitization" 43). Although threats appear to be anchored in 'reality', they are always constructed and relative. To illustrate this point, Ewald for instance notes that "nothing is a risk in itself; there is no risk in reality. But on the other hand, anything can be a risk; it all depends on how one analyzes the danger, considers the event" (199). On the same note, Campbell uses terrorism as an example in his work when he states that it "is often cited as a major threat to national security, even though its occurrence [...] is minimal and its contribution to international carnage minor" (2) – as compared to other causes of death such as HIV (and other diseases), obesity, smoking, or suicide that claim the lives of considerably more people around the world.

But what is security? From a traditional military-political perspective, "security is about survival" (Buzan et al. 21). Wæver and the Copenhagen School define it as a speech act. "Security is not of interest as a sign that refers to something more real; the utterance *itself* is the act" ("Securitization" 45), as he puts it. Security is therefore understood as a socially constructed practice. In a similar fashion, Hansen suggests that

“[...] the actual definition of security depends on its successful construction in discourse” (288). It signifies the presence of an existential threat *and* appropriate measures taken for dealing with it. Insecurity, on the other hand, describes a situation with a present security problem but without a response to it (Wæver, “Securitization” 45). Moreover, Wæver is cautious to equate security with a positive value that is to be maximized at all cost (“Securitization” 46). A key feature of the Copenhagen School is its scepticism towards ‘security,’ which it conceptualizes “as a negative, a failure to deal with issues as normal politics,” since it often entails anti-democratic and anti-creative practices (Wæver “Aberystwyth” 9). The preferred aim is therefore desecuritization, the process whereby issues are shifted from the security sphere back into the political sphere (Buzan et al. 4). The Copenhagen School distinguishes between security and securitization in the realm of ‘high politics’, which means that issues require extensive resource allocation and extraordinary measures to be addressed, and regular politics and politicization in the sphere of ‘low politics’, which is characterized by political awareness (Nyman 54).⁷

At the heart of the Copenhagen School’s theory, the process of securitization is a speech act, which serves as a crucial element in the social construction of security (Wæver, “Aberystwyth” 9). By speaking security, an actor moves an issue out of the sphere of ordinary politics and into the security sphere, where extraordinary measures are justified in order to deal with the threat (Nyman 53). An issue only becomes a security problem, or a threat, “when the elites declare it to be so” (Wæver, “Securitization” 44). It is not necessary for a securitizing actor to mention the word “security”; rather, an issue

⁷ Nyman suggests a “scale for identifying the status of issues,” which differentiates between: non-politicized issues, which are characterized by no state involvement and are not subject to private debate or decision; politicized issues, which are part of public policy and subject to government decision; and securitized issues which are existential threats and require emergency measures and actions outside the scope of normal politics (Nyman 54).

needs to be framed as an existential threat following the “grammar of security” (Nyman 54), which emphasizes priority, urgency, and (once again) survival. “By saying the words, something is done [...], [it] is by labelling something a security issue that it becomes one” (Wæver, “Aberystwyth” 9). Since threats are exclusively constructed through linguistic rhetoric according to the Copenhagen School’s approach, discourses are the main sites of their creation, interpretation, and reproduction. Foucault’s understanding of discourse as a way to produce knowledge and social practices is a useful reference point in this context. He characterized discourse in terms of a power-knowledge nexus when he wrote the following:

[In] a society there are manifold relations of power which permeate, characterize, and constitute the social body and these relations of power cannot themselves be established, nor implemented without the production, accumulation, and functioning of a discourse. [...] We are subject to the production of truth through power and we cannot exercise power except through the production of truth. (Foucault 93)

Discourse in this sense can be seen as providing meaning to realities, which emphasize certain perceptions, which in turn are simultaneously based on and produce particular power relationships and interests. Thus, securitization can be analyzed as a discourse through which relations of power are exercised (Ibrahim 164). Ibrahim adds that laws and policies are outcomes of discourse, and at the same time reaffirm this discourse (164).

However, it is this focus on language and its epistemological reliance on speech acts for which the Copenhagen School is most frequently criticized. It has been noted that it ignores “non-verbal expressions of security” (Wilkinson 94) and that language is just

one way of communicating meaning (McDonald 568). Furthermore, when Hansen criticizes the absence of gender in securitization theory, she argues that by focusing only on the articulations of the powerful, the approach contributes to the silencing of the powerless in global politics (306). They are thereby effectively marginalized and conceptualized as either part of an audience (which receives little attention and agency in Buzan et al.'s original framework to begin with), or as "passive recipients of elite discourses" (McDonald 574). Huysmans voices a similar concern when he explores the exclusionary functions of the politics of insecurity, stating that migrants' "different motives, family background, and social circumstances are silenced and skewed to make them representatives of a collective force endangering welfare provisions, every-day security of citizens, the moral fabric of society, etc." (2006, 56). This is perhaps the greatest limitation of this thesis: the danger of feeding into this phenomenon by generalizing and reifying migrants and glossing over the heterogeneity of this diverse group of people. Likewise, Balzacq advocates for greater emphasis on the audience, specifically its frame of reference, readiness to be convinced, and its ability to grant a formal mandate, as well as other contextual factors (general *Zeitgeist* and immediate impact of a given situation), securitizing actors (their capacity to gain the support of their target audience, competence, and trustworthiness) and the congruence between them (192). Peoples and Vaughan-Williams contend that in addition to coming from a position of authority, a securitizing move also needs to be made in the right context, adhere to certain pre-established conventions, and build on a certain level of acceptance between the securitizing actor and their audience (2014).⁸

⁸ For a more detailed compilation of limitations of securitization theory, see Nyman 2013.

In an attempt to remedy some of these limitations of the Copenhagen School, the Paris School moves the theory to the field of political sociology, and employs a practice-oriented approach that is capable of revealing different patterns and processes than those derived from studying official discourse (Wæver, “Aberystwyth” 10). Securitization is expanded to include threat production through administrative and institutional practices, daily routines, and cooperation between security professionals (Bigo 2006). Bigo, one of the leading figures of the school, also argues that the distinctions between internal and external security fade away as a consequence of transnational developments (2000). Through merging these aspects of security, the competences of external (military, secret service) and internal (police, border guards) security agencies are fused and expanded, and the need for ever-more co-operation between them is justified (Bigo, “When Two Become One” 320-321). Bigo harshly critiques what he calls the “governmentality of unease” (“Security”), which results from this continuum of threats. He argues that this specific mode of governing aims at remediating trust in the state “not by reassuring but by worrying individuals about what is happening at the external and internal levels” (“Security” 81), which results in a worldview of constant chaos and insecurity. Consequently, he defines securitization “not [as] an answer to insecurity, but a capacity to manage (and create) insecurity” (“When Two Become One” 323). Securitizing actors in this scenario are “professional managers of unease” (Bigo, “Security” 74) who exercise their authority by defining and prioritizing threats according to their own immediate interests. Since a considerable amount of Bigo’s work addresses immigration directly, more of the key concepts of his approach will be discussed in the following subchapter.

2.3 The Migration-Security Nexus

Now that I have analyzed the main tenets of securitization theory, it is important to examine how and why a migration-security nexus⁹ has developed in Western societies, especially in the EU. It is important to bear in mind that migrants and refugees can be perceived in different ways. Huysmans poses a set of questions in this context, which are at the heart of contemporary debates on migration and asylum policies:

Immigrants and refugees can be interpreted in different ways. Are immigrants and refugees an economic resource for a country? Are they a danger for social stability? Are refugees human rights holders who have a right to be protected under international law? Are immigrants and refugees a real or perceived danger to society? (Huysmans 2006, 53)

This highlights that framing migrants and refugees as a security threat is therefore a deliberate choice, and not a given reality.

As I have mentioned above, many scholars have pointed to the end of the Cold War as a catalyst for the spread of unspecific, transnational, and hard-to grasp fears (Benam 2011; Buzan et al. 1998; Faist 2004; Huysmans 2000 & 2006; Wæver 1998 & 2004). Since then, Faist states that migration has become a meta-issue that can be referred to as the root cause of many different problems, such as rising unemployment, terrorism, and the crisis of the welfare state (*The Politics of Immigration* 50). It has increasingly become framed as a destabilizing force for public order and domestic integration, which has led to the establishment of restrictive migration and asylum policies, as well as the social construction of migration as a security issue (Huysmans, “The European Union”

⁹ Faist defines the migration-security nexus as “the discursive securitization of migration and integration policies” (“Migration Security Nexus” 1).

751). This process has taken place against the backdrop of the politics of belonging and has gone hand in hand with European integration (Benam 193). In the Copenhagen School's original framework, migration is classified as an issue of the societal sector. The general referent object here is the nation rather than the state, so threats are framed not in terms of sovereignty, but in terms of the survival of a nation or national identity. Who is perceived to be an "outsider" or an "insider" becomes a crucial question depending on how certain groups are framed and defined through legislative acts or popular public discourse. There are various securitizing actors in the field: They are frequently politicians, journalists, and security professionals with the aim of sustaining and expanding their positions of authority and power (Bigo 2002 & 2006; Campesi 2011; Ibrahim 2005). However, some academics and international organizations have also been involved with furthering the securitization of migration in their function as 'producers of knowledge' that have aligned their focus with the interests of their donor states (Ibrahim 169).

As Faist suggests in his study of immigration and asylum discourse in Germany, the migrant has become a many-headed hydra (*The Politics of Immigration*). Migrants are seen as a danger to political, social, and economic stability as a consequence of powerful political and societal dynamics, which reify "migration as a force which endangers the good life in west European societies" (Huysmans, "The European Union" 752). Huysmans identifies three main themes of the securitization of migration: Internal security, cultural security, and the crisis of the welfare state ("The European Union" 758).

In a globalized world where people are becoming more mobile through technologies and international infrastructures, political actors and security professionals

have established the notion that this increased human mobility (especially in the EU where internal borders controls were abolished in 1995) can potentially lead to a breakdown of public law and order, if not managed and thereby restricted appropriately, to such an extent that it has become common sense (Huysmans, “The European Union” 758). In the case of the EU (then the EC), this mentality was evident very early on during the negotiations of the Schengen agreement where a strengthening of external border controls was compulsory for the abolition of internal border controls. Subsequently, the migration-security nexus laid the foundation for Fortress Europe – the bureaucratic, institutional, and even physical walls that are supposed to keep unwanted and undeserving migrants out.

Moreover, migration is perceived as a threat to “the myth of national cultural homogeneity” (Huysmans, “The European Union” 762), which has persisted throughout a majority of European societies where legal and symbolic membership is still rooted in ethnic understandings of nationhood. Ibrahim argues that the securitization of migration discourse is based on the assumption that cultural differences will inevitably lead to social breakdown (164). A notion she coins “new racism” has evolved, which is characterized by an emphasis on cultural difference rather than on biological features. Ibrahim therefore interprets the migration-security nexus as a re-actualization of racist discourse that has been made possible through the broadening of security concepts (164). Different speakers have established a worldview based on a dichotomy between ‘us’ (as in Western civilization) and ‘them’ (as in barbaric and uncivilized nations in the South), which reflects an imperialist understanding of the world (Ibrahim 171). In an attempt to avoid openly racist language alluding to concepts of superiority or inferiority, migrants

are framed as being naturally and inevitably “different” (Ibrahim 165). In predominantly nativist nations, where traditions have developed as a means to provide security for their populations, the disruption of these traditions through immigrants who come from different cultural backgrounds imbalance the host nations and threaten to rupture their social fabric (Ibrahim 166). Thus, rejecting migrants in order to preserve the cultural purity of the nation or the state has become a common measure among liberal governments (Ibrahim 166).

Closely related to the membership debate is the notion of ‘welfare chauvinism’, which Faist defines as “the unwillingness of natives to share welfare state benefits with certain immigrants groups and asylum seekers who are perceived as ‘intruders’” (“How to Define a Foreigner” 61). Migrants, specifically refugees, are seen as financial burdens to the host society, as freeloaders that benefit from social assistance and welfare provisions to which they have never contributed. They are perceived to have no legitimate right to these provisions, which is different from their legal rights, depending on their officially recognized status, as Huysmans points out (“The European Union” 767). Additionally, offering social assistance to refugees and migrants is often cited as a pull-factor that motivates more people from the South to strive for a better life in Western democracies, either as refugees or irregular migrants. In response to the 2015 refugee crisis, several European governments have cut welfare benefits for refugees in order to discourage them from travelling to Europe in the first place, though without apparent success (Dearden 2016). In this context, migration is therefore depicted as challenging the principles of solidarity and redistributive justice in host countries that may lead to societal disintegration. To a greater extent, migrants are seen as an economic problem,

they are simultaneously blamed for being financial burdens on the one hand, and competitors for jobs in an unstable labour market on the other.

Another crucial aspect of the migration-security nexus is the criminalization of immigration law, also referred to as “crimmigration” (Stumpf 2006; Van der Woude and Van Berlo 2015), which Van der Woude and Van Berlo define as the convergence of crime and immigration control (62). In the EU, this process has been triggered through the simultaneous harmonization of asylum and immigration policies on the one hand, and issues of police cooperation such as crime, trafficking, and terrorism on the other (Faist, “The Migration-Security Nexus” 8). This component of European integration in the securitization of migration will be further analyzed in the following chapter. Stumpf notes that while the merger between immigration and criminal law has been well documented by scholars, its theoretical underpinnings have been somewhat neglected (377). She proposes membership theory as a fruitful framework for crimmigration, according to which individuals’ rights and privileges are limited to the members of a social contract between a government and its people (377). Thus, crimmigration is derived from notions of membership that create a clear distinction between insiders and outsiders, a dichotomy that is echoed in both immigration and criminal law, two fields that “marshal the sovereign power of the state to punish and to express societal condemnation for the individual offender” (Stumpf 379). Immigration and criminal law both act as “gatekeepers of membership in our society” (Stumpf 396), as both regulate access to and expulsion from it (the former through access to national territory, and the latter through segregation by incarceration). Hence, both “embody choices about who should be members of society [...] [and] whose characteristics or actions make them

worthy of inclusion” (Stumpf 397). This conceptual link between crime and immigration casts criminals as aliens and aliens as criminals, and has resulted in similar forms of procedure and enforcement in both policy fields (Van der Woude and Van Berlo 62).

Since securitization theory places considerable emphasis on speech acts, it is also necessary to outline the general terminology of the migration-security nexus that has been established. As I have touched upon beforehand, the construction of a binary ‘us’ versus ‘them’ is essential for the security narrative around migration. Furthermore, narratives of ‘war’ are frequently employed, not only in terms such as the quite literal ‘war on terror’, ‘war on crime’, and ‘war on illegal immigration’, but also in a more subtle language that focuses on existential threats, which indicate that something must be defended, may that be the state, the nation, a cultural identity, or a labour market. In this war discourse, migration is often depicted as an ‘invasion’ or even “reverse colonization” (Bigo, “Globalized (in)Security” 7). By employing such narratives, migrants are conceptualized as a political, social, and economic threat that can be addressed by traditional means of war such as heightened surveillance and military force (Faist, “The Migration-Security Nexus” 11). To describe supposedly large numbers of migrants, politicians and journalists regularly use terms such as ‘flooding’, ‘pouring’, and ‘streaming’, implying that migratory movements are somehow equal to natural disasters (Gabrielatos and Baker 21). Similarly, migrant-receiving countries have introduced a language of being ‘saturated’, ‘full’, or having reached their integrative ‘capacity’ or ‘limits’ (Faist, “How to Define a Foreigner” 61) into their discourse. An especially telling example is the German term *Überfremdung* (literally over-foreignerization), which describes a population’s infiltration with too many foreigners or foreign influences and implies a

threat for the cultural identity and homogeneity of host nations. Taken together, “[this] discourse excludes migrants from the normal fabric of society, not just as aliens but as aliens who are dangerous to the reproduction of the social fabric” (Huysmans, “The European Union” 758).

Lastly, it is important to note that the securitization of migration discourse has not gone unchallenged. Numerous scholars, NGOs, and other actors have drawn attention to the negative effects of the security-migration nexus and offered alternative discourses that emphasize humanitarianism, global freedom of movement, and cosmopolitanism. Bigo suggests that none of these remedies have gained traction because diverse institutions have utilized the securitization of migration as a political tool to spread and sustain unease, “so as to affirm their role as providers of protection and security and to mask some of their failures” (“Security” 65). The issue is therefore not a lack of knowledge or awareness, but rather an intentional choice of denial (Bigo, “Security” 66).

Moreover, a brief analysis of how the perception and conceptualization of refugees in particular has changed in recent decades is needed. The legal situation of refugees is rather simple. A *refugee* is a person who:

[...] owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (*Convention relating to the Status of Refugees, Art. 1A(2), 1951* as modified by *the 1967 Protocol*).

An asylum seeker is recognized as a refugee when a country determines that they meet the legal definition of a refugee and extends international protection to them. However,

their perception in host nations has shifted dramatically since the Geneva Convention came into being in 1951, when the horrors of the Second World War were freshly ingrained in the world's collective memory. Chimni identifies several shifting policy contexts in regards to refugees in the post-war period: the neglect of refugees in the Third World, their use as pawns during the Cold War, and the politics of containment now (1998). Arguing that following the end of the Cold War, "the refugee no longer possessed ideological or geopolitical value" (351), refugee policies underwent a process of rethinking as Western countries were increasingly faced with "new asylum seekers" (a term used throughout Chimni's work) from the Global South. Chimni further asserts that this paradigm shift took place through "the creation of the myth of difference" (351) in the post-Cold War world, which represented

[...] the nature and character of refugee flows in the Third World [...] as being radically different from refugee flows in Europe since the end of the First World War. Thereby, an image of a 'normal' refugee was constructed—white, male and anti-communist—which clashed sharply with the individuals fleeing the Third World. (Chimni 351)

This, in turn, has led to what he titles the "non-entrée regime," whose declared purpose is to check for illegitimate asylum seekers who abuse the refugee status in order to pursue a better life in the wealthier countries (Chimni 352). Paradoxically, the refugee status has been elevated to a privileged status (Chimni 1998; Martin 1988).

In this chapter, I have presented the main tenets and discussions surrounding securitization theory, and how the theory's concepts have been applied in order to describe and explain recent developments in the area of migration politics and

management. Overall, it has been selected as the theoretical foundations for this thesis due to its focus on elite discourse. Even though it is precisely this feature that has been most frequently critiqued, for the purpose of this thesis, and especially the source material that was used for the following case study in chapter 4, securitization theory provides the most effective framework for my analysis.

3. Contextualization: Schengen and European Integration

*»The politics of insecurity is thus always also a politics of belonging. Security framing impinges on and is embedded within struggles between professional agencies – such as the police and customs – and political agents – such as social movements and political parties – both over cultural, racial and socio-economic criteria for the distribution of rights and duties and over acceptable instruments of control through which people are integrated within a community.«
(Huysmans, *The Politics of Insecurity* 63)*

In order to understand the 2015 refugee crisis and the responses it has triggered, it is necessary to consider the historical and political context in which these events have taken place, and how the decades long processes of European integration have shaped immigration and asylum policies. Thus, this chapter is meant to provide the necessary backdrop for current developments on the one hand, and to demonstrate how migrants and refugees have been conflated with criminals and framed as security threats prior to the events under study on the other.

3.1 The Historical Evolution of the Schengen Agreement

As iconic a symbol as the Schengen Agreement has become for Europe, the path to freedom of movement for European citizens has been a rocky one. Initially, free movement within Europe was sought after by states in order to enable the working population to move and settle freely in any participating state. Carens points out that “European states did not adopt their open borders policy out of a commitment to justice or human rights but out of a concern for economic efficiency” (272). Thus, a Europe of open borders was primarily motivated by economic incentives. However, the Schengen zone has gained a symbolic significance that goes beyond its everyday function as a free travel area for European citizens – it has become one of the main corner stones of European identity (Bruter 2004). Since the abolition of internal border controls in 1995,

generations (sometimes referred to as Generations ‘Europe’, ‘Schengen’, or ‘Erasmus’) have grown up in a unified Europe, having internalized the advantages and values that integration, cooperation, and solidarity have surrounded them with. One of the leading scholars in the field of European Identity research, Michael Bruter, states that “Europeanness means first and foremost that some physical and symbolic borders have disappeared for citizens” (“On what Citizens mean by feeling ‘European’” 33). He further argues that frequent travelling, speaking foreign languages, and living in another European country – which are all facilitated through and by Schengen – make individuals more likely to recognize the significance of a ‘People’s Europe’ and increase their civic identity (Bruter, “Citizens of Europe?” 120).

The concept of a free travel zone as a feature of European integration dates back to the mid 1980s, when European politics faced yet another crisis. Economic stagnation and institutional stalemate had paralyzed integration in the EEC (Zaiotti, *Cultures of Border Control* 67). Even though the Treaty of Rome had established the common goals of free movement of capital, goods, and workers in the EEC, a “Westphalian culture of border control” (Zaiotti, *Cultures of Border Control*) prevailed, which emphasized borders and physical control over territory as the main attribute of sovereignty. Borders were heavily controlled, immigration strictly limited to protect domestic labour markets, and the foreigner in general was painted as a threat to social and cultural stability (Zaiotti, *Cultures of Border Control* 47). By putting emphasis on the divisions between national units, the Westphalian culture obstructed migratory flows and hindered cooperation in general (Zaiotti, *Cultures of Border Control* 58). Even though policy makers explored the advantages of freedom of movement for the European economic area, negotiations on the

abolition of border controls (defined as identity checks and custom controls) stagnated at an early stage due to different interpretations of the term ‘freedom of movement’. While some states, such as the UK, supported free movement only for citizens of the EC, others advocated for free movement for everybody within the external borders of the EC. The issue with the former model was that controls would have had to stay in place in order to differentiate between EC citizens and third-country nationals. Margaret Thatcher’s ‘Bruges Speech’ of 1988 summed up the skepticism towards open borders in Europe:

Of course we want to make it easier for goods to pass through frontiers. Of course, we must make it easier for people to travel throughout the Community. But it is a matter of plain common sense that we cannot abolish frontier controls if we are also to protect our citizens from crime and stop the movement of drugs, of terrorists and of illegal immigrants. (Thatcher, “The Bruges Speech“)

Besides the obvious link she establishes between migration, crime, and security, Zaiotti points out her invocation of “common sense” (*Cultures of Border Control 2*). Thatcher formulates her argument in collective terms (“we”, “our citizens”) in order to establish a nationalist reading of border controls with her European partners and to present her view not as another outgrowth of British isolationism, but rather as “plain common sense” (Zaiotti, *Cultures of Border Control 2*). As we know today, the UK would not have the last word in this debate, but Thatcher’s rhetorical move reflects a conflict that has been at the heart of the Schengen Agreement ever since: How can a free travel zone and sufficient internal security be achieved at the same time? An answer to this question that all Member States could agree on was quickly found. In order to abolish internal border controls, external borders needed to be strengthened to replace them. Yet, consensus on

how to realize such a project was absent. Zaiotti argues that two different alternative cultures of border controls emerged during this stage: Schengen and Brussels (*Cultures of Border Control*). Both were meant to create a European Single Market, but their underlying assumptions and visions of the free travel area differed vastly. A bilateral Franco-German collaboration provided the stimulus for the Schengen approach, which envisioned a regional governance system of Europe's external borders and unrestricted freedom of movement in the EC for both citizens and third-country nationals, reached through an intergovernmental approach (Zaiotti, "Revisiting Schengen" 32). The Brussels initiative on the other hand relied on EC framework, was unclear on the definition of freedom of movement, and insisted that effective compensatory measures at Europe's external border were necessary before the abolition of internal borders could even be seriously considered (Zaiotti, "Revisiting Schengen" 40). At a time when European politics at the supranational level already suffered from a general deadlock, the (initially) intergovernmental Schengen initiative should provide a more fruitful approach.

In 1984, Germany and France entered the Saarbrücken accord, in which they agreed on creating common border check points along their external borders, abolishing controls of persons, harmonizing their conditions of entry, and extending their police and customs cooperation (Zaiotti, *Cultures of Border Control* 70). Shortly thereafter, the Benelux countries (which had already established a free travel zone as a result of the Benelux Economic Union) displayed interest in the project; in 1985, Schengen was born. It obtained its name from the Luxembourgian village of Schengen, where it was signed during a symbolically powerful ceremony on the river Moselle, where France, Germany, and Luxembourg meet (EC, *Schengen Area*). Initially, this intergovernmental agreement

formulated very broad short- and long-term goals such as the gradual abolition of border controls between the participating states, but was overall more of a general guideline rather than a comprehensive plan for action. Nevertheless, it took the signatory parties until 1990 to agree on the text of the Convention Implementing the Schengen Agreement (CISA). By 1995, when the Schengen acquis¹⁰ was eventually implemented, Greece, Italy, Spain, and Portugal had joined the project.

As successful as the Schengen approach had proven in delivering timely results, it faced substantial criticism as well. Schengen's intergovernmental nature was initially seen as incompatible with the European project since it was undermining long established practices between Member States, which were used to cooperating under a common institutional framework (Zaiotti, "Revisiting Schengen" 39). It was feared that it would lead to a "Europe of 'variable geometry', with some members 'in' and others 'out'" (Zaiotti, *Cultures of Border Control* 39). Zaiotti argues that critics, and most importantly the Commission, slowly warmed up to it because its proponents presented it as a 'laboratory' for Europe ("Revisiting Schengen" 39). The fact that Schengen gained the support of the so-called Guardian of the Treaties, despite the fact that its intergovernmental routes effectively circumvented these treaties, bestowed legitimacy upon the initiative. Eventually, all actors agreed that Schengen was a project they could embrace (Zaiotti, "Revisiting Schengen" 40). When Schengen gained more and more substance, it became evident that the Brussels-led initiative had failed due to disagreements over the terms of border controls and a long and exhausting completion process of their Border Convention. The only thing that remains of it today is the Dublin

¹⁰ Accumulated legislation (agreements, conventions, accessions, etc.) that constitutes the body of Schengen law.

Regulation, which was passed in 1990. The Treaty of Amsterdam finally incorporated the Schengen acquis into the first pillar of the EU legal framework in 1997 and replaced what was little was left of the Brussels initiative. Zaiotti concludes that Schengen and Brussels were cultural variations, of which the Schengen approach asserted itself because “the culture in which it was embedded demonstrated in practice to be more effective in addressing relevant problems” (“Revisiting Schengen” 31).

Needless to say, the Schengen Agreement and the creation of a free travel zone on the continent were major steps for European integration. Ironically though, it also marked an important landmark of the formal securitization of migration. It became a paradox in itself: a ‘fortress’ that enabled the internal movement of Member States’ citizens at the cost of keeping non-EU citizens out. Van der Woude and Van Berlo argue that the travel free zone actually stimulated border control, “since the notion that European integration *via* the opening of internal borders would lead to an increase in crime and more mobile criminal organised groups became the shared belief underpinning Schengen” (64). The anxiety about open borders that Thatcher expressed in her Bruges speech was still prevailing and Schengen gave it a voice. According to the Schengen logic, the abolition of internal border controls needed to be matched by strengthened controls at the external borders, as well as standardized visa and asylum procedures, and intensified police cooperation between Member States through the creation of the Schengen Information System (SIS). Much was at stake since the outer Member States were now obliged to “take responsibility for controlling the external borders on behalf of the other Schengen States” (EC, *Schengen Area*).

3.2 The Europeanization of Migration Policy: A Security Continuum

3.2.1 Securitization in Official and Legal Discourse

The academic literature reflects that the European integration process is deeply implicated in the securitization of migration discourse and related laws and practices (Bigo 2002; Huysmans 2000; 2006; Kostakopoulou 2000; Ugur 1995; Van der Woude and Van Berlo 2014). Huysmans argues that the construction of migration as a security threat in the 1980s inspired a spillover of the economic project into an internal security project (2000). Thus, a security continuum has been established: “an institutionalized mode of policy-making that allows the transfer of the security connotations of terrorism, drugs traffic and money-laundering to the area of migration” (Huysmans, *The Politics of Insecurity* 71). Official discourse tied the European single market and its inherent freedom of movement to an increasing need for ‘more’ security in a ‘more dangerous world’. This subchapter addresses some of the milestones of European integration and analyzes how they shaped the migration-security nexus. Due to the great number of policy documents the EU has produced, I will limit my analysis to the most important and influential exemplars. I will argue that immigration and asylum issues have been asserted into an internal security framework, which is “a policy framework that defines and regulates security issues following the abolition of internal border control” (Huysmans, “The European Union” 770). Furthermore, the section will also lay out how these securitized discourses and policy outputs have shaped methods and practices that are enforced on the ground.

As noted above, the Schengen agreement is not the only venue of the migration-security nexus; other key accomplishments of European integration have furthered the

securitization of migration in a similar fashion. The Single European Act (SEA), the CISA, the Dublin Convention, and both the Amsterdam and Maastricht Treaties have put political currents into legal practice and enforcement.

Shortly after the Schengen agreement was concluded, the SEA of 1987 came into effect. It was based on the common goals formulated in the EEC Treaty of 1957, and revived the creation of an internal market without obstructions to “the free movement of goods, persons, services and capital” (SEA, Article 14.2). As Geddes points out, the Commission’s attempts to communitarize immigration and asylum policies were rejected by Member States and the act fell short of providing provisions for third-country nationals, even though they were clearly affected by the single market (71). Decision processes and policy making in these areas continued to take place through intergovernmental working methods (Geddes 75).

While the Schengen Agreement itself provided a basic guideline for abolishing internal border controls, the CISA produced a particular link between migration, terrorism, transnational crime, and border control (Bigo 1996; Huysmans 2000; Schlentz 2010). The CISA located “the regulation of migration in an institutional framework that deals with the protection of internal security” (Huysmans, “The European Union” 757) and thereby initiated the development of a security discourse in the policy area of migration. According to official reasoning, this move was a *reaction* to the threats that an internal area of open borders would inevitably pose to Member States’ national security; the security problem had triggered securitizing language, which in turn justified security policies. However, this interpretation does not account for the various ways in which security practices actually transformed migration into a security problem by creating

public expectations and specific institutions (Huysmans, “The European Union” 757). Moreover, CISA intensified the asylum-migration nexus by introducing regulations such as harmonized, yet strict visa requirements, expulsion and readmission procedures, and carrier sanctions that addressed both groups indiscriminately (Schlentz 9). Thus, Huysmans identifies a spill over of the economic project into an internal security project in the 1980s that has simultaneously been inspired by and further intensified the construction of migration as a security threat in the EU (“The European Union” 751).

Another important piece of legislation is the Dublin Convention of 1990, whose full title is the *Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities*. The convention supplemented the CISA and had two main objectives: to establish a common framework for determining which Member State is responsible for an asylum claim on EU territory, and to ensure that every application would only be processed once, by one Member State (Refugee Council 2002). According to the convention, the country of first entry is responsible for the assessment of an individual’s asylum claim, which has led to readmission procedures between Member States. Similar “safe third country” procedures have emerged between the EU and third states, which have enabled the Union to return asylum seekers that have transited through ‘safe’ countries in order to reach European territory. The Dublin Convention has been modified twice since its inception, in 2003 and 2013, and is now known as Dublin Regulation or Dublin III. It is harshly criticized by academics and NGOs for significantly undercutting the universal responsibility of protection enshrined in the Geneva Convention (Schlentz 9). Lavenex argues that the objectives of the underlying intergovernmental approach were to reduce the numbers of

asylum applications, tighten external borders, and reduce entry options for third-country nationals (97).

Following the SEA, the Schengen acquis, and the Dublin Convention, the Treaty on European Union, known as Maastricht Treaty, introduced the pillar structure to the legal framework of the newly established EU in 1992. Although the communitarization of issues such as foreign policy, security policy, criminal cooperation, and immigration and asylum policy was attempted, it ultimately failed because these areas were seen as too sensitive to national sovereignty (Schlentz 9). Instead, these subject matters were compromised by two pillars that were based on an intergovernmental approach. The Third Pillar of Justice and Home Affairs (JHA) subjected migration explicitly to the intergovernmental cooperation methods of the EU (Huysmans, "The European Union" 755). This further consolidated the categorization of migration as a security threat, since the JHA pillar coordinated cooperation in the fight against crime. Under Title VI, the treaty names asylum and immigration policy in the same breath as combatting international crime, drug trafficking, and terrorism as "matters of common interest" (Maastricht Treaty, Article K.1). Besides this striking conflation of immigration and asylum with all sorts of serious international crime, Schlentz points out that the Maastricht Treaty also neglected to provide community approaches and judicial oversight in the field. In this light, Kostakopoulou argues that the marginal role of community institutions during this stage of policy development "put in place an institutional framework which lacked coherence, consistency, democratic accountability, respect for the rule of law and for human rights, and effectiveness" (498). Prevailing assumptions about the security problem that migration embodied were deeply embedded in this policy

patchwork (Kostakopoulou 498). In 1997, when the Treaty of Amsterdam was adopted and finally communitarized the JHA pillar, nationally established domestic practices and restrictive immigration laws had already gained such a foothold, that they became the ‘common sense’ that informed the adoption of EU-wide policies (Kostakopoulou 498).

In an attempt to solve the institutional confusion caused by the incoherent mass of national approaches to immigration and asylum policies on the one hand, and a communitarized single market on the other, the Amsterdam Treaty moved the fields of immigration and asylum, visa policy, and administrative co-operation to the Community Pillar, which conferred legal precedence to supranational law (Kostakopoulou 501-2; Schlentz 10). At the same time, police and judicial cooperation in criminal matters remained in the Third Pillar (Kostakopoulou 502). Although the treaty officially seemed to dissolve the link between migration and organized crime in this way, it also created the “Area of Freedom, Security and Justice” (AFSJ), “in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (Treaty of Amsterdam, Art. B). Schlentz argues that this move not only failed to break the security continuum, it also institutionalized the migration-security nexus (10). In addition, the intergovernmental legacy of the policy area remained relatively intact through “upholding democracy-starved decision-making measures such as unanimity at the Council and consultation procedure with the European Parliament” (Schlentz 10), which allowed national governments to remain rather influential. Consequently, the Community permanently adopted the Member States’ prevalent discourse on the securitization of migration policies (Kostakopoulou 508). This is evident in a 1997 joint action plan “on

how best to implement the provisions of the Treaty of Amsterdam”, where the Council and the Commission stated:

Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. [...] Maintaining the right balance between them must be the guiding thread for Union action. It should be noted in this context that the Treaty instituting the European Communities (article 61 ex article 73 I a), makes a direct link between the measures establishing freedom of movement of persons and the specific measures seeking to combat and prevent crime (article 31 e TEU), thus creating a conditional link between the two areas. (European Council and Commission 1997)

This statement not only indicates that both the Council and the Commission were aware of the migration-security nexus, but that they endorsed it. By recognizing the ‘evident’ connection between migration and crime, and therefore between internal freedom of movement and security, the Community “inherits from the Member State the tendency to treat security threats and vulnerability as objective, that is, as independent realities which are not subject to verification and to critical inquiry” (Kostakopoulou 508).

3.2.2 Securitization in Practice

Now that I have analyzed how official and legal discourses have framed migration as a security issue, I will turn to the practical implications of this development and how they have resulted in a scale back of protection and rights of refugees and migrants. Overall, Maas and Truong identify three main trends that have permeated EU policy

development in the context of asylum and migration policies: impeding access to EU territory, externalizing border control, and restricting access to fair determination processes (69). Due to the space limitation of this thesis, I will once again focus on the most important components¹¹ of current EU migration practices in order to illustrate my point. I will focus on two developments at the EU's external borders in particular: technological tools and procedures of surveillance, and so-called 'remote-control' initiatives.

While the Schengen acquis has led internal borders to lose their function as checkpoints and fences that keep 'neighbors' and non-nationals out alike, the area's external borders have been strengthened, following Schengen's logic of 'compensatory' measures (Mitsilegas 2007; Zaiotti *Cultures of Border Control*). Security is seen as an absolute concept. Since internal borders are now permeable, this perceived 'loss' of security needs to be made up for at the external borders. The importance of this logic is also evident in the conditions that prospective EU Member States have to fulfill in order to be considered and approved. Additional to the requirements that the Copenhagen criteria set out, Schengen membership has become obligatory for all those seeking to join the Union. New members need to demonstrate their commitment and capacity to "take responsibility for controlling the external borders on behalf of the other Schengen States" (EC, *Schengen Area*). By establishing common external borders and creating a single market and the area of free movement, the EU has become more state-like and has since begun to imitate the 'protective state' (Kostakopoulou 510). At the same time, the 'protective Union' also affirmed institutions' role as providers of protection and security

¹¹ Other components of asylum and migration policies that are not analyzed in detail in this thesis are institutions such as Frontex, the European Border and Coast guard, Europol, etc.

(Bigo, “Security” 65). Mitsilegas also points out that a shift in terminology has occurred from ‘border control’ to ‘border security’ (359), leading to a “focus on enforcement measures to tackle irregular migration at the expense of more protective measures giving rights to third country nationals” (361). Border security is seen as a vital means to protect citizens and their rights and freedoms, as the above quote from the joint Action Plan of the Council and Commission indicated. In order to achieve the necessary enhancement of border security, the latest technologies have enabled the establishment of detailed databanks and an extensive surveillance apparatus. The most important examples thereof are the Schengen Information System (SIS), the European Dactyloscopy (Eurodac), and the Visa Information System (VIS).

The SIS was originally conceived around the same time as the Schengen agreement itself, as one of the compensatory measures. The CISA states its purpose as “[maintaining] public policy and public security, including national security” (Art. 93). It went into force in 1995 as a computerized information system that was shared between national law enforcement agencies. In essence, the SIS is used by Member States (and their police, customs, and immigration authorities) to communicate ‘alerts’ among each other about the identities of third-country nationals whom the respective state classifies as a threat according to their domestic criteria (Faure Atger 7). It was updated into the SIS II in 2013 after several EU enlargements and its effective functioning is now firmly established as one of the prerequisites for the abolition of internal border controls between old and new Members States (Faure Atger 8). The VIS allows Schengen states to exchange visa data of third-country nationals and serves as a vital tool in the identification of document fraud through its reliance on biometric data (EC, “VIS” 2017).

Eurodac is a central database that contains digital fingerprints and stated motives of asylum seekers. Together with the Dublin Regulation, whose implementation is its primary objective, it constitutes the ‘Dublin system’, which regulates and organizes the responsibility of asylum applications between the Member States (EC, “Identification of applicants” 2017). One of its tasks is to prevent multiple asylum applications in different Member States, which is referred to as ‘venue shopping’. National law enforcement agencies and Europol can also consult Eurodac’s data “for the purpose of prevention, detection and investigation of serious crimes and terrorism” (EC, “Identification of applicants” 2017). The 2015 ‘migration crisis’ has brought to light some issues with the Eurodac approach, since certain Member States were overwhelmed with fingerprinting all new arrivals, which has led to unauthorized secondary movements in the EU. Therefore, Eurodac is currently under revision. A proposal is being discussed that would extend its general scope to identify irregularly staying third-country nationals and include other biometric identifiers such as photographs (EC, “Identification of applicants” 2017).

Despite their diverse purposes (SIS and the Europol database as tools of police-cooperation and counter-terrorism; Eurodac and the VIS as facilitators of immigration and asylum applications), what they all have in common is that they contain extremely sensitive data, are continuously broadened in scope, and are accessible to multiple security professionals on national and EU levels. Mitsilegas argues that their interoperability “renders any safeguard based on purpose limitation regarding access and use of these databases meaningless” (391). They are becoming more generalized as they are collecting data on both European citizens and third-country nationals, gathering various data points in order to create profiles that track individuals’ movement across the

globe; and while they monitor insiders and outsiders alike, they are becoming ever more invisible for Europeans and visible for third-country nationals. This network of databases is therefore a crucial product of the migration-security nexus and signifies an overall shift from reactive to proactive methods, and from border control into security tools that are used to report and investigate crime (Bigo 2006; Mitsilegas 2007). The growing dependence on technologies derived from the intelligence and military sectors is consistent with the overall security turn of migration policy that I have attempted to present (Zaiotti, *Externalizing Migration* 7)

Another significant strategy that the EU has adopted in dealing with migration, especially irregular migration and refugee movements involves ‘remote control’ practices that externalize migration management. Since policy makers’ ability to regulate mobility within and across their borders is subject to numerous political, legal, and ethical constraints, European governments have increasingly attempted to stop migrants before they reach their territory (Zaiotti, *Externalizing Migration* 4). Eurosur for instance is another information-exchange network that was initiated in 2013 and is, among other purposes, used to generate a “common pre-frontier intelligence picture” (Frontex, “Eurosur” 2017) through satellite technology and other surveillance tools, which focus on areas beyond the Schengen zone. Additionally, a thick network of cooperative arrangements between the EU and third countries has emerged, which effectively extends European borders beyond the EU (DeGenova 2016; Zaiotti 2016). Visa regulations, carrier sanctions, and pre-inspections at foreign airports have all been used to prevent the arrival of aspiring migrants or asylum seekers, while bi- and multilateral readmission agreements have enabled the EU to send migrants back to ‘safe’ third countries of origin

or transit (Gibney 13). This trend of non-arrival measures has been justified by the stated intention to prevent abuse of the asylum system through ‘illegitimate’ claimants, and rectify injustices since some countries in the Schengen zone are evidently more burdened by migration than others (Gibney 2006). Zaiotti offers an interesting reading of these ‘remote control’ practices by examining externalization as a psychological defense mechanism on an individual level; however, his analogy draws some interesting conclusions, which echo developments on the international level. He describes externalization as a psychological defense mechanism and a “protection against anxiety” (*Externalizing Migration* 11). If taken too far, “it can lead to the development of ‘neurosis,’ a functional disorder characterized by excessive and irrational anxiety, and frequent compulsive acts” (Zaiotti, *Externalizing Migration* 11). Applied to our canvass of European politics, Zaiotti argues that:

[...] times of rapid economic and cultural change have contributed to the spreading of fears about one’s identities in western societies, fears that have in turn been projected onto a threatening ‘other,’ especially if this other comes from far away and it is perceived to be culturally ‘different.’ (*Externalizing Migration* 11)

This is especially apparent in the reactions that migration from Muslim countries have triggered in Western countries, particularly in the EU which was, and still is, struggling to create a common European identity that encompasses (but does not interfere with) existing national identities, which will be explored further in the following subchapter. However, it is very likely that the visible ethnic difference and religious orientation of the protagonists of this latest refugee crisis have influenced the severity of the responses.

Nevertheless, there has been considerable pushback against some of these measures, especially arrangements with third countries, from NGOs and critics. These arrangements have been established between the Union and ‘migrant-producing’ countries in Northern Africa and the Middle East and usually involve the transfer of funds or development aid to the non-EU partner to build up the capacity to deal with migratory movements themselves or to dissolve push factors. Lavenex and Kunz even argue that a ‘migration-development nexus’ has materialized in this context (2008). Since fourteen out of the fifteen top contributing countries of official development assistance¹² in 2016 were European (OECD 2017), the implications of such a connection could be far-reaching for persons in need of protection. Indeed, migration collaborations have been criticized internationally for cutting legal corners, and for relocating rather than resolving the issue. In some cases, such as the EU’s migration partnership with Sudan, the Union is effectively funding violent and repressive actions against migrants and refugees through their support of an authoritarian government (Baldo 2017). Generally, these practices also send a dangerous message to other countries that host large refugee populations, that if “governments face the prospect of domestic unpopularity, the obligation to protect becomes secondary” (Collett 2016). Another popular and current example is the EU-Turkey Deal of 2016, which determined that asylum seekers that reached Greece by irregular means could be returned to Turkey. In exchange, the EU has to admit one refugee through legal channels for every person that is sent back. The deal also includes financial support for Turkey and provides it with leverage in membership negotiations.

But one does not even have to look beyond the Schengen zone to spot mechanisms that externalize migration. Within the EU, the Dublin system does just that.

¹² As percentage of gross national income.

The very nature of the system (the country of entry is responsible for processing an asylum claim) puts disproportionate pressure on the Member States along the external borders, since most refugees reach European territory either by sea or land. Especially Greece and Italy as gateways for migrants from the Mediterranean routes have been struggling to keep up with the registration of incoming people and assessment of their asylum claims, while wealthier countries in central and northern Europe have received far fewer claims. Thus, the Dublin system has been described as a “failure of solidarity and burden-sharing among [EU] Member States” (Fratzke 1).

Whilst Kostakopouloul predicted back in 2000 that a model of “concentric circles of migration” (512) would replace Fortress Europe, I would argue that both models currently exist and complement each other. Kostakopouloul describes the concentric circles model in the following way:

[The] circle of Schengen EU members would be surrounded by a second circle consisting of prospective members and associated states. The latter would have to bring their migration policies in line with the first circle’s standards in the areas of visas, border controls and readmission policies in return for their admission to the EC (European Council, 1998, paras. 60–1). [...] A third circle of states in the former Soviet Union and North Africa would have to focus on transit checks and on combating illegal immigration networks. Co-operation could be achieved by linking migration policy objectives with European funding programmes. Finally, a fourth circle of states in the Middle East, China and Africa would co-operate with the EU on eliminating the push factors of migration. (Kostakopouloul 513)

I would argue that such a concentric circles model has become reality, based on my

observations above. States that have entered into migration partnerships with the EU such as Sudan and Turkey, to name a few, constitute the fourth circle and have become “wardens of the European border regime” (DeGenova 41).

What I hope to have shown in this subchapter is that the official discourse that has constructed a nexus between crime and open borders, has given birth to compensatory measures and practices in the EU that emphasize prevention rather than reaction. Both technologies of surveillance and the externalization of migration are driven by the objective to deter migrants before they reach EU territory rather than apprehending irregular migrants after they have entered European soil. In summary, Matthew Carr hits the nail right on the head when he states the following:

European governments have created an extraordinarily elaborate and complex system of exclusion and control that is simultaneously ruthless, repressive, devious, chaotic and dysfunctional, and whose consequences are often strikingly at odds with its stated rationalisations and objectives. (Carr 245)

3.3 European Identity: United in Diversity?

When we talk about European integration and the Europeanization of migration politics, it is also necessary to examine how these processes, and especially the security framing of migrants and refugees as outsiders, has affected the insiders. How did the development of a European migration policy feed into the wider politics of belonging in the EU? Since the ‘European people’ is currently made up of the populations of 28 Member States¹³ (and counting), the project of a pan-European identity is a quite ambitious one. The question of a European identity, however, is essential because it gives

¹³ Not to imply that these are homogenous societies either.

the EU democratic legitimacy. Referring to social contract theory, Bruter makes the argument that “without identity, there can be no true, durable, legitimacy attached to a political entity” (22-23). Identity and legitimacy are therefore linked (Bruter 2004; Cerutti 2006; Follesdal and Hix 2006). The EU is often said to suffer from a democratic deficit due to its lack of a European demos (Follesdal and Hix 2006). There is no consensus to what extent a European identity exists, and the limited scope of this paper does not allow for me to explore this question. Rather, I want to turn my attention on how a European identity has been constructed.¹⁴ In the context of this thesis, I will argue that one of the main strategies has been to define Europeans against outsiders, that is that a negative definition of European identity has emerged that is built on what Europeans are not rather than what they have in common.¹⁵ In devoting a part of my analysis to the audience of the ongoing securitization process, I also hope to address the limitations of my theoretical framework that I have pointed out in the beginning.

Ugur argues that the discrimination of third-country nationals dates back to 1968, when a Council Regulation (1612/68, Art. 1 [1]) established citizenship of a Member State as the basis for the right to free movement and equal treatment in the context of the labour market (976). Furthermore, another Article of the same Regulation preserved the right of Member States to restrict the entry and settlement of third-country nationals, while such restrictions could not be extended to nationals of other Member States (1612/68, Art. 4 [1]). Nationality as the foundation of internal freedom of movement and workers’ rights in the EU also became a step towards the emergence of a European form

¹⁴ For explorations of what themes and values constitute European Identity, see the Community’s “Declaration on European Identity” (2013), Bruter (2003; 2004; 2005), and Ghenea (2015).

¹⁵ This is not the only manner to define European identity. Wyzicka and Hasmath (2016) for instance suggest that EU norms (as spelled out in treaties) and institutions have played a significant role in forging a pan-European identity.

of citizenship (Ugur 977). While it could be argued that a transnational understanding of European citizenship constitutes a positive development of the narrowly defined concept of purely national citizenship, it has to be considered that European membership was defined through the exclusion of third-country nationals (Ugur 977). Today, it serves as a second layer of citizenship that connects the Member States' citizenries with each other in order to create a European people; a community of political actors that are both subject to EU laws, as well as participants in the democratic processes that shape these laws (by engaging in politics through the right to vote in European elections for instance). Nevertheless, European citizenship is only supplementary to national citizenship, and therefore dependant on it. National citizenship remains one of the legal and political areas over which EU Member States enjoy exclusive control; how membership in a national political community is determined, is still regarded as such an essential exercise of a nation's self-determination, that it has evoked a multitude of policies across Europe that reflect varying degrees of liberalism. How the entitlement to citizenship is determined at birth (through *ius sanguinis*¹⁶ or *ius soli*¹⁷), what criteria have to be met in order for naturalization, and whether dual citizenship is permitted are sensitive matters that are regulated differently from state to state, reflecting the unique historical circumstances and political processes that have shaped these regulations. Depending on the respective Member State, an ethno-cultural understanding of nationhood will result in more restrictive citizenship laws than a more liberal understanding of social membership will in other Member States. While the status of European citizens is equal no matter what Member State they belong to, the access to national – and therefore European –

¹⁶ Latin for “right of the blood.”

¹⁷ Latin for “right of the soil.”

citizenship is unequal. Therefore, Ugur argues that the foundations of Fortress Europe are anchored in this re-imagination of citizenship (and its definition against third-country nationals), which materialized in 1968 (977).

Moreover, the establishment of the single market corresponded with “the transformation of what used to be an elite expectation into a commonly held grassroots perception” (Ugur 977). Ugur attributes this development to the high rates of unemployment (977). He actually claims that times of economic instability in general trigger an increased demand for the exclusion of third-country nationals among EU nationals and cites statistical data from the Eurobarometer as proof (977-978). This indicates that in times of economic hardship, outsiders are seen as threats because they are perceived to be competitors on the labour market.

During the integration process that followed the establishment of the single market, Kostakopouloul argues that the Community missed the chance to dispel common myths surrounding immigration and “[provide] a coherent normative response to the problems of membership and citizenship in the EU by adopting a relaxed, positive, liberal and enlightened approach to migration flows” (509). When the Maastricht Treaty adopted national policy options and discourses rather than providing communitarian guidance, it “uncritically adopted the Member States’ definition of ‘who Europeans are’ and their preoccupation in securing national identities” (Kostakopouloul 509). It was not considered how this move would affect the formation of a European identity project, and third-country nationals were left in a vulnerable position (Kostakopouloul 489). Official discourses encouraged the logic of exclusion and framed it as a prerequisite for the AFSJ and the freedom of movement for citizens (Kostakopouloul 510).

In summary, European identity has been defined through excluding third-country nationals. As “citizens without a constitution” (Guild 2007), which is the traditional framework of citizenship, its values have been vague and only subsidiary to national identities. At times when rapid political developments such as European integration and several extensions of the EU have arguably complicated a clear cut definition of what it is that binds national polities together and creates a European people, as well as a well-established migration-security nexus that has framed non-EU citizens as dangerous outsiders and a destabilizing force, it has become easier to define what is not European. Rather than being ‘united in diversity’, as the EU’s motto suggests, Europeans have united against the perceived differences that third-country nationals represent.

As I have demonstrated in this chapter, the securitization of migrants has been a longstanding practice in the EU, prior to more recent events such as 9/11 or other high-profile terrorist attacks. Migrants have long been related to risk and threats to national security in elite legal discourse in the EU, and third-country nationals that are members of religious as well as visible minorities are particularly vulnerable to being depicted as ‘too foreign’ because they challenge the traditional ethnocultural perceptions of what it means to be European; especially at a time where increasing ethnic diversity within the EU raises “questions on the political and cultural agenda, [...] [that] often take on a security dimension because they are argued in terms of the survival of specific cultures” (Buzan et al. 129). Political discourse has framed migrants, asylum-seekers, and refugees as potential security threats, justifying the introduction of restrictive, and deterring immigration and asylum policies and facilitating the construction of third-country nationals as a ‘suspect community’ (Pantazis and Pemberton 646).

4. The 2015 »Crisis«: A Europe of Fortresses?

»The respect of the fundamental rights and freedoms of every human being, as provided by international as well as European legal frameworks, needs to be taken as a point of departure in every single security initiative adopted and implemented on behalf of our 'security'. Security needs to go hand-to-hand with freedom.« (Apap & Carrera 11)

When migrants started to arrive in greater numbers at European borders in 2015, governments and security professionals alike immediately framed the situation as a crisis – but not as a humanitarian crisis, which could have been alleviated through solidarity and the rule of law, but rather as a security crisis which demanded extraordinary measures to be tackled. One of the most notable and highly visible reactions to the crisis have been the reintroduction of internal border controls, which, even though grounded in the SBC, are a measure of last resort in exceptional circumstances that put a Member States' public policy and internal security at risk. Surprisingly, past research has not brought to light significant evidence that this so-called derogation clause has been used as a tool to shut out undesired migrants (Groenendijk 2004; Van der Woude & Van Berlo 2014). However, 2015 marked a sharp turn in events. Not only have multiple Schengen Member States invoked the derogation clause in response to increased numbers of irregular migrants and asylum seekers on the continent, claiming these migratory movements constitute security threats; they have also left these controls in place for over two years at this point, calling their temporality into question. Therefore, I will argue that the reinstatement of border controls is not an exceptional tool exclusively reserved for emergency situations anymore, but rather that it has become common practice and contributed to a permanent state of emergency in the EU.

This subchapter offers a rough overview of the events that transpired, the legal evolution of the SBC and the derogation clause in order to understand the mechanisms

that have been absent or put into place in order to deal with exceptional circumstances, and a detailed analysis of the reinstatements of internal border controls and how they have been officially justified.

4.1 The »Crisis«

Even though the current crisis is officially said to have originated in 2015, when record numbers of irregular migrants and asylum seekers arrived at the Schengen zone's external land and sea borders, it has to be noted that the EU was aware of the issues long before then. Traub identifies three stages of the crisis: the first stage that offered an opportunity for early and systematic policy reform, the second stage that was characterized by tremendous public sympathy for asylum seekers, and the third and final stage of sovereign reassertion (2016).

For instance, the Commission's so-called *Biannual reports on the functioning of the Schengen area* to the Council and the European Parliament, which were introduced in response to the 'Franco-Italian affair' in 2011, drew attention to the Syrian civil war as a generator for potential mass displacement, and weaknesses in external border controls of the Schengen zone as early as 2012.¹⁸ These reports in general provide an overview of issues related to both internal and external borders and evaluate the lawful application of the Schengen acquis in order to establish a common basis for debate and policy making, as well as to enhance cooperation in the area. The very first biannual report of the Commission in 2012 pointed out that "the situation in Syria may prompt a future migration flow into the neighbouring countries, and also into the European Union" (EC,

¹⁸ It is interesting to note that the Commission has neglected to publish these reports since December 2015, which coincides roughly with the peak of the 'crisis' and the subsequent reinstatements of internal border controls by several Member States.

COM[2012] 3). Moreover, Frontex made similar predictions in its annual risk analyses, as is apparent from its 2012 issue, where the agency discussed several political and humanitarian crises outside of the EU that were likely to “result in the displacement of large numbers of people in search of international protection towards the land and sea borders of the EU” (Frontex 2012, 7). Both reports identified the Central Mediterranean (from Libya and Egypt towards Italy), the Eastern Mediterranean (from Turkey to Greece), and the Western Balkans (from Greece through the Balkan states towards Hungary and Austria) route as particularly viable channels for prospective migrants from Northern Africa and the Middle East (EC COM[2012]; Frontex 2012). A storm was brewing, but the issues were largely ignored by countries without external borders. Greece, affected by austerity measures that impaired its ability to perform its border duties, was already known to struggle with enforcing its vast sea borders and suffering from deficiencies in its asylum system in general, but little was done except for “close [monitoring]” (EC, COM[2012], 230 7) of the situation. The *European Agenda on Migration*, which was published in 2015, called on Member States to increase their funding for key actions such as the EU’s naval operations *Triton* and *Poseidon* (that are aimed at saving refugees at sea), breaking up smuggler networks, and building greater capacities in Greece and Italy to receive asylum seekers and process their claims (COM[2015] 240 final). The agenda also included a proposal for a “mandatory and automatically-triggered relocation system” (COM[2015] 240 final, 4) for situations of mass influxes, based on Member States’ population and GDP (COM[2015] 240 final, 21-22). However, the window of opportunity for policy reform passed without significant

actions being taken. Traub points out that European leaders were preoccupied with other issues such as the financial crisis in Greece and its possible opt-out of the Eurozone (3).

Then came the mass influx for which the *Agenda on Migration* had tried to provide. While the numbers of irregular migrants and refugees remained somewhat stable throughout 2012/13, the year 2014 witnessed unprecedented “illegal border crossings”¹⁹ and record monthly averages starting in spring. The year 2015, however, marks the peak of the crisis, with 1.822.337 detected irregular border crossings along the external border according to Frontex, a number roughly six times higher as in the previous year (2016, 14). In its eighth and final *biannual report on the functioning of the Schengen area* in late 2015, the Commission refers to the events as “refugee crisis” and “migrant crisis” for the first time, seemingly using the terms interchangeably (EC, COM(2015) 675 2012). De Genova argues that the crisis-terminology that has been employed by both Member States and EU institutions alike was a rhetorical “device for the authorisation of exceptional or “emergency” governmental measures aimed at enhancing and expanding border enforcement and immigration policing” (37).

At that point, the tragedy that was unfolding on Europe’s doorsteps could no longer be ignored. Thousands of migrants and refugees arrived in Greece every day. As Greek authorities were unable to cope with the masses, many continued their voyages by foot on the Western Balkan route. On April 19, 2015, a ship that carried about 850 migrants and refugees capsized and all but 28 of its passengers drowned (DeGenova, Bonomolo & Kirchgaessner 2015; DeGenova 2016). DeGenova argues that the incident only achieved public attention because it was the “most ghastly and most publicised in a long and unrelenting list of comparable episodes that have utterly banalised such human

¹⁹ Language adopted from the Frontex Risk Analysis Reports

disasters” (33). Overall, an estimated 3.803 migrants found their death in the Mediterranean Sea alone that year, making Europe’s southern sea border not only the most heavily trafficked maritime migration route, but also the deadliest in the world (Hammond 2). Migrants were stuffed into tiny or broken boats by the hundreds, sometimes abandoned and left drifting by their smugglers, suffering from exposure and malnutrition, or they drowned. On April 23, the European Council held an emergency meeting to discuss the crisis during which it decided to increase funding and staff for rescue operations and to target smugglers and traffickers in non-EU countries in order to prevent migrants from reaching EU territory (EC “Special meeting”). In May, the Commission proposed a quota scheme as an alternative to the Dublin Regulation, which had utterly failed to manage the influx of asylum applications in a proportionate and burden-sharing way. While countries that had received larger numbers of migrants supported the proposal, Eastern European states opposed it.

The death of Alan Kurdi, the Syrian three-year-old boy whose body was washed ashore in Turkey in September 2015, induced the second phase of the crisis, which was shaped by widespread public compassion for the ‘migrants’ and shifted the discourse (at least in the short term) towards a ‘refugee crisis’. Kurdi’s picture haunted international media and became the symbol of the hardships and perils that migrants have to endure during their dangerous journeys. Nonetheless, the discussions about the crisis continued to be preoccupied with the ‘illegal’ and ‘criminal’ aspects of migration and there was a consensus among political leaders that a tougher approach toward smugglers and traffickers was needed (De Genova 33).

Only days after Kurdi's untimely death, German chancellor Angela Merkel publicly announced that she was not willing to put a cap on the number of refugees that Germany would take in. She achieved world fame (especially among refugees) with her slogan "we can do it" (Rothenberg 2016). Meanwhile, the situation in Hungary was about to escalate. Thousands of migrants and refugees were stuck at overcrowded detention centers and the main train station in Budapest, chanting "Merkel, Merkel". President Orbán eventually let them go on to Austria, stating that Hungary was a nation of Christians that did not want Muslim migrants and that the crisis was now a German problem, not a European one (Rothenberger 2016). Merkel and her Austrian counterpart decided to let the migrants and refugees pass through without controls or registrations, effectively suspending what little was left of the Dublin Regulations – a controversial decision for which she faced harsh critique from within her own party. However, her move was not free from political calculus, since she knew that the migrants could only be stopped by blunt police force, pictures that would have only further escalated the already precarious situation (Ehrich 2016).

However, the third and final stage of the crisis was triggered only days later, when Germany reinstated border controls due to the large numbers of asylum applications that were received. A domino effect was set in motion and Austria, Slovenia, Hungary, Sweden, Norway, Denmark, and Belgium followed suit due to "the identified serious threats to the internal security and public policy" (EC, COM[2015] 675 6).²⁰ Some countries even went a step further and built physical barriers out of concrete, barbed wire, or razor wire. Most publicized were Hungary's attempts to shut its borders with Serbia

²⁰ Serbia and Croatia also closed their borders due to the high numbers of migrants and refugees that passed through their territories on the Balkan route, but neither of them is a signatory to the Schengen Agreement.

and Croatia, but Bulgaria, Slovenia, Austria, France (funded by the British government), and the UK all erected walls or fences in order to secure the ever re-locating “frontline of European border struggles” (De Genova 37). Both the media and politicians were quick to point out that the Schengen Agreement was dead and a borderless Europe no longer viable (Binyon 2015; The European Post 2016; Rogers 2016; Traynor 2016). At the time of writing this thesis, six countries are still enforcing internal border controls: Austria, Denmark, Germany, Norway, and Sweden, and France.

Subsequent terror attacks in Paris, Brussels, Nice, Berlin, Manchester, and London have further catalyzed increasingly tense discussions about the ‘migrant crisis’, where the influx of refugees and migrants was framed as the perfect cover for terrorists to pass Europe’s external borders unobstructed and move freely within the Schengen zone upon their arrival. After all, the Paris attacks in November 2015, the first in the context of the proclaimed crisis, proved that the refugees and migrants truly posed a security threat (De Genova 38). Then president François Hollande declared a state of emergency in France that has lasted until November 1, 2017, almost two years after the initial attacks.²¹

It is this phase of sovereign reassertion that this case study seeks to illuminate by critically analyzing not only how this emergency situation was manufactured, but also which systems of justification were utilized, to which extent they are compatible with the law, and which purposes they actually serve.

²¹ The state of emergency has since been replaced by Macron’s counterterrorism law which bestows more power and tools upon the police in order to fight extremism and has been criticized by opponents for undermining civil liberties (Vinocur 2017).

4.2 The Evolution of the Schengen Borders Code and the Derogation Clause

The SBC in general provides the rules concerning the movement of persons across borders (both internal and external) in the EU, as well as common rules on the temporary reintroduction of border controls at the internal borders in exceptional circumstances. In this subchapter, I will take a closer look at these common rules and the ‘exceptional’ circumstances under which they have been applied. The first set of rules and guidelines on border governance was the CISA of 1990, since neither the Saarbrücken Agreement of 1984, nor the first Schengen Agreement of 1985 contained provisions for the reintroduction of border controls, since they were deemed unnecessary at these early stages when internal border controls were not yet abolished (Groenendijk 153). However, the CISA, the SBC, and the derogation clauses that these documents would ultimately contain, have their roots in previous intergovernmental agreements that were concluded long before Schengen.

Groenendijk mentions the Nordic Passport Control Agreement of 1957, which established freedom of movement for both citizens and third-country nationals between Denmark, Finland, Norway, Sweden, and later on even Iceland, as well as the 1958 Treaty on the Benelux Economic Union, which allowed for freedom of movement between Belgium, Luxembourg, and the Netherlands (151-52). In both of these pre-Schengen arrangements, all signatories retained the right to temporarily reintroduce their border controls “in case of possible threats to the interests of the state or its population” (Groenendijk 151).²² However, Groenendijk did not come across any instances in which border controls had been reinstated in the Benelux Economic Union, and only one case in which this measure had been used in the Nordic countries, which highlights the

²² For further details on these procedures, see Groenendijk 2004.

exceptional nature of this tool. Similarly, when the CISA was concluded in 1990, Article 2(2) stated the following:

[Where] public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof. (CISA Art. 2[2])

What we can deduce from CISA Article 2(2) is that internal border controls could be reintroduced if public policy or national security were at stake, but only for a limited period of time, and after consulting the other signatories, at least regarding foreseeable events. In unforeseeable events, the Article allows for the immediate reinstatement of controls and retroactive notification to the other signatories. Schengen's intergovernmental nature of the time is strongly evident here, as the decision to reintroduce checks is made at the discretion of the state concerned and neither requires the consent of the other partners nor holds them accountable towards a supranational body. Moreover, Apap and Carrera point out that national law enforcement authorities determine the existence of a threat in this context, and which specific security procedures should be followed (3). Overall, it should be noted that the contracting parties to the initial Schengen agreement failed to provide a detailed procedure for the reintroductions of internal border controls.

In 1995, when border controls were actually abolished amongst the eight Schengen states, it became clear that the Schengen system of intergovernmental

cooperation had far-reaching institutional weaknesses and stricter rules regarding the invocation of Article 2(2) had to be established. In July, France refused to lift its border controls under the derogation clause, due to concerns about the Dutch policy on drugs, which was believed to lead to an increase of illegal drug trafficking if border controls were to be abandoned (Groenendijk 156-57). In light of the disputes that followed the French reluctance to become a fully functional part of the newly created Schengen area,²³ the Schengen Executive Committee published a Decision on the procedure for applying Article 2(2) of the CISA, which emphasized the temporary and exceptional character of its provisions. This Decision states that “[the] overall objective of the measures provided for in the Schengen Convention is to *avoid* invoking Article 2(2). The reinstatement of checks must remain a measure of exception” (SCH/Com-ex [95] 20, rev. 2; emphasis added). Additionally, it contained more detailed procedures for both foreseeable events and unforeseeable events. In either case, it required states that considered reinstating border controls to provide the other partners with notification letters, which must include the grounds for their decision (“which events constitute a threat to its public order or national security”), the extent of the measure, the anticipated duration, and a request for consultation (SCH/Com-ex [95] 20, rev. 2). Furthermore, a report on the implementation of the decision had to be submitted once the exceptional situation had passed and controls were lifted (SCH/Com-ex [95] 20, rev. 2). When the Schengen aquis was incorporated into EC law in 1999, the Council replaced the Schengen Executive Committee and the notification letters and reports had to be provided to both the Council and the Commission (Groenendijk 155). Groenendijk reports that except for the French case (in

²³ The Netherlands even tried to get the European Court of Justice to resolve the case, but these efforts ultimately failed as Article 68(2) of the TEC denies the Court to rule on checks on persons at internal borders (Groenendijk 157).

which border controls with the Netherlands and Luxembourg were quietly and gradually abolished until the early 2000s), there were only three other instances in which Member States invoked Article 2(2) between 1995 and 2000: one due to construction issues at a Dutch airport, the other two due to planned demonstrations in order to prevent possible riots (158).

In 2006, the SBC replaced the CISA. Title III of the 2006 SBC regulates the governance of internal borders in general, stating that “[internal] borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out” (Article 20). Title III, Chapter II is entirely dedicated to the temporary reintroduction of border controls at internal borders.

Where there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of [time] [...] [while the] scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat. (2006 SBC Art. 23)

Article 24 lays out the procedure for foreseeable events, requiring Member States to notify their partners as soon as possible, providing – much like the CISA had demanded – the reasons, scope, date, the supporting measure taken by other Member States to help remedy the situation, as well as a list of all authorized border crossing-points (Art. 24[1]). In an effort to further communitarize this problematic component of the SBC, Article 24(2) authorizes the Commission to issue an opinion, and Article 24(3) and 24(4) establish a consultation process between the Commission and the Member States; however, it offers more of a symbol in the spirit of co-operation rather than a system of

checks and balances with which to hold Member States accountable for their use of the derogation clause. Again, in urgent situations, Member States are free to introduce border controls immediately, but have to notify the other Member States and the Commission without delay (2006 SBC Art. 25). Moreover, the 2006 SBC also requires Member States to produce a report on the reintroductions to the European Parliament, Council, and Commission (Art. 29), as well as to inform the public about their decision to invoke the derogation clause (Art. 30), unless the Member State requests confidentiality due to “overriding security reasons” (Art. 30-31). With regards to the duration of these measures, Article 23 stipulates that controls may be reintroduced for no longer than 30 days, and may be prolonged for periods of up to 30 days, after supplying the other Member States and the Commission with the same information as required under Article 24 (2006 SBC Art. 26). While the 2006 SBC certainly established more detailed and coherent rules on the temporary reinstatement of border controls, as well as some basic feedback procedures for supranational bodies, elements such as a more pronounced definition of the term ‘temporary,’ as well as guidelines as to what constitutes a ‘serious threat’ were neglected.

The SBC saw its next big overhaul in 2013 in form of the Schengen Governance Package (SGP), which is an amending regulation ([EC] No 1051/2013²⁴) that tried to mitigate some of the shortcomings that were pointed out above. Nevertheless, the SGP, much like the Schengen Executive Committee Decision of 1995, was initiated by a crisis situation rather than strategic foresight. Previously, in the spring of 2011, violent revolutions in the wake of the Arab Spring produced large numbers of refugees from North-African countries, who sought safety across the Mediterranean Sea, in Italy. The

²⁴ Hereafter referred to as SGP.

Italian government was hopelessly overwhelmed with around 30,000 persons of mostly Tunisian and Libyan origin, and eventually came to a return agreement with the new Tunisian government (another example of remote control practices) (Zaiotti, “The Italo-French row” 5-6). As an additional measure, Italy also decided to issue temporary residence permits for humanitarian reasons²⁵ to all Tunisian nationals, which in turn allowed them to move freely within the Schengen Area. Many of them continued their journey to France, the use of the same language and possible family ties being likely pull factors, which led the French government to question the lawfulness of the residence permits and to reintroduce border controls in April 2011 (van der Woude & Van Berlo 65). Hundreds of migrants and refugees were thereby prevented from entering French territory.²⁶ Consequently, the Schengen area was deeply shaken when the French President and the Italian Prime Minister at the time decided to join their efforts in pushing for a revision of the SBC, and called the passport-free travel zone itself into question. In a joint letter, the two Member States advocated for more lenient rules on the temporary reintroduction of border controls under “circumstances related to external border pressures” (van der Woude & Van Berlo 66). Stemming from this crisis, the SGP was passed in 2013, containing a legislative package that produced different results from what both Italy and France had in mind (Pascoucau, “The Schengen Governance Package”1). The SGP actually provides new evaluation mechanisms with the purpose of verifying the lawful application of the SBC, as well as greater clarification of the conditions under which the derogation clause can be used, and overall strengthens the role of the Commission and the Parliament in border governance (Pascoucau, “The

²⁵ Under Article 20 of Italy’s Consolidated Immigration Law (Van der Woude & Van Berlo 65).

²⁶ For further details on the Franco-Italian dispute, see Campesi 2011; McClure 2012; Pascoucau 2012 & 2013; Van der Woude & Van Berlo 2015; Zaiotti “The Italo-French row”.

Schengen Governance Package” 1).

Article 23(2) of the SGP states that “[border] controls at internal borders shall only be reintroduced as a last resort”, when all other policy tools and options have been exhausted. Therefore, in order to justify such a measure of last resort, Member States are now obliged to assess the necessity and proportionality of their decisions. Furthermore, the SGP specifies the temporality of the derogation clause: Member States may prolong internal border controls for up to six months under foreseeable and unforeseeable circumstances, and for a total maximum of two years, if “exceptional circumstances put the overall functioning of the Schengen area at risk” (Art. 23[4]). It also states that members must provide “all relevant data detailing the events that constitute a serious threat” so that a simple reference to an event will not suffice, and that “[migration] and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security” (SGP, Recital 5). The competences of the Commission are fortified through stricter consultation procedures (SGP Art. 25), and an evaluation mechanism laid out in Article 37a, which commits the Commission and Member States to regular evaluations in order to verify the proper application of the SBC. Hence, every Member State is to be evaluated at least once every five years by a team of Commission representatives and experts chosen by the Member States through announced or unannounced on-site visits at internal or external borders (Art 37a[2]). Lastly, Article 29 demands that Member States that have invoked temporary border controls must produce a report to the Parliament, Council, and Commission within four weeks of lifting the controls, and furthermore bestows upon the Commission the responsibility to present (at least) annual reports on the functioning of the area without

internal border control to the European Parliament and Council, which must contain all cases of reinstatements of internal border controls in the time period under examination. As I have mentioned before, the Commission carries out this duty by publishing bi-annual reports, which have been put to a halt since December 2015. In general, the SGP provided important clarifications on the grounds on which border controls may be reinstated and their duration, along with stricter control and evaluation mechanisms at a time of political crisis when some Member States pushed for greater national authority on the matter. By stating that migration cannot per se be considered a security threat, the package also attempts to dissolve the link between migration and security/crime, which was previously up to interpretation by the Member State (as in the Franco-Italian dispute).

The last evolution of the SBC came into existence in March 2016, when the ‘refugee crisis’ swept across Europe and a total of ten states (Germany, Austria, Slovenia, Hungary²⁷, Sweden, Norway, Denmark, Belgium, France, and Malta) reintroduced temporary border controls under Article 28 with regards to unforeseen circumstances. While these measures were relatively short-lived in Slovenia, Belgium, and Malta, the other Member States subsequently relied on Article 27 of the SBC, which allows states to prevent foreseeable threats (Guild et al. 16). Regulation (EU) 2016/399²⁸ represents the consolidated version of the former SBC and its amendments, such as the SGP. All references to the SBC from here onwards are made to this consolidated 2016 version, unless otherwise indicated. In order to capture the most important changes concerning the numbering of the individual articles, Table 1 (see page 70) summarizes the relevant

²⁷ Hungary did not actually invoke any official legal procedures under the SBC, but initiated the construction of a fence on its border with Slovenia, which is a symbolically rich act.

²⁸ Hereafter referred to as SBC.

articles for the reinstatement of internal border controls.

In this subchapter, I demonstrated that the common rules for the governance of common borders have been very sensitive and highly contested policy areas, but that the SBC and its predecessors have come a long way from an intergovernmental to a more integrated, communitarized approach towards conflict resolution, creating an intricate balance between the two. However, this subchapter has also pointed to some of the problematic components of the SBC, namely the long history of disputes over the temporality of reinstated border controls, as well as the circumstances which constitute a serious threat to public policy and internal security. Until rather recently, Member States essentially had the discretionary authority to decide on what they considered to be grave threats, which has contributed to a further consolidation of the securitization of migratory movements, as is evident in the example of the Franco-Italian dispute, where “France’s actions represented one of the first times a country [reintroduced border controls] to prevent a specific group of people from entering its borders by defining their entrance as a national ‘threat to security’”(McClure 337). In the next subchapter, I will take a closer look at why, when, and against whom the derogation clause has been used in the past, and whether there have been any significant new trends since the 2015 ‘migrant crisis’.

Table 1: Relevant Schengen Borders Code articles for re-instating internal border controls (Guild et al. 22)

New Article (Regulation [EU] 2016/399)	Former Article (Regulation [EC] 562/2006)	Procedures and Measures	Duration of Controls
Article 25	Article 23	General framework for the temporary reintroduction of border control at internal borders	Timelines, in accordance with Articles 27, 28, or 29
Article 26	Article 23a	Criteria for the temporary reintroduction of border control at internal borders	N/A
Article 27	Articles 24	Procedures for foreseeable events (regular procedure): Advance notice to other MS and EC	Up to 30 days or “for the foreseeable duration of the serious threat” if longer; Renewable for periods of up to 30 days up to a maximum of six months
Article 28	Articles 25	Cases requiring urgent action (emergency procedure): Immediate (unilateral) action without prior notification by the MS	Up to 10 days; Renewable for periods of up to 20 days, up to a maximum of 2 months
Article 29	Articles 26	Prolonging border control at internal borders (prolongation procedure): Council recommends (on the basis of a Commission proposal) that one or more MS should reintroduce controls	Up to 6 months, renewable up to three times up to a maximum of 2 years

4.3 Temporary Reinstatements of Internal Border Controls since 2014

This subchapter will examine the cases in which temporary controls at internal borders have been reintroduced in the Schengen area since 2014. It will provide original

data for my case study, and, as was mentioned in the introduction, build on the works of Kees Groenendijk (2004), Maartje van der Woude and Patrick van Berlo (2014).

Table 2: Breakdown of Notification Letters and Follow-up Documents

Year²⁹	Total Number of Letters examined	Initial Notifications	Prolongations	Reports	Advance Notice	Notices of Termination
2017³⁰	46 ³¹	8	18	18	2	0
2016	41 ³²	4	35	2	0	0
2015	30 ³³	10	14	4	1	1
2014³⁴	8	4	1	2	0	1
Total	125	26	68	26	3	2

4.3.1 Results

Following Van der Woude and Van Berlo’s work, the results of this study and the discussion of the findings is presented in three sections (71). In order to give a complete, yet organized overview of the use of the derogation clause and subsequent reintroductions of temporary internal border controls in recent years, I will analyze the number of cases per country (4.3.1.1), per year (4.3.1.2), and per events that triggered Member States’ decisions (4.3.1.3).

4.3.1.1 Number of Cases per Country

As mentioned before, between April 2014 and November 2017, 125 letters of notification and follow-up documents were sent, encompassing 94 unique cases of

²⁹ Start date is decisive.

³⁰ January-November.

³¹ 17 documents, which are exclusively reports, were not publicly available: 11758/17 (DE), 10754/17 (AT), 10570/17 (SE), 10568/17 (DK), 10451/17 (NO), 10450/17 (DE), 9683/17 (AT), 8983/17 (SE), 8641/17 (DE), 8332/17 (DK), 8330/17 (AT), 8282/17 (SE), 8281/17 (NO), 8023/17 (AT), 7857/17 (SE), 7662/17 (DE), 6980/17 (MT).

³² One document, which was a report, was not publicly available: 11858/16 (PL).

³³ One document, which was a report, was not publicly available: 5044/15 (BE).

³⁴ April-December.

temporarily reintroduced border controls. Table 3 details the number of unique cases per Schengen Member State for the period under study. While Norway and Sweden are tied at the top with 16 cases each, Germany, Austria, Denmark, and France are not far behind with 14, 12, 12, and 10 cases respectively. All other countries combined were responsible for only 14 out of 94 instances of temporary internal border controls. Thus, the six very countries that have retained internal border controls up until the writing of this thesis, clearly dominate the usage of the applicable derogation clauses significantly. In comparison, Van der Woude and Van Berlo found that France and Spain were using this exceptional tool most frequently between 2000 and 2014. The timeframe of this thesis reveals the Scandinavian Schengen Member States seem to have relied most heavily on this measure over the past three years. How these findings can be explained will be explored in greater detail in one of the following subsections.

Table 3: Number of Notifications and Unique Cases per Schengen Member State

Country	Number of Notifications and Follow-up Documents	Number of unique cases
NO	21	16
SE	20	16
DE	19	14
AT	16	12
DK	14	12
FR	10	10
MT	8	3
BE	5	4
SI	4	2
IT	2	1
NL	2	1
PL	2	1
PT	1	1
EE	1	1
CH	0	0
CZ	0	0
EL	0	0

ES	0	0
FI	0	0
HU	0	0
IS	0	0
LIE	0	0
LT	0	0
LU	0	0
LV	0	0
SK	0	0
Total	125	94

4.3.1.2 Number of Cases per Year

As shown in Table 4, the number of cases per year has increased significantly since 2014, especially when taken into account Van der Woude and Van Berlo’s research, which is illustrated in Table 5. The most striking finding is that the number of unique cases in which temporary internal border controls were reintroduced is greater in the three and half year time span that has been the focus of this study, than during the entire thirteen year period that Van der Woude and Van Berlo examined. Furthermore, only one unique case was reported until the month of September in 2015, when Germany was the first country to trigger the derogation clause and reintroduce internal border controls as a consequence of what had been termed the ‘refugee crisis’. Other Member States followed suit quickly, and 22 additional notification letters establishing unique cases followed between mid-September and December of 2015. 2016 was the year that witnessed most reintroduction thus far, with 39 unique cases over the course of 12 months, while notifications in 2017 seem to be declining. Whether this data constitutes an increasing trend or rather an exception to the rule cannot be determined at this point. However, whereas Van der Woude and Van Berlo arrive at the conclusion that “the powers as provided under the Schengen *acquis* in relation to temporary border controls

have been invoked less and less, and that they [...] do not constitute tools that Member States regularly rely on” (72), the data presented in this section paints a different picture. The stark increase of temporary border controls within the Schengen area reveals that Member States have been much more inclined to use such measures of last resort when faced with situations that have been conceptualized as threats to their public policy and internal security.

Table 4: Number of Cases per Year, 2014-2017

Year of Border Controls (Start Date is decisive)	Number of Unique Cases
2017 (January-November)	26
2016	39
2015	24
2014 (April-December)	5
Total	94

Table 5: Number of Cases per Year, 2000-2014 (Van der Woude & Van Berlo 71)

Year of Border Controls (Start Date is decisive)	Number of Unique Cases
2014 (January-March)	1
2013	1
2012	3
2011	4
2010	5
2009	9
2008	3
2007	3
2006	9
2005	9
2004	4
2003	3
2002	12
2001	6
2000	10
Total	82

4.3.1.3 Events triggering the Temporary Reinstatements of Internal Border Controls

This subsection is of particular importance since it embodies the essence of this case study: what has constituted security concerns over the last few years, and what events or circumstances have been deemed sufficient to trigger a clause of the Schengen framework, which is supposedly only reserved for the gravest of situations.

Multiple justifications have been given for the temporary reintroductions of internal border controls within the Schengen area, but by far the most common reason in the scope of this study has been migratory flows in general and the high number of asylum seekers, migrants, and refugees. Austria, Denmark, Germany, Norway, and Slovenia have all cited “enormous” (7136/16), “massive” (13127/15; 2110/15), “uncontrolled and unmanageable” (12984/15) influx of third-country nationals was mentioned as a security concern and reason for temporary internal border controls in 42 out of 167 recorded justifications. Terrorist threats were the second most frequently named reason, mentioned 25 times either in combination with migratory movements within Europe (claiming that terrorist were posing as refugees in order to gain access to European territory or that asylum seekers and refugees were vulnerable to radicalization), in reference to previous terrorist attacks such as the events in Paris, Brussels, Nice, Berlin, Manchester, and London, or as a broader, more elusive issue such as “the terrorist threat in Europe” (13205/17) or the “global terrorist threat” (6514/16; 14731/15). In third place, with 20 hits, deficits in the protection of the external border, as well as the high migratory pressure there were used to justify the use of the derogation clauses, oftentimes explicitly naming Greece as the root of the problem. In fourth place, “illegal” (13207/17 + ADD 1; 6252/17; 8571/16; 7499/16; 6754/16; 6514/16; 6440/16; 5786/16; 5247/16;

5021/16; 14731/15; 12435/15; 12418/15) and irregular migration was cited as a justification for border controls in 18 cases. Subsequently, another 17 cases were based on *Council Implementing Decision[s] setting out [...] Recommendation[s] for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk* (Council Implementing Decisions 2017/818; 2017/246; 2016/1989; and 2016/894). Three of these decisions recommend prolongations

[...] in order to address the serious threat to public policy and internal security in these States by — deficiencies in external border control in Greece and the subsequent secondary movements of irregular migrants entering via Greece and who move to other Schengen States (2017/818; 2017/246; 2016/1989)

Large-scale political events and summits made up for 15 instances of reinstated border controls, in order to prevent certain groups or individuals from travelling to the destination and avoid public disturbances. Human trafficking and smuggling was cited in a further seven instances, both as a concern and criminal offense, and as an issue that ought to be combatted through internal border controls. In six cases, France justified border controls with the ongoing state of emergency that François Hollande declared on November 13, 2015 – in wake of the terrorist attacks in Paris – that lasted until November 1, 2017. Austria and Sweden cited overwhelmed national social and emergency services as grounds for another six cases, and a further six letters explicitly mention secondary movements of migrants as an issue, which I decided to document as a separate justification from migratory movements since secondary migration is a separate legal issue with regards to the Dublin Regulations. State visits accounted for three

reinstatements of border controls, and large sports events and demonstrations for two and one respectively.

Compared to Van der Woude and Van Berlo's findings, Member States' justifications for invoking the derogation clauses and reintroducing temporary border controls have changed significantly in their content and their frequency. Between 2000 and 2014, 39 unique cases were justified with European Council meetings and other political events and summits (Van der Woude & Van Berlo 74). Terrorism threat was cited in only 8 instances, and the authors point out that all of them were invoked by France in relation to one ongoing issue (72). Demonstrations, large sports and music events, ceremonies, state visits, vacations by 'high-ranking persons' in border areas, immigration policy-related purposes, specific terrorist attacks, the introduction of the Euro, and unknown reasons made up the remaining 36 cases, all ranging between seven and one case each (Van der Woude & Van Berlo 74).

Overall, this subsection brought to light dramatic shifts in events and justifications that have triggered reinstatements of internal border controls, with the greatest and most significant difference being that migratory movements (including secondary movements and irregular migration) have been used to justify 66 cases and therefore constitute an overwhelming majority, as compared to Van der Woude and Van Berlo's work, which recorded political meetings and summits as the main official cause for border controls.

Table 6: Events triggering the Temporary Reinstatements of Internal Border Controls

Event	Number of Cases ³⁵
Migratory Movements and High Number of Asylum Seekers, Migrants, and Refugees	42
Terrorist Threat	25
Deficits in the Protection of and High Pressure on the External Border	20
“Illegal” or Irregular Migration	18
Council Implementing Decisions setting out a Recommendation for Temporary Internal Border Control	17
Political Events and Summits (G7, G20, Valletta Conference on Migration, Commonwealth Heads of Government Meeting, NATO Summit, Conference of the Parties to the United Nations Framework Convention on Climate Change, Malta Informal Summit, Nuclear Security Summit, Social Summit for Fair Jobs and Growth)	15
Human Trafficking/Smuggling	7
National State of Emergency	6
Overwhelmed National Services	6
Secondary Movement of Migrants	6
State Visit by Head of State or Political Leaders (including the Pilgrimage of the Pope)	3
Large Sports and Music Events (UEFA, Tour de France, UCI Road World Championship)	2
Demonstrations	1
Total	167

4.3.2 Discussion of Results

In light of the results that my study has yielded, three main observations can be made. Firstly, Schengen Member States have invoked the derogation clauses much more frequently than in the 14-year period before the refugee crisis. Secondly, the duration of these ‘temporary’ border controls has drastically increased, from an average of 14.2 days per unique case in Van der Woude and Van Berlo’s study (73) to 59.6 days per case in this study. Lastly, and most importantly for this thesis, migration-related causes have been cited at large, oftentimes in connection with terrorist threats, even though the SBC

³⁵ Since some notification letters contain more than one reason for the respective Member State’s decision, the number of cases compiled in this table is greater than the number of unique cases overall, as all reasons that were provided were taken into consideration here.

explicitly states that large numbers of third-country nationals that cross the external borders should not constitute a threat to a Member State's public policy and internal security (SBC, Recital 5). Thus, multiple questions arise from this analysis: How lawful are the reintroductions of temporary border controls in the timeframe of this study? How effective are these controls? And at what point do such 'exceptional' and 'temporary' measures become the rule?

As the main justification that has been provided by Schengen Member States for invoking the derogation clauses, migratory movements and their impact on public policy and internal security need to be further analyzed. As mentioned before, the latest version of the SBC states that external border crossings by large numbers of third-country nationals are not sufficient grounds for reinstating border controls (Recital 5). According to Article 25(1), a "serious threat to public policy and internal security" must be present in a Member State in order to invoke the derogation clauses. Guild et al. point out that this formulation is rather vague and lacks a definition of the terms 'public policy' and 'internal security' (39). Recital 27 of the SBC stipulates that "a derogation from the fundamental principle of free movement of persons must be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society." Given that these formulations are rather nebulous, the SBC is quite clear about the fact that temporary border controls must "remain an exception and should only be effected as a measure of last resort, for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level" (SBC, Recital 23). These criteria are laid out in Article 26:

- a) the likely impact of any threats to [the Member State's] public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;
- b) the likely impact of such a measure on free movement of persons within the area without internal border control.

Thus, the burden of proof for the need of exceptional measures is clearly placed on the Member States. As was mentioned in a previous subchapter, the procedures provided under Article 27(1) further require Member States to supply the following information in their notification letters:

- a) the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
- b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;
- c) the names of the authorised crossing-points;
- d) the date and duration of the planned reintroduction;
- e) where appropriate, the measures to be taken by the other Member States.

The Commission, in its role as the 'Guardian of the Treaties' and enforcer of Union law, is supposed to ensure that Member States' justifications for reinstating internal border controls meet these substantial evidential requirements, pass the proportionality test, and are not taken lightly or based on inadequate information (Guild et al. 42). However, what is apparent from all the notification letters that have been subject to this study is a lack of detail regarding the reasons for invoking the derogation clauses. While Member States are eager to repeat the wording of the relevant SBC Articles, mentioning 'threats to

public policy and internal security’ word for word in almost every single case, no further supporting documentation in form of data or other substantial evidence is ever provided in order to prove the existence of a threat.

Migratory movements are most commonly cited as justification for reinstating border controls, but in what ways exactly they present public policy or internal security threats is left unsaid. The three most common themes in this context are the claims or assumptions that asylum seekers and refugees are linked (or vulnerable to) terrorist or other criminal activities, that their comparatively high number puts a strain on host societies, and that their presence is largely illegal.

Some of the earlier notification letters name sole ‘migrant flows’ as a security threat, whereas most subsequent letters establish a link between asylum seekers, refugees, and terrorists. The refugee flow is either portrayed as a backdoor for terrorists to enter the EU, or refugee populations are seen as being particularly susceptible to radicalization and recruitment by terrorist organizations. In one letter by the French delegation, the following is stated:

[...] the current situation reinforces the link between the terrorist threat and the crossing of borders owing to the geographical proximity of migratory routes to the regions at the source of the terrorist threat, which facilitates the arrival in the Schengen area and the return to the national territory of individuals - European and non-European nationals alike - who might be plotting a terrorist attack in France. (5055/17)

Here, a clear nexus between asylum and terrorism is established. Indeed, France is not the only Member State to make this connection. Austria, Denmark, Germany, Norway, and

Sweden all assume a relation between increased migratory movements across Schengen's internal and external borders, and the risk of terrorist attacks. On one occasion Norway states that there exists "[...] a risk of persons suspected of having terrorist intentions posing as refugees" (13205/17), and on another that the country is facing "an unpredictable migratory flow containing a mix of asylum seekers, economic migrants, [and] potential criminals" (14633/15). Similarly, the Danish delegation suggests that "[...] terrorist groups are likely to try to take advantage of deficiencies in our border controls – that crossing the external and internal borders of the Schengen area is part of their strategy" (13141/17). Regarding the radicalization of asylum seekers and refugees already present in Europe, Germany for instance wrote in one letter that "[e]specially with regards to persons who may have been radicalized in crisis and conflict regions, threats related to uncontrolled migration are obvious" (13569/15). To cite the Danish delegation in another letter:

[...] the large number of irregular migrants and failed asylum seekers present in our neighbouring countries that are waiting to be returned to their country of origin or transit poses a real security threat, as there is a risk that some terrorist group will exploit their vulnerable situation. (13141/17)

No data is ever cited in any of these notification letters and follow-up documents that would validate these claims and justify the gravity of the responses. In fact, it is mostly European nationals and permanent residents that have carried out terrorist attacks in Europe in recent years (Crone et al. 2017). Actual numbers are difficult to pin down since both research and official reports on terrorist activities define terrorist attacks in different ways, and only limited information is available about some of the perpetrators.

Nevertheless, even Europol writes in its European Union Terrorism Situation and Trend Reports (TE-SAT) of 2016 and 2017 that “there is no concrete evidence to date that terrorist travellers systematically use the flow of refugees to enter Europe unnoticed” (2016, 7; 2017, 61) and that “[t]errorist cells ready to perpetrate a terrorist attack in the EU are largely domestic and/or locally based” (2016, 22). However, both reports also admit that “it is indisputable that some terrorists have entered the EU posing as refugees” (TE-SAT 2016, 62), referring to the 2015 attacks in Paris where two perpetrators are indeed thought to have entered the EU under the pretence of seeking asylum. Crone et al.’s report mentions a further four asylum seekers that were involved in attacks on European soil between January 2016 and April 2017, including three who had their asylum requests denied (5), and two who arrived before 2015. Thus, while there appear to be rather isolated incidents of terrorists posing as asylum seekers to cross the Schengen borders, and of asylum seekers that commit violent attacks once in Europe, Crone et al. conclude that “[s]o far, IS’s suspected ‘weaponization’ of refugee flows towards Europe has been greatly exaggerated” (16). That being said, the Islamic State has capitalized on these largely unsubstantiated fears by fuelling them with false claims (for instance in 2015, when the group claimed that it had sent 4000 fighters to the EU via Turkey [Crone et al. 21]) in order to spark polarization and create a refugee-hostile environment in Europe that could facilitate radicalization and recruitment (Crone et al. 21). The mere suspicion that asylum-seekers were responsible for the 2015 attacks in Paris was enough to divide political debates on refugees in Europe and probably contributed to some of the attacks on refugee camps in several Member States that occurred in response (Crone et al. 21). With regards to asylum-seekers and refugees being particularly vulnerable to

recruitment, Crone et al. argue that the radicalization of second generation migrants could be a long-term phenomenon that possibly links migration to terrorism, since “[d]isenfranchisement and a perceived or real lack of opportunity and justice make recruitment within vulnerable groups [...] possible” (42), but this is a question that requires further research. Granted that vulnerability to radicalization is linked to economic, social, and political integration in a host society (Precht 2007; Stemmann 2006), an adequate response has to be realized through better integration policies, rather than national security frameworks. Moreover, since terrorism is oftentimes transnational in nature, transnational responses are more likely to be better suited to respond to these issues rather than the strictly national security solutions to which a number of Member States have retreated. Therefore, the question remains whether border controls are an appropriate and effective response to terrorism. Since most terrorist attacks are carried out by home-grown terrorists who are either European nationals or legal residents, whom may have been trained abroad or sympathized with terrorist organizations from home, internal border controls can do little to stop them. Crone et al. suggest that “[t]he threat seems to reside in a combination of returning foreign fighters who are European citizens or residents, and a lack of officials’ capacity to detect them” (25), while Groenendijk argues that combatting crime and fighting terrorism are long-term activities that can hardly be advanced through short-term measures (168). Overall, the link between the refugee crisis and terrorism is not entirely dismissible but to cite terrorist threats as a risk of migratory movements exaggerates the extent to which it is an actual problem that warrants reinstatements of internal border controls and renders this justification unacceptable. They also do not pass the proportionality test. Considering that in 2015 and

2016 alone, over 511 million people (mostly travellers) entered the EU, combined with the number of EU citizens and residents that have a right to free movement within the Schengen area, the number of detections of asylum seekers with malicious intentions and the cases of terrorists disguised as asylum seekers is insignificant. Therefore, neither are the controls likely to be effective, nor are they proportional.

Another frequently advanced argument is that the comparatively large number of asylum seekers has overwhelmed social services and accommodation facilities in host countries. Just to illustrate the language that Member States have been using: the “enormous” (7136/16), “massive” (13127/15; 2110/15), “uncontrolled and unmanageable” (12984/15) influx of third-country nationals was mentioned as a reason for temporary internal border controls by the Austrian and German delegations on multiple occasions, while Denmark repeatedly cited the “historically high” number of asylum seekers as a security concern (8571/16; 7499/16; 6754/16; 6440/16; 5786/16). Certainly, the number of asylum seekers has been higher than in previously recorded years. Several Member States have therefore declared that they are not equipped to register and accommodate higher number of asylum seekers. Sweden continually states that the unprecedented migratory pressure poses “challenges for a range of important services in Swedish society” (8667/16; 7716/16; 56886/16; 5103/16; 15456/15; 15253/15; 14383/15), leading to “severe strains on mainly housing, health care, schooling and social services, but also other areas vital to the functioning of the society” (14047/15). Austria voices similar concerns, and writes on multiple occasions that border controls are supposed to prevent “continuous overburdening of the executive branch, of emergency rescue services, and of public infrastructure” (7136/16; 12110/15; 12435/15;

13127/15; 14211/15; 6071/16; 7136/16). Furthermore, the Austrian delegation states in another letter that the number of asylum seekers presents a:

[...] major challenge not only for the police force and the Austrian federal army which was called for support, but also for rescue workers and all NGO personnel participating in providing assistance to refugees, which can only be managed by controlling the influx of these people in an orderly manner. (12435/15)

Guild et al. identified a lack of reception facilities for arriving asylum seekers as one of the main issues in this context (39). According to a series of interviews the authors conducted with officials in national Ministries of the Interior, Member States “tended not to keep significant reception facilities available for asylum seekers, but rather to try to expand and contract these facilities depending on the ebbs and flows of arrivals” (Guild et al. 39). Another problem was a serious shortage of staff, since trained and experienced officers are usually on short-term contracts and laid off when arrival numbers drop and replaced when numbers rise (Guild et al. 39). At the same time, Member States do not maintain substantial housing facilities for asylum seekers, which led to a number of chaotic reception situations throughout the crisis. Multiple tent camps in which asylum seekers are often stuck and suffer from inhumane conditions remain until today. Support from EU institutions came in form of emergency funding for some Member States along the Balkan route, as well as human resources such as border guards or police officers, and less often asylum support services and caseworkers (Guild et al. 39). Guild et al. argue in their report that:

[...] the crisis could well be framed as not so much one of border controls but rather of reception facilities and the duties of Member States. Border controls

became a surrogate for the proper reception of asylum seekers and the correct operation of the CEAS. (Guild et al. 48)

From this viewpoint, internal border controls are indeed a useful tool in avoiding responsibility for arriving asylum seekers. One of Austria's notification letters deserves attention here, when it explains that the derogation clause as a last-resort measure was justified since alternative approaches would have been insufficient because "it would not be possible to apply the most effective instrument of border control – refoulement" (9147/17). However, whether a person in need of international protection arrives at the Greek, Austrian, or Swedish border should not impact their right to asylum, and what Austria proposes in this letter could be interpreted as a breach of international agreements such as the Geneva Convention, the EUCFR and the CEAS. It is also questionable whether the sheer number of newly arriving asylum seekers was ever the actual problem, since several Member States have admitted that the numbers have been decreasing (mostly due to international collaborations with third countries such as the EU-Turkey Statement), yet the internal border controls have remained (7716/16; 7499/16; 6886/16; 6043/16; 5914/16; 5294/16; 5103/16; 15497/15; 15456/15; 15253/15; 14996/15). Furthermore, another interesting aspect about increasing numbers of asylum seekers is brought forth by the German delegation: "Together, we in Europe must succeed in significantly reducing and slowing the influx of refugees in order not to place excessive demands on our citizens and to prevent resentment" (6048/16). Traub argues that there are some aspects of this concern over 'absorption capacities' that might be worth considering (2016). While there was plenty of public sympathy during the onset of the humanitarian crisis, after Alan Kurdi's picture evoked emotional responses to the plight

of many refugees, public opinion began to swing after events such as the Paris terror attacks or New Year's Eve 2015 in Cologne. The 2016 Eurobarometer survey revealed that even though a majority of respondents still agreed that their country should help refugees, the notion has lost support in 18 Member States, and gained support in 9, as compared to the previous year (Eurobarometer 49).³⁶ Aside from what national governments' legal obligations towards refugees are, what the recent years have shown is that xenophobic right-wing parties have been able to capitalize on the refugee crisis, and gained a foothold in many EU Member States. One of the most daunting examples thereof was the Brexit vote in 2016, where the *Vote Leave* campaign around Boris Johnson managed to exploit the electorate's unsubstantiated fears that immigrants were taking away their jobs and putting a strain on social services. Thus, Traub poses the question: "what if doing the right thing ultimately leads to the wrong thing?" (8) What if by adhering to international laws and moral standards, liberal governments play into the hands of right-wing parties "and bring to power xenophobic rabble-rousers who will bar the door to immigrants of all kinds" (Traub 8)?

Moreover, the criminalization of asylum seekers is another serious issue. Not only are they conceptualized as a Trojan horse for foreign fighters and potential recruitment pools for extremist organizations, but also as migration law offenders. Even though most asylum seekers come from countries with a high recognition rate (most prominently Afghanistan, Iraq, and Syria), Guild et al. argue that "the language of 'crisis' transformed the appellation of people from "refugees" (which would soon be recognised) into "illegal immigrants" who were committing criminal acts by travelling through the Schengen

³⁶ Trends in public opinion cannot be deducted from available Eurobarometer data yet, since a section on respondents' opinion on help for refugees was only added in 2015, and 2017 data will not be available until later this year.

border-control-free area” (48). Most notification letter consistently refer to ‘migration’ flows and therefore presuppose the entry of ‘illegal’ migrants rather than refugees. Austria for instance cites “uncontrolled illegal migration” (13207/17+ADD 1) and “illegal migration in the direction of Central Europe” (6252/17) as security issues, while Denmark continuously sees itself confronted with a “serious risk to public order and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time” (8571/16; 7599/16; 6754/16; 6440/16; 5786/16; 5247/16; 5021/16). Slovenia highlights the impact of “illegal migration” (12418/15) on its national security, as Germany and Norway identify “uncontrolled irregular migration” (13205/17; 13142/17) as substantial threats. Additionally, Danish, Norwegian, and Swedish authorities classify mixed migration flows of economic migrants, asylum seekers, potential criminals, and human traffickers (5021/16;14633/15; 14047/15) as security concerns. Despite these claims, it is a fact that most third-country nationals that have entered the EU seek international protection (Guild et al. 48). This fact alone should ensure that they are entitled to the full application of the Geneva Convention. It is also necessary to keep in mind that EU Member States’ treatment of asylum seekers is not only regulated through the SBC (which actually states that “[t]his Regulation [the SBC] shall apply to any person crossing the internal or external borders of Member States, without prejudice to [...] the rights of refugees and persons requesting international protection, in particular as regards to non-refoulement” in Article 3) or the Dublin III Regulation, but also through the Geneva Convention, the Common European Asylum System (CEAS), and the EU Charter of Fundamental Rights (EUCFR). Guild et al. clarify that “[o]nly if third-country nationals arrive irregularly and

do not seek international protection can they be treated as irregularly present and subject to sanctions” (48). Article 31 of the Geneva Convention states the following about refugees unlawfully in the country of refuge:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

The expression “coming directly from a territory where their life and freedom was threatened” (Geneva Convention Art. 31(1)) is a hot topic of debate in the EU. While the first Member State of arrival is supposed to be responsible for registering asylum seekers and processing their claims under Dublin III, the disproportionate bureaucratic burden on Member States along the external Schengen border has been discussed in the previous chapter. Whether these Member States are equipped with the necessary resources to meet the reception conditions that they are required to provide for asylum seekers under the CEAS is irrelevant to the regulation. According to Dublin III, all asylum seekers that travel to another Member State while their application is under review are to be returned

to the Member State of first entry. However, in light of the numbers of asylum seekers and the severe stress that especially Italian and Greek reception facilities are facing, rendering them inadequate for their intended purpose, the Court of Justice of the EU and the European Court of Human Rights have passed modified judgments stating that vulnerable asylum applicants should not be returned to Italy, and none at all to Greece (Guild et al. 49). Guild et al. therefore identify the Dublin III Regulation as the main cause why Member States and EU institutions alike justify their continued rhetoric which refers to asylum seekers that move across internal Schengen borders as ‘migrants’ rather than asylum seekers or refugees (50). Disregarding the Geneva Convention in this context, Member States have gotten away with insisting that asylum seekers have gained access to their national territory unlawfully and should therefore be punished (Guild et al. 50). The language of illegality and penalties has permeated official discourse and the securitization and criminalization of asylum seekers has become common practice, as this subsection has demonstrated.

Another justification that requires further analysis are the frequently mentioned shortcomings in the protection of the external border. They are often brought forward in combination with high migratory pressures on the border, but as discussed earlier, the number of external border crossings by third-country nationals should not be considered sufficient grounds for reinstating internal border controls per se (SBC, Recital 5). And since even remote-control practices as described in the previous chapter have little proven effect on the number of asylum seekers in general, how many people are seeking for international protection at any given point in time has to be considered largely outside of

any Member State or EU institution's control.³⁷ What is clear according to internal law however is the obligation to assess every asylum claim that is made. Deterring asylum seekers and preventing them from claiming refuge is under no circumstances acceptable. Yet, that seems to be exactly what interior Members States seem to be suggesting. The comparatively high number of asylum seekers is attributed to shortcomings in external border controls, especially those of Italy and Greece, which are facing such considerable migratory pressure due to their geographic location. Since Greece was most closely connected to the arrivals of asylum seekers in the EU, due to its location along the migratory land route from Syria and other Middle Eastern countries to Europe, shortcomings in its external border controls were quickly identified as the root cause for the migratory pressure and secondary movements. Austrian, Danish, German, Norwegian, and Swedish authorities alike cite these deficits in external border protection and the resulting secondary migration movements as reasons to prolong their border controls (13207/17 + ADD 1; 13205/17; 13203/17; 13142/17; 13141/17; 9379/17; 6255/17; 8827/16; 8571/16), echoing sentiments that the Council and Commission have expressed in several recommendations. What exactly the nature of these serious deficiencies in Greek border control are or how internal border controls are supposed to remedy the situation remains, once again, unclear.

This leads us to the role that the European Commission and Council have played in the responses to the crisis. For this purpose, I will be focusing on the documents that were arguably the most important in the context of temporarily reinstated border controls: the four Council Implementing Decisions that set out recommendations for prolonged

³⁷ While the EU-Turkey Statement of 2016 for instance was considered a successful attempt at reducing the number of new arrivals in the EU, the agreement had little impact on the number of internationally displaced persons in general, but rather on the location of particular populations.

internal border controls ([EU]2017/818; [EU] 2017/246; [EU] 2016/1989; [EU] 2016/894), The Commission Opinion on the necessity and proportionality of the Austrian, German, and Slovenian border controls (C[2015] 7100 final), and the Commission's Back to Schengen Roadmap (COM[2016] 120 final). In chronological order, the Commission Opinion was the first piece that was published in October 2015. Germany had been the first country to reintroduce border controls during the crisis on September 13, 2015 “[i]n view of the uncontrolled and unmanageable influx of third-country nationals into German territory” (19986/15), given that “[f]urther arrivals would endanger the public order and internal security” (19986/15). Once Germany in its role as policy leader in the EU had broken the seal and invoked the derogation clause, Austria followed only three days later, citing similar reasons (“the security situation caused by the huge migration flows to and via Austria” [12110/15]). In its Opinion, which the Commission is entitled to issue under Article 24(4) of the 2013 SBC, it is mentioned that the Commission requested additional information from the German authorities, which in turn provided the number of registered asylum seekers from September 5-29, 2015. While I was unable to trace the original document from the German delegation in the Public Register, the Opinion states that according to the report, 527.000 asylum seekers had been registered between January and late September 2015, as compared to 239 000 in 2014. Without a doubt, the registration and accommodation of such a number of people is certainly a logistical challenge, however, the Commission accepted Germany's claim that the asylum seekers constitute a serious threat to public policy and internal security, stating:

While there is no direct evidence so far that jihadist groups have exploited the

movement of refugees with the specific aim of infiltrating Germany, in view of the large number of people entering the country, it is possible that among these persons there could also be people with links to crime, members of militant groups or lone extremists. (C[2015] 7100 final 4)

Similarly, the Opinion backs up Austria's justification, asserting that the "big number of persons entering Austria is deemed to demonstrate the necessity of the reintroduction of border controls at Austria's internal borders" (C[2015] 7100 final 5). Slovenia had reinstated border control a few days after Germany and Austria, because it was in turn confronted with a higher number of 'stranded' asylum seekers that could not continue their journeys due to the Austrian border controls. Slovenia is the only country that seems to have submitted not only the number of asylum seekers it received, but also the results of its initial border controls. Out of 1.918 checks on vehicles and 5.615 checks on persons, the Slovenian authorities refused entry in 15 cases, detected 39 SIS hits and one Interpol hit (C[2015] 7100 final 6).³⁸ Whether these numbers make a compelling case for the proportionality of the extraordinary measure that were adopted is questionable. In the concluding paragraphs, the Opinion further states that:

While in 2013 the legislators agreed that the migratory flows cannot per se justify the reintroduction of checks at internal borders, in the opinion of the Commission the sheer number of persons entering the territory of Germany in view of seeking international protection indeed led to a threat of public policy and internal security and thus justified the application of the extraordinary measures available under the Schengen Borders Code. The provided information regarding the continuous

³⁸ Whether these individuals were asylum seekers or European nationals whose information was checked is unclear.

daily influx of persons seeking international protection into Germany confirms this. (C[2015] 7100 final 7)

Overall, the Commission comes to the conclusion that the Member States under review acted in compliance with the SBC, and the invocation of the derogation clause was adequate and proportionate.

The Schengen Roadmap was published in March 2016 and offers an assessment of the situation and acknowledges that “the current patchwork of unilateral decisions on the reintroduction of border controls needs to be replaced with a coordinated approach [...] with the aim to subsequently lift all internal border controls as quickly as possible” (COM[2016] 120 final 2). The document repeatedly cites “irregular migration” (COM[2016] 120 final 3, 4, 10, 11) and “deficiencies relating to the management of the external border” (COM[2016] 120 final 2, 6, 10, 11) as serious threats to Member States’ public policy or internal security, but fails to provide further details or evidence of this suggestion. Moreover, the Roadmap contains a timeline with action items that are to be completed in order to return to a fully functioning Schengen area, for which the target date was December 2016 (COM[2016] 120 final 12). Most action items concern Greece and provisions to its external border management, but also announce the invocation of SBC Article 29 in May, if deficiencies persist (COM[2016] 120 final 12).

Following the SGP in 2013, the Commission has the power to propose that Member States reinstate temporary internal border controls, if the Council issues an according recommendation to do so (SBC, Article 29), if all other measures have proven insufficient and the exceptional circumstances that put the overall functioning of the Schengen area at risk prevail. In such cases, based on said recommendation from the

Council, internal border controls may be introduced (or in this context maintained) for a period up to six months, which may be prolonged three times. In late 2015, temporary internal border controls were first reintroduced under Article 28 (formerly Art. 25 of the 2013 SBC) for cases that require immediate action, for a maximum period of two months. After this initial period, Article 26 was invoked. It provides procedures for foreseeable circumstances, for a maximum period of six months. When this option was eventually exhausted as well, but the identified ‘threat’ to public policy and internal security continued, Article 29 was invoked. In May 2016, November 2016, February 2017, and May 2017, the Council issued such recommendations for Austria, Denmark, Germany, Norway, and Sweden.³⁹ The decisions list recommended locations of border controls for each of these five Member States in an effort to restrict border controls to what is strictly necessary. All five Member States that were mentioned in the decisions prolonged their border controls for the maximum period set out in the respective document. The decisions also require the Member States that chose to continue their controls to report to the Commission regularly. Aside from the fact that none of the five states fulfilled their reporting duties in a satisfying way, there are a few aspects of these recommendations that stand out. First of all, multiple times throughout the documents under review, reference is made to ‘migrants’ rather than asylum seekers or refugees, which most of the third-country nationals that have entered the EU ‘irregularly’ during the crisis are, echoing the language used by Member States in their notification letters. Additionally, the documents state that:

³⁹ The Council Implementing Decisions recommending the prolongation of internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk only address cases where ‘irregular migration’ was the justification for reinstating border controls. Since France reintroduced controls due to the national state of emergency and terrorist threats, it was not included in these recommendations.

[t]he record number of migrants arriving in the [EU] since 2015 and the deficiencies at parts of the Union’s external border identified during the November 2015 evaluation have resulted in important secondary movements, causing a serious threat to public policy or internal security in several Member States.” ([EU] 2016/894 2)

The recurring and exclusive reference to these mixed migration groups as ‘migrants’ implies the assumption that a considerable number – or even the majority – are migrants rather than asylum seekers or refugees, who would be entitled to international protection.

Moreover, the use of emergency measures such as the reintroduction of internal border controls is described as “adequate”, “necessary”, and “proportionate” ([EU] 2016/894 2). Furthermore, the recommendations adopts the same language as the notification letters and mention “the persistent risk of secondary movements” and states that “secondary movements [cause] a serious threat to public policy or internal security in several Member States” ([EU] 2016/894 2). Again, just like the notification letters, these documents are lacking any evidence to back up this claim or define why or how secondary movements amount to serious security threats for Member States. Another interesting observation is that as early as May 2016, when the Council issued its first recommendation to prolong border controls under Article 29, the number of arrivals in Greece was already decreasing. The recommendation admits that the Greek authorities have made “significant progress in addressing many of the deficiencies in its external border management” ([EU]2016/894 2), which, in combination with the EU-Turkey Statement, have led to “a sharp decrease in the number of irregular migrants and asylum seekers” ([EU]2016/894 2). However, in order to “address the serious threat to public

policy or internal security posed [...] by the combination of deficiencies in external border control in Greece and the secondary movements of irregular migrants” ([EU]2016/1989 1), the Commission time and again validates the Member States’ fears and recommends to prolong border controls “as a last resort measure” ([EU]2017/818). The Council’s last recommendation expired on November 11, 2017. Since the Council has issued four recommendations to prolong internal border controls under Article 29 of the SBC (The first and last one for six months each, the second and third for three months each), it was unable to release another one in November. Six Member States (Austria, Denmark, France, Germany, Norway, and France) notified the Council that they would maintain their internal border controls until May 2018 regardless.

The last aspect of my findings, which I would like to discuss here, is the general compliance of Member States with the legal framework of the SBC.⁴⁰ One of the most important findings that I hope to have demonstrated above is the fact that Member States may have officially complied with Article 27 of the SBC, which sets out the information that Member States have to provide if they decide to reinstate border controls. SBC Article 27(1) stipulates that Member States must supply “the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security.” Instead of “including all relevant data” however, Member States have gotten away with citing vague, unsubstantiated fears and claiming relations and connections that are unsupported. Most notification letters are rather brief and provide little information on the nature of the supposed threats, other than that they repeat the exact wording of the SBC and certain keywords. Reporting duties are

⁴⁰ This section will focus on violations of the Schengen acquis. For a detailed consideration of how the responses to the 2015 refugee crisis have challenged legality in terms of human rights violations and the rights of EU citizens, see Topping (2016).

largely ignored, as is evident in the small number of reports as compared to the high number of notification letters, particularly if taken into consideration that monthly reports were required by the Commission and the Council, and multiple notification letters encompassed time periods of up to six months. Since most of the few reports that have been provided are not publicly accessible, the quantity and quality of any additional information they may or may not contain is impossible to estimate.

Moreover, the case of France is an interesting one. France reinstated border controls at all of its borders on November 13 under Articles 23 and 24 of the SGP (later Articles 25 and 27 of the 2016 SBC), since it was hosting the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 21) in Paris. The controls were announced in late October, but November 13 coincided with the date of the terrorist attacks in Paris which led President Hollande to declare a national state of emergency due to the terrorist threat, which became the justification for prolonging internal border controls until the writing of this thesis. Under the articles that France repeatedly cites, however, Member States are only allowed to reintroduce border controls “for a limited period of up to 30 days or for the foreseeable duration of the threat if its duration exceeds 30 days” (SGP, Art 23[1]). Article 23 further stipulates:

3. If the serious threat to public policy or internal security in the Member State concerned persists beyond the period provided for in paragraph 1 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 23a and in accordance with Article 24, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, *shall not exceed six months*. Where there are exceptional circumstances as referred to in Article 26, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article. (SGP, Art. 23[3-4], emphasis added)

France repeatedly disregarded these limits and prolonged its border controls for more than 30 days at a time (14/12/2015-26/2/2016 [15181/15+REV 1]; 27/7/2016-26/1/2017 [11514/16]; 27/1/2017-15/7/2017 [5055/17]; 16/7/2017-31/10/2017 [10365/17]; 1/11/2017-40/4/2018 [12933/17]), and well beyond the six month limit. Especially taken into account that only under exceptional circumstances that put the overall functioning of the Schengen area at risk, as well as with a mandate from the Commission, can internal border controls be reintroduced for a maximum period of two years (Article 26 of the SGP and later Article 29 of the 2016 SBC), it seems very odd that the French conduct was considered acceptable. The Council did not once issue a recommendation for France to prolong its border controls as is required under Schengen law for maintaining border controls for longer than the six month period laid out in Article 23/now 25. However, I could not find any opposition to this breach of Schengen law in the Council documents, so it seems the Commission, the Council, and the other Member States alike agreed in silence.

All the other Member States that have reintroduced border controls since 2015, stayed within the time constraints of the respective articles they were invoking, until recently. As mentioned before, while September marked the two year anniversary of

‘temporary’ border controls in Austria and Germany, November 11, 2017 was the day that the Council’s final recommendation for prolonging border controls under Article 29 of the SBC expired. Nevertheless, Austria, Denmark, France, Germany, Norway, and Sweden prolonged their border control for an additional 6 months, until May 2018 (13207/17+ADD 1; 13205/17; 13203/17; 13142/17; 13141/17; 12933/17). While all these letters acknowledge that the European Commission announced that it would be unable to present another proposal on prolonging internal border controls to the Council of the European Union, they univocally state that the ongoing terrorist threat and “uncontrolled secondary migration” (13142/17) create serious threats to public policy and internal security. Article 25(4) of the SBC clearly states that:

The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 29, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article. (Art. 25[4] SBC)

The Article clearly states that the maximum time period for ‘temporary’ internal border controls is two years, thus defining the term ‘temporary’ in this context. Whether two years is objectively a ‘temporary’ period is debatable. In this light, the Commission has already decided to interpret and apply the SBC rather liberally, stating in a recent proposal that “[i]n the interpretation of the Commission, the periods of reintroduced border control under Articles 28 and 25 can cumulate” (COM[2017] 571 final). Even taken this declaration into account, the six Member States that are currently maintaining their border controls under Article 29 have no right to do so, as they lack the necessary

mandate from the Council. Even though these six Members States are now in clear violation of the existing SBC, no disciplinary actions of any kind have been taken by the Commission or other EU institutions until today. Instead, what the Commission has presented in response is a proposal for another Schengen reform.

In light of the refugee crisis and the supposedly ongoing security threats to Members States, France and Germany are reported to have made a proposal to the Commission regarding amendments to the SBC that would allow Member States to reintroduce border controls for up to four years (Becker 2017; Gutteridge 2017; Henley 2017; Spiegel Online 2017). In early September 2017, the NGO Statewatch published this proposal on their website, and while there is no definite way of knowing whether this document is legitimate, it was leaked to several European media organizations. Said document is backed up by Austria, Denmark, and Norway and “call[s] on the Commission to submit draft legislation aimed at amending the provisions under Article 25 of the SBC to allow Member States to reintroduce internal border controls for periods longer than currently provided for” (“Non-Paper” 1). The documents states that current legislation “does not match the needs in context of a long-term terrorist threat” (“Non-Paper” 1), and suggests that the above cited Article 23(4) of the SBC should be amended to allow the total period during which border controls may be reintroduced to be prolonged from a maximum of two years to four (“Non-Paper” 2). Regardless of the legitimacy of this working paper, the Commission published a proposal for reforming the SBC later that month. In its first contextual component, the proposal states that Member States had previously reinstated border controls “due to the secondary movements of irregular migrants and the increase of cross-border terrorist threats posing a serious threat

to the internal security or public policy” (COM[2017] 571 final 2) of these states, “sometimes until the exhaustion of the current legal framework (COM[2017] 571 final 2). Furthermore, the Commission comes to the conclusion that Member States have applied the emergency measures of the derogation clauses “in a responsible manner” (COM[2017] 571 final 3) and that the SBC “has been sufficient to address challenges faced until now [but that it is not] sufficiently adapted to address the evolving security challenges” (COM[2017] 571 final 2). What exactly these new and evolving security challenges are, remains vague in the proposal other than the operation of cross-border terrorist networks and exceptional national measures such as the state of emergency (COM[2017] 571 final 4). Since transnational terrorist networks have been operating for a long time in Europe, and national legislation enabling Member States to declare a state of emergency in exceptional circumstances is also not a novelty, the question what has changed since 2015 remains. Irregular migration is mentioned several times throughout the document (notable here is again the choice of words and the reference to irregular migrants rather than asylum seekers or refugees), but how it compromises public policy and internal security is not specified. The declared objectives of the proposal are:

- to ensure that the time limits applicable to temporary internal border controls allow Member States to address threats sufficiently
- to introduce better procedures in order to ensure that invocations of the derogation clauses are based on proper risk assessments and in accordance with neighbouring Member States

In summary, the Commission proposes increased time limits for temporary reintroductions of intra-Schengen border controls, new guidelines for risk assessments

(including collaborations with relevant agencies such as Europol and the European Border and Coast Guard), and improved follow-up processes regarding opinions issued by the Commission (COM[2017] 571 final 3-4). The Commission proposed to raise the time limit of temporary internal border controls to five years instead of the current two. Later on in the proposal, a draft for the actual regulation is attached, in which Article 25(4) now states that:

The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed one year.

In the exceptional cases referred to in Article 27a, the total period may be further extended by a maximum length of two years in accordance with that Article.

Where there are exceptional circumstances as referred to in Article 29, the total period may be extended by a maximum length of two years, in accordance with paragraph 1 of that Article. (COM[2017] 571 final 15)

The wording of this Article leaves room for interpretation. Could border controls be reinstated for up to three years or even five? A fact sheet that the Commission published on the same day as the proposal explains that controls can be reinstated in foreseeable events for up to one year, and, that “in the case of long-lasting persistent security threats, an extraordinary possibility for prolonging border controls [...] for another two years” had been introduced (“Fact Sheet” para. 4). As the fact sheet suggests, three years would be the maximum time period; however, the formulation of the reformed Article 25 indicated that additionally to the one year under Article 25(3) and the two years under Article 29 in exceptional cases that put the overall functioning of the Schengen area at

risk, Member States could justify their border controls for another two years under Article 27. Considering the fact that the Commission has already expressed that time periods set out under several of the derogation clauses may cumulate, it cannot be ruled out that the new legislation could enable Member States to reinstate ‘temporary’ internal border controls in emergency situations for up to five years. While the proposal promises a greater emphasis on accountability and better procedural safeguards, it also has the potential to be interpreted in a way that could seriously impact the functioning of the Schengen zone beyond a ‘temporary’ period of time. The proposal has yet to enter into force.

Before this chapter can be concluded, it is necessary to compare my research findings with Groenendijk, Van der Woude and Van Berlo, and Guild et al.’s work. In his study on the reinstatements of border controls between 1995 and 2003, Groenendijk arrived at the conclusion that “the authorities evidently deem controls at internal borders not to be an efficient instrument in the fight against serious criminal activities unrelated to political events” (159). With a more specific focus on immigration control, he states that there were three cases in the period he examined in which controls had been reintroduced with the aim of restricting the immigration of third-country nationals (160). In his findings, Article 2(2) of the SIA was indeed a temporary measure (with controls lasting between one day and three weeks), with the main purpose of “disciplining citizens”⁴¹ (Groenendijk 168), rather than combatting crime or fighting terrorism, as these are long-term activities that can hardly be advanced through short-term measures. Van der Woude and Van Berlo’s research produced similar findings. Other than the fact that

⁴¹ Which is in itself a contested use of Article 2(2), as the practice of reintroducing border controls in order to prevent persons from crossing borders restricts the civil liberties of European citizens and third-country nationals. For further consideration of this argument, see Apap and Carrera (2004).

they recorded far fewer and shorter invocations of the derogation clauses, they found that “crimmigration rationales and/or the fear of immigration [...] do not seem to play a major role in the invocation of the exception clause” (73). As mentioned before, in most of the cases they examined between 2000 and 2014, internal border controls were temporarily reintroduced due to political summits and other large-scale public events. As for Guild et al.’s study of temporary border controls from the onset of the crisis until June 2016, I find our results to concur. The trends that they identified regarding the insufficient justifications of Member States’ notification letters and follow-up documents proceed throughout the period of my analysis. All this previous work taken into consideration, it can be observed that Member States only recently started to use the derogation clauses for the purpose of deterring asylum seekers from entering their national territories. This development is particularly dangerous because the Commission and the Council have validated these decisions and thereby set a precarious precedence for future situations, as well as contributed to a further criminalization of asylum seekers and securitization of migration.

In summary, what the material under review and my examination and analysis have demonstrated in this chapter, is the fact that Member States have not fulfilled their legal obligation under the SBC in a satisfactory fashion, and that their failure to do so has gone unchallenged by the Commission. From a legal point of view, the requirements under Articles 26 and 27(1) have not been met in a single case. Neither have the Member States provided sufficient data or other evidence to back up their claims and explain how exactly higher numbers of asylum seekers constitute a serious security threat, nor have they assessed to what extent internal border controls remedy these identified threats,

affect the free movement of persons within the Schengen area, or how their responses have been proportionate. As Guild et al argue, the mere repetition of key words from the derogation clauses, such as ‘serious threat,’ ‘public policy,’ and ‘internal security’ is not equivalent to real grounds for the reinstatement of border controls under Article 26 (43). To suggest that the number of asylum seekers in itself is a legitimate justification for internal border controls, with the sole purpose of re-allocating the responsibility to register and accommodate new arrivals, could be interpreted as a breach of international laws and agreements such as the Geneva Convention, the EUCFR and CEAS. To this end, “[b]order controls became a surrogate for the proper reception of asylum seekers and the correct operation of the CEAS” (Guild et al. 48). Asylum seekers are consistently conceptualized as terrorist threats and criminalized for ‘illegally’ gaining access to EU territory or interior Member States, which is indicated by the constant references to illegal, irregular, or just plain ‘migrants’ rather than ‘asylum seekers’ or ‘refugees’. Vague references are made to worries about overwhelmed social and police services, with no explanation as to why these issues cannot be addressed through staff transfers or engaging temporary or more staff. While the Member States have formally complied with the SBC until recently, my analysis has shown that their justifications lack substantiation and detail and fail to fulfil the criteria laid out in the SBC (Guild et al. 72). Considering the political weight of the decision to reinstate internal border controls in the Schengen area, Member States’ justifications and proportionality assessments must be thorough and complete. Furthermore, the “rote repetition of the wording of the Articles in the SBC should not be considered sufficient” (Guild et al. 72). To adopt such exceptional emergency measure on the basis of unsubstantiated fears or future possible contingencies

is disproportionate and runs counter to the spirit of the Schengen agreement. The underlying reason for these border controls are domestic anxieties caused by an increasing number of visible minority third-country nationals into and within the EU (Van der Woude & Van Berlo 78), and the fact that border controls are highly visible symbolic measures that politicians are willing to employ in an attempt to make their people, and electorate, feel safe.

These nebulous fears and justification have not only been recognized and legitimized by the Commission and the Council, but even encouraged. A dynamic unfolded in which the Commission adopted the language used by Member States in their notification letters, and Member States in turn used the exact rhetoric that these EU institutions provided in their implementing decisions and proposals. A self-reinforcing cycle of rhetoric and practice has been established that criminalizes and securitizes asylum seekers and legitimizes last-resort emergency measures that undermine the core values of the EU. The Commission has rarely made use of its power to request additional information from Member States in order to assure compliance with Article 26 of the SBC, has failed to hold them accountable for their lack of sufficient grounds to trigger the derogation clauses, and has eventually legitimized their actions with every single opinion and proposal it issued. What started out as several unilateral actions by Member States in the fall of 2015, has turned into a sanctioned permanent state of emergency and a serious undermining of Union law. What is supposed to be a last-resort measure of exceptional gravity and nature has turned into common practice. However, the responses to this latest refugee and Schengen crisis should not be seen as isolated events, but rather as a part of a broader development of the securitization of migration, as discussed in the previous

chapter. The responses to the 2015 refugee have to be seen as what they are: an erosion of civil liberties, human rights, and the rule of law.

5. Conclusion

»Schengen is alive. Schengen has to stay alive [...]. If Schengen dies, Europe will die.« (Dimitris Avramopoulos)

As this thesis has demonstrated, European Member States have gone to drastic ends to deter asylum seekers during this recent refugee crisis. They have consistently been framed as security threats in official notification letters announcing national border controls in order to justify the exceptional measures that have been adopted to respond to the crisis. Since then, the crisis has publically been declared to be over. In his 2017 State of the Union address, the European Commission's current president Jean-Claude Juncker credits the EU-Turkey Statement and the newly created European Border and Coast Guard with reducing 'irregular arrivals' via the Eastern and Central Mediterranean routes (European Commission, "State of the Union Address"). However, while he claims that arrival numbers have gone down by 97% and 81% respectively as compared to 2016, internal border controls have remained in place in Austria, Denmark, Germany, Norway, and Sweden, and France.

Why have Member States gone to such extraordinary lengths in this situation? In the previous chapter, I analyzed Member States' most frequent justifications of internal border controls and demonstrated that they are vague, insufficient, disproportionate, and ineffective for their official states purposes, and the question arises why Member States still go through the trouble of reviving their borders in these times of perceived domestic crisis. They are only meant to be short-term measures, they cost the Schengen states considerable amounts of money, and their efficiency is rather questionable, as I have argued previously. When Groenendijk examined the same question back in 2004, he suggested that they may have more of a symbolic function and are intended to make the

public feel safe. They are highly visible measures that have an effect on a large number of people and reassure the public that their government is proactive in times of crises. Wendy Brown explores this argument in depth in her 2010 work *Walled States, Waning Sovereignty*. Building her argument, she asserts that state sovereignty in its classic sense (supremacy, perpetuity over time, decisionism, absoluteness and completeness, nontransferability, and territoriality [Brown 22]) has been eroded by globalization, the transnational flows of capital, ideas, and people, as well as international economic and governance institutions.⁴² At the core of her analysis, she argues that

[The] new nation-state walls are iconographic of this predicament of state power. Counterintuitively perhaps, it is the weakening of state sovereignty, and more precisely, the detachment of sovereignty from the nation-state, that is generating much of the frenzy of nation-state wall building today. Rather than resurgent expressions of nation-state sovereignty, the new walls are icons of its erosion. While they may appear as hyperbolic tokens of such sovereignty, like all hyperbole, they reveal a tremulousness, vulnerability, dubiousness, or instability at the core of what they aim to express—qualities that are themselves antithetical to sovereignty and thus elements of its undoing. (Brown 24)

Following this line of argument, Member States have reintroduced border controls in order to reassert their national sovereignty and display their power and control in a chaotic situation. De Genova echoes a similar sentiment when he argues that the 2015 refugee crisis constitutes “a ‘crisis’ of territorially-defined state power over transnational,

⁴² The EU itself is an excellent example of how international cooperation has transformed state sovereignty over the past century. See Bulmer and Lequesne (2005), Olearnik-Szdlowska (2015), Tokár (2001), and Wæver (1995) for in-depth discussions of how EU membership has affected and transformed different aspects of its Member States’ national sovereignty.

cross-border human mobility” (42) that has strategically been framed as a crisis in order to reconfigure the European border governance and immigration and asylum law enforcement (42). The outcome of the 2015 refugee crisis “may just be a new configuration of the power to define and govern emergency within the frame of European migratory policy, with the strongest [Member States] pushing for an extension of their sovereign prerogative to suspend the ordinary Schengen regime” (Campesi 2).

Where do we go from here? National governments are pushing for an extension of their ability to prolong internal border controls in times of crisis, and the Commission is likely to give in to this pressure in order to avoid further internal conflict. Solidarity amongst Member States is arguably at an all-time low, and a revived focus on national sovereignty in the form of internal border controls has brought to light a Europe that has failed to live up to its founding values. The 2015 refugee crisis has not broken Schengen, but stretched it beyond its legal limits, and is likely to have a lasting effect on the agreement. The state of emergency that first prompted Member States to turn to such last resort measure as intra-Schengen border controls has become perpetual and bears the risk of permanently altering the current Schengen regime. That being said, in view of the 2011 Franco-Italian dispute, Zaiotti suggests that “these recurrent crises can [...] be understood as cyclical adjustment mechanisms that have helped the regime withstand new challenges and consolidate its institutional presence in Europe” (“The Italo-French row” 4). Whether these upcoming adjustments will help the Commission to reclaim some of its agency and introduce more efficient monitoring mechanisms and democratic accountability for Schengen law, or whether they will further consolidate Member States autonomy in defining national security threats remains to be seen. However, Guild et al.

warn that such frequent legislative reforms negatively affect legal certainty, and that the 2013 SGP should be followed strictly before more amendments are considered (74). They propose a set of recommendations that includes that the Commission should adopt a more “evidence-based approach to the legal assessment of Member States’ notifications for the reintroduction of intra-Schengen border controls” (74), a comprehensive proportionality test, prepare guidelines of the appropriate application of Article 31 of the Geneva Convention, and that the results of Schengen evaluation concerning the lawfulness of Member States’ actions should meet “a higher degree of public scrutiny and transparency” (74).⁴³ Considering the current situation, the application of the derogation clauses undermine both the principles of solidarity between Member States, as well as adherence to Schengen law, as some countries such as Greece are punished for being unable or unwilling to receive and host large numbers of asylum seekers, while other states are allowed to close their internal borders without sufficient grounds (Guild et al. 75).

Moreover, while this ‘unprecedented’ refugee ‘crisis’ has substantially derailed the Union’s solidarity and put Schengen to test like no other event before, it is also more than likely that future international conflicts or issues such as climate change will lead to greater numbers of refugees worldwide. The responses to the 2015 crisis have set a dangerous precedent for future situations that could further solidify the securitization of migration and lead to a suspension of Schengen. Only if the EU returns to a fully implemented Schengen acquis, and takes actions to desecuritize⁴⁴ migration, can we

⁴³ See Guild et al. 2016 for the details.

⁴⁴ Desecuritization as a concept is comparatively understudied; Wæver suggests that desecuritization can occur through a limited use of security speech acts, whereby threats are turned into challenges and security into politics, which in turn opens up domestic space for more open political discussions (“Securitization”

possibly begin to create “a Europe that protects, a Europe that empowers, [and] a Europe that defends” (European Commission, “State of the Union Address”), as envisioned by Juncker in 2017.

49). Other scholars propose that education can play a crucial role in changing societal perceptions about securitized groups (Coskun 2011; Schüller 2012).

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9147/17; 9379/17; 9382/17; 9006/17; 9512/17; 9683/17 (not accessible); 10186/17; 10450/17 (not accessible); 10450 (not accessible); 10451/17 (not accessible); 10365/17; 10568/17 (not accessible); 10570/17 (not accessible); 10754/17 (not accessible); 10186/17; 10365/17; 11734/17; 11758/17 (not accessible); 12933/17; 13141/17; 13142/17; 13203/17; 13205/17; 13207/17 + ADD 1; 14407/17.

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Appendix

Detailed list of all temporary reintroductions and prolongations of internal border controls between January 1, 2014 and November 24, 2017

No	Document	Delegation	Dates Concerned	Articles Cited	Reasons Cited
1	14407/17 SE - internal borders	SE	12-19/11/17	Art. 28(1) of Reg. (EU) 2016/399	Social Summit for Fair Jobs and Growth on 17/11/2017; “[...] the risk of unrest and serious disorder in connection to the Social Summit for Fair Jobs and Growth”; “[...] experiences of serious disorder in connection to similar meetings and recent violent incidents during demonstrations [...]”
2	13207/17 + ADD 1 AT - internal borders - Prolongation	AT	12/11/17- 11/5/18	Reg. (EU) 2016/399	“[...] ongoing deficits in the protection of the external borders and therefore resulting illegal secondary migration [...]”; “The security situation in the European Union continues to be tense”; “A serious threat to the public order and security comes from this uncontrolled illegal migration. Austria is still facing a large number of unregistered asylum seekers”; “In the short-term, significant changes cannot be expected”
3	13205/17 NO - internal borders - Prolongation	NO	12/11/17- 11/5/18	Art. 25 & 27 of Reg. (EU) 2016/399	“The terrorist threat in Europe is a grave concern, and the European security situation remains tense”; “Shortcomings in the protection of the external borders and significant irregular secondary migration within the Schengen area persist. This uncontrolled irregular migration creates serious threats to public security and order, with a risk of persons suspected of having terrorist intentions posing as refugees”; “The Norwegian Police Security Service publicised an updates national threat assessment [...], which concluded that it is probable that terrorist attacks will be attempted to be carried out in Norway”; “It is very unlikely that the situation will change significantly in the near future”
4	13203/17 SE - internal borders - Prolongation	SE	12/11/17- 11/5/18	Art. 25 of Reg. (EU) 2016/399	“[...] due to the continuous serious threat to public policy and internal security [...]”; “The Swedish Security Service has come to the conclusion that the threat level remains the same as on 7 April 2017 when Stockholm witnessed what is

					considered a terrorist attack. Shortcomings in the protection of the external borders persist and contribute to this threat, as they enable potential terrorists and other criminals to enter the Schengen territory unnoticed. As I foresee that this situation will last beyond the near future [...]"
5	13142/17 DE - internal borders - Prolongation	DE	12/11/17- 11/5/18	Reg. (EU) 2016/399	"[...] persisting shortcomings in protecting the external borders which facilitate irregular secondary migration to other member states"; "dramatic terrorist attacks"; "The European security situation remains tense"; "This uncontrolled irregular migration creates serious threats to public security and order"; "It is very unlikely that the situation will significantly change in the near future"
6	13141/17 DK – internal borders - Prolongation	DK	12/11/17- 11/5/18	Art. 25 & 27 of Reg. (EU) 2016/399	"The many failed, foiled and completed terrorist attacks carried out in EU Member States in 2016 and 2017 have demonstrated in all their horror that terrorist groups are likely to try to take advantage of deficiencies in our border controls – that crossing the external and internal borders of the Schengen area is part of their strategy [...]"; "persistent shortcomings and structural deficiencies at the EU external borders"; non-application of the Dublin regulation; "[...] significant irregular secondary migration [...] constitutes a real threat to the public order and internal security in our societies"; "[...] the large number of irregular migrants and failed asylum seekers present in our neighbouring countries that are waiting to be returned to their country of origin or transit poses a real security threat, as there is a risk that some terrorist group will exploit their vulnerable situation"; internal border controls are considered "a necessary tool to manage the migration flows and ensure the security of our citizens"
7	12933/17 FR - internal borders - Prolongation	FR	1/11/17- 30/4/18	Art. 25(1) & 27 of Reg. (EU) 2016/399	"[...] the terrorist threat has remained high on the French territory"; "The risk analysis elaborated by competent services confirms the existence of a durably high level of this threat, and makes it credible that other attacks could be carried out on French soil [...]"; "The crossing of EU internal borders remains a strategy of terrorist groups [...]"

8	11758/17 DE - internal borders - Report	DE	12/6-11/7/17	Art. 25 of Reg. (EU) 2016/399	N/A
9	11734/17 NO - internal borders	NO	26/8-25/9/17	Art. 25 of Reg. (EU) 2016/399	UCI Road World Championships in Bergen from 16-24/9/17 “Events like the aforementioned Championship are known to attract spectators with alternative motivations, hereunder terrorists. Hosting the World Championship in itself poses a serious threat to internal security [...]”
10	10365/17 FR - internal borders Prolongation	FR	16/7-31/10/17	Art. 25(1) & 27 of Reg. (EU) 2016/399	The state of emergency; “the persistence of the terrorist threat”; “The various attacks on national territory, in particular the attacks in Nice on 14 July 2016 and recently in Paris, as well as those in the UK, show that the terrorist threat remains acute”; “A risk analysis by the competent services has confirmed the very high threat level and prompted concern about other attacks on national territory”; “[...] crossing the external and internal borders of the Schengen area is part of the terrorist groups’ strategy [...]”; “The specialised services indicate that the terrorist groups’ strategy for committing attacks in France and other European countries is based in particular on the opportunities for crossing the external borders provided by the current migratory pressure there”
11	10186/17 DE - internal borders	DE	12/6-11/7/17	Art. 25 of Reg. (EU) 2016/399	G20 summit in Hamburg from 7-8/7/17
12	10754/17 <i>AT - monthly report</i>	AT	11/5-10/6/17	N/A	N/A
13	10570/17 <i>SE - monthly report</i>	SE	24/4-31/5/17	N/A	N/A
14	10568/17 <i>DK - monthly report</i>	DK	8/5-11/6/17	N/A	N/A
15	10451/17 <i>NO - monthly report</i>	NO	12/5-12/6/17	N/A	N/A
16	10450/17 <i>DE - monthly report</i>	DE	Until 11/5/17	N/A	N/A
17	10186/17 DE - internal borders	DE	12/6-11/7/17	Art. 25 of Reg. (EU) 2016/399	Advance notice, see #11 G20 Summit in Hamburg, 7-8/7/17
18	9683/17 <i>AT - monthly report</i>	AT	11/4-10/5/17	N/A	N/A
19	9512/17 DK - internal borders - Prolongation	DK	12/5-11/11/17	Art. 29 of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/818 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/5/2017

					“[Exceptional] circumstances putting the overall functioning of the Schengen area at risk”
20	9006/17 DE - internal borders	DE	Dates confidential	Art. 25 of Reg. (EU) 2016/399	G20 Summit in Hamburg 7-8/7/17; “the terrorist threat situation”
21	9382/17 NO - internal borders - Prolongation	NO	12/5-11/11/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/818 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/5/2017 “[Concerns] over the number of irregular migrants still present in parts of Europe”; “large secondary movements”; “avoid the entry of persons who do not fulfill the requirements for legal entry into Norway”
22	9379/17 SE - internal borders - Prolongation	SE	12/5- 11/11/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/818 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/5/2017 “[Deficiencies] in the external border control risk resulting in that i.a. potential terrorists could enter into the Schengen territory unnoticed”
23	9147/17 AT - internal borders - Prolongation	AT	12/5/17- 11/11/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/818 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/5/2017 “[Risk] of migrants continuing their journey in an irregular manner”; “combating smuggling of migrants”
24	9145/17 DE - Prolongation	DE	12/5/17- 11/11/17	Art. 29 of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/818 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/5/2017 “[Continuing] shortcomings in the protection of external borders and the migration situation within the Schengen area”; “for reasons of migration and security policy”
25	8182/17 IT - internal borders	IT	10-30/5/17	Art. 25 of Reg. (EU) 2016/399	G7 Summit Taormina 26-27/5/17
26	8983/17 SE - <i>monthly report</i>	SE	April 2017	N/A	N/A
27	8641/17 DE - German-Austrian	DE	N/A	N/A	N/A

border - Report					
28	8332/17 DK - <i>monthly report</i>	DK	12/2-31/3/17	N/A	N/A
29	8330/17 AT - <i>monthly report</i>	AT	11/3-10/4/17	N/A	N/A
30	8282/17 SE - <i>monthly report</i>	SE	March 2017	N/A	N/A
31	8281/17 NO - <i>monthly report</i>	NO	11/3-7/4/17	N/A	N/A
32	8023/17 AT - <i>monthly report</i>	AT	11/2-10/3/17	N/A	N/A
33	8319/17 SE - internal borders	SE	7-14/4/17	Art. 28(1) of Reg. (EU) 2016/399	Suspected terror attack in Stockholm on 7/4/17
34	8182/17 IT - internal borders	IT	10-30/5/17	Art. 25 of Reg. (EU) 2016/399	Advance notice, see #25 G7 Summit in Taormina 26-27/5/17
35	7967/17 PT - internal borders	PT	10-14/5/17	Art. 25 & 26 of Reg. (EU) 2016/399	Pilgrimage of the Pope 12-13/5/17
36	7857/17 SE - <i>monthly report</i>	SE	N/A	N/A	N/A
37	7847/17 NO - <i>monthly report</i>	NO	10/2/2017- 10/3/2017	Council Implementing Decision (EU) 2017/246	185 746 people have been checked during the period in question, 36 have been investigated further, 4 have been refused entry, no asylum application have been lodged following a control situation.
38	7662/17 DE - <i>monthly report</i>	DE	N/A	N/A	N/A
39	6980/17 MT - air and sea borders - Report	MT	21/1-9/2/17	Art. 25 & 27 of Reg. (EU) 2016/299	N/A
40	6366/17 DK - internal borders - Prolongation	DK	12/2-11/5/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/246 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 7/2/2017
41	6258/17 SE - internal borders - Prolongation	SE	12/2-11/5/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/246 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 7/2/2017
42	6257/17 NO - internal borders - Prolongation	NO	12/2-11/5/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/246 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 7/2/2017
43	6255/17	DE	12/2-11/5/17	Art. 29 of	Council Implementing Decision (EU)

	DE - internal borders - Prolongation			Reg. (EU) 2016/399	2017/246 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 7/2/2017; “[Continuing] shortcomings in the protection of the external borders and the migration situation within the Schengen area”; “the security situation in Germany [...] also meets the conditions which would justify conducting checks at the internal borders as a matter of national sovereignty”
44	6252/17 AT - internal borders - Prolongation	AT	12/2-11/5/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2017/246 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 7/2/2017; “[Preventing] illegal migration in the direction of Central Europe and [...] combatting smuggling of migrants”
45	5206/17 MT - air and sea borders	MT	21/1-9/2/17	Art. 25 & 27 of Reg. (EU) 2016/399	Malta Informal Summit 3/2/207
46	5055/17 FR - internal borders - Prolongation	FR	27/1-15/7/17	Art. 25(1) & 27 of Reg. (EU) 2016/399	State of emergency Attack of Nice on 14/7/2016 “confirmed the unremitting threat of terrorism faced by France”; “The ongoing risk analysis by the competent services confirms a further increase in this threat and has prompted fears of fresh attacks on national territory, as evidenced by the recent arrests of members of terror cells in September and November 2016, which back up this analysis”; “It has been confirmed that crossing the external and internal borders of the Schengen area is part of the terrorist groups’ strategy, which often involves preparing attacks in one Member State from the territory of a neighbouring Member State”; “Moreover, the current situation reinforces the link between the terrorist threat and the crossing of borders owing to the geographical proximity of migratory routes to the regions at the source of the terrorist threat, which facilitates the arrival in the Schengen area and the return to the national territory of individuals - European and non-European nationals alike - who

					might be plotting a terrorist attack in France.”
2016					
47	14880/16 DE - internal borders - Prolongation	DE	12/11/16- 11/2/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/1989 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/11/2016
48	14879/16 AT - internal border - Prolongation	AT	12/11/16- 11/2/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/1989 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/11/2016
49	14876/16 DK - internal border - Prolongation	DK	12/11/16- 11/2/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/1989 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/11/2016
50	14680/16 SE - internal borders - Prolongation	SE	12/11/16- 11/2/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/1989 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/11/2016
51	14386/16 NO - internal borders - Prolongation	NO	12/11/16- 11/2/17	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/1989 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 11/11/2016
52	11858/16 PL - internal borders - Report	PL	4/7-2/8/16	Art. 22 of Reg. (EU) 2016/399	N/A
53	11514/16 FR - internal borders Prolongation	FR	27/7/16- 26/1/17	Art. 25 & 27 of Reg. (EU) 2016/399	State of emergency “COP21, the terrorist threat, and the organization of major sporting events” “for various reasons” → for the previous introduction from Nov 13, 2015 until July 26, 2017; “attack in Nice on 14 July confirms the ongoing threat of terrorism faced by France”; “As evidenced by the attacks of 13 November 2015, crossing the external and internal borders of the Schengen area is part of the terrorist groups’ strategy, which sometimes involves preparing attacks in one Member State from the territory of another Member State”; “The current migratory situation reinforces the link between the terrorist threat and the crossing of borders. In fact, the volume

					of flows at the EU's external borders and the geographical proximity of migratory routes to the regions at the source of the terrorist threat facilitate the arrival in the Schengen area and national territory of individuals - European and non-European nationals alike - who might be plotting a terrorist attack in France.”
54	10135/16 NO - internal borders - Prolongation	NO	12/6/16- 11/11/16	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/894 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 12/5/2016
55	9991/16 PL - internal borders	PL	4/7-2/8/16	Art. 27 of Reg. (EU) 2016/399	NATO Summit (8-9/7/2016); World Youth Days (25-31/7/2016); Pilgrimage of the Pope (28-31 July 2016)
56	9865/16 SE - internal borders - Prolongation	SE	8/6-12/11/16	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/894 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 12/5/2016
57	9792/16 DK - internal border - Prolongation	DK	3/6-12/11/16	Art .29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/894 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 12/5/2016
58	9506/16 FR - internal borders	FR	27/5-26/7/16	Art. 25(1) & 27 of Reg. (EU) 2016/399	UEFA Euro 2016 (10/6-10/7/2016), Tour de France (2-24/7/2016) “This risk is heightened by the terrorist threat which France and the whole of Europe have been facing in recent months”
59	8947/16 + REV 1 AT - internal border - Prolongation	AT	16/5-12/11/16	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/894 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 12/5/2016
60	8930/16 DE - internal borders - Prolongation	DE	14/5-12/11/16	Art. 29(2) of Reg. (EU) 2016/399	Council Implementing Decision (EU) 2016/894 for prolonging temporary internal border controls in exceptional circumstances putting the overall functioning of the Schengen area at risk of 12/5/2016
61	8827/16 NO - internal borders - Prolongation	NO	13/5-11/6/16	Art. 24 of Reg. (EU) 2016/399	“[The] serious threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society. Other measures had been deemed insufficient”; “[...] migratory pressure at the external

					border continues to be significant”
62	8667/16 SE - internal borders - Prolongation	SE	9/5-7/6/16	Art. 25 & 27 of Reg. (EU) 2016/399	“[The] remaining serious threat to public policy and internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”; “[...] although the situation has improved to some extent, there are still challenges for a range of important services in Swedish society and that the strained situation is likely to remain so for some time”
63	8571/16 DK - internal borders - Prolongation	DK	4/5-2/6/16	Art. 25 & 26 of Reg. (EU) 2016/399	“[...] Denmark is faced with a serious risk to public order and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; “historically high” number of asylum seekers; “ongoing pressure on Europe’s external borders”; neighbouring countries’ measures (ID controls in Sweden); “[...] uncertainties regarding the vast number of refugees and migrants who are now in Europe”
64	8217/16 FR - internal borders - Prolongation	FR	27/4-26/5/16	Art. 25(3) & 26 of Reg. (EU) 2016/399	State of emergency “[...] the major ongoing terrorist threat, illustrated by the attack on Brussels on 22 March 2016 [...]”
65	7948/16 NO - internal borders - Prolongation	NO	14/4-12/5/16	Art. 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[The] serious threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”; “[...] migratory pressure at the external border continues to be significant”
66	7873/16 BE - internal borders - Prolongation	BE	13-22/4/16	Art. 25(3) of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The risk is real that this rise [of transmigrants] will continue because of the start of the summer season and the better weather conditions”; evacuations of tent camps on northern France; “For this kind of [tent] camps has a big impact on the public order and security and on the general sense of security of the citizens. In the past few weeks different attempts were noticed to set up tent camps in the coastal zone and the police services already had to intervene several times to clear starting camps”
67	7716/16 SE - internal borders - Prolongation	SE	9/4-8/5/16	Art. 23 & 24 of Reg. (EC) 562/2006 as	“[The] remaining serious threat to public policy and internal security posed by the consequences of the unprecedented

				amended by Reg. (EU) 1051/2013	migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”; overwhelmed social services
68	7499/16 DK - internal borders - Prolongation	DK	4/4-3/5/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; “[...] the number of asylum seekers seems to remain at a relatively high level”; “historically high” number of asylum seekers; “ongoing pressure on Europe’s external borders”; neighbouring countries’ measures (ID controls in Sweden); “[...] there are still uncertainties regarding the vast number of refugees and migrants who are now in Europe.”
69	7360/16 + REV 1 FR - internal borders - Prolongation	FR	28/3-26/4/16	Art. 23(3) & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	State of emergency “[Due] to the ongoing terrorist threat”
70	7351/16 BE- internal borders - Prolongation	BE	24/3-12/4/16	Art. 23, 24 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“Even though the number of transmigrants dropped significantly in the days following the implementation of the border controls, indicating the dissuasive effect of our measures, the security impact remains high”; prevention of tent camps “that have a serious impact on the internal security”; “Apart from the physical integrity and wellbeing of the migrants, there is also a lot of material damage. In addition, this has an impact on the general feeling of insecurity of the inhabitants of the region”; organized crime and human smuggling
71	7136/16 AT - internal borders - Prolongation	AT	16/3-15/5/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] the enormous influx of third country nationals persisting since September 2015 [...]”; “ascertained and still prevailing serious flaws in external border controls in Greece”; “This is the only way within the scope of legal and actual opportunities to avoid security deficits in the future for the benefit of all citizens within the Schengen area.”; “[...] continuous overburdening of the executive branch, of emergency rescue services, and of public infrastructure [...]”
72	7122/16 NO - internal borders -	NO	16/3-13/4/16	Art. 24 of Reg. (EC)	“[...] the serious security threat to public policy and internal security posed by the

	Prolongation			562/2006 as amended by Reg. (EU) 1051/2013	consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”
73	6886/16 SE - internal borders - Prolongation	SE	10/3-8/4/16	Art .23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] due to the remaining serious security threat to public policy and internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”
74	6754/16 DK- internal borders - Prolongation	DK	5/3-3/4/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; “historically high” number of asylum seekers; “ongoing pressure on Europe’s external borders”; neighbouring countries’ measures (ID controls in Sweden)
75	6514/16 MT - internal borders - Report	MT	20/11-31/12/15	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] the global terrorist threat”; “[...] process of addressing a smuggling ring that was targeting Malta as a destination for illegal migrants travelling from other Schengen States”; “[...] Malta’s proximity to Libya, where the situation of instability facilitates the promulgation of extremist ideology across the territory”
76	6490/16 + REV 1 BE- internal borders	BE	23/2-23/3/16	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] the announced closure and evacuation of further migrant camps in the Nord-Pas-de-Calais region”; “[...] the Port of Zeebrugge creates a major pull effect to migrants trying to reach the UK.”
77	6440/16 DK- internal borders - Prolongation	DK	24/2-4/3/16	Art. 23 & 25 Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; “historically high” number of asylum seekers; “ongoing pressure on Europe’s external borders”; neighbouring countries’ measures (ID controls in Sweden)
78	6071/16 AT - internal borders - Prolongation	AT	16/2-16/3/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] the enormous influx of third country nationals prevailing since September 2015 [...]”; “[...] this is the only way to avoid security deficits in the future within the scope of legal and actual opportunities for the benefit of all citizens within the Schengen area”

79	6048/16 DE - internal borders - Prolongation	DE	14/2-13/5/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] no lasting or significant reduction in the numbers of third-country nationals entering German territory has occurred which would enable the suspension of temporary controls at the internal borders. The temporary border checks concentrated on the internal land borders between Germany and Austria continue to be an effective and necessary instrument to ensure orderly procedures at the border [...]”
80	6043/16 NO - internal borders - Prolongation	NO	14/2-15/3/16	Art. 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] in order to remedy the serious security threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”
81	5981/16 FR - internal borders - Prolongation	FR	27/2-27/3/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	State of emergency Terrorist attacks in Paris on 23/11/2015; remaining terrorist threat
82	5914/16 SE - internal borders - Prolongation	SE	9/2-9/3/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”
83	5786/16 DK- internal borders - Prolongation	DK	4/2-23/2/16	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; “historically high” number of asylum seekers; “ongoing pressure on Europe’s external borders”; neighbouring countries’ measures (ID controls in Sweden)
84	5294/16 NO - internal borders - Prolongation	NO	15/1-14/2/16	Art. 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] in order to remedy the serious security threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”
85	5247/16 DK- internal borders - Prolongation	DK	15/1 - 3/2/16	Art. 23 & 25 Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time”; neighbouring countries’ measures (ID controls in Sweden)

86	5103/16 SE - internal borders - Prolongation	SE	10/1-8/2/16	Art. 23, 24 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] due to the remaining serious security threat to public policy and internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”
87	5021/16 DK- internal borders	DK	4-14/1/16	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] Denmark is already experiencing an unprecedented migration pressure as well as a significant number of asylum seekers, including unaccompanied minors. The Swedish Government has stated that one of the reasons for introducing the new regulation is to prevent refugees from applying for asylum in Sweden”; “[...] closed border for immigrants and asylum seekers with no identification”; “As a consequence of these measures, Denmark is faced with a serious risk to public policy and internal security because a very large number of illegal immigrants might be stranded in the Copenhagen area within a short period of time.”
2015					
88	15497/15 NO - internal borders - Prolongation	NO	1/1-15/1/16	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] to remedy the serious security threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”; “The overall situation is not likely to change any time soon”
89	15456/15 SE - internal borders - Prolongation	SE	21/12/15- 9/1/16	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] due to the remaining serious security threat to public policy and internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”; “[...] the overall situation is unlikely to improve in the near future. Instead, the serious threat to public policy and internal security is expected to remain for still some time”; overwhelmed social services
90	15366/15 MT - internal borders - Report	MT	9-29/11/15	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The decision was taken in view of the threat scenarios in international major events and particularly in the light of the continuous risk of terrorist activities and attacks”; “The measures were proportionate and necessary in view of the high level and profile of the events taking place”
91	15253/15 SE - internal borders -	SE	12/12- 20/12/15	Art. 23 & 25 of Reg. (EC)	“[...] due to the remaining serious security threat to public policy and

	Prolongation			562/2006 as amended by Reg. (EU) 1051/2013	internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society”; overwhelmed social services
92	15181/15+ REV 1 FR - internal borders	FR	14/12/15- 26/2/16	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	State of emergency Terrorist attacks in Paris on 13/11/2015; “[...] owing to the imminent danger resulting from serious breaches of public order”
93	14996/15 NO - internal borders - Prolongation	NO	7-26/12/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] in order to remedy the serious security threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society
94	14731/15 MT - internal borders - Prolongation	MT	30/11- 31/12/15	Art. 23 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	Valletta Conference on Migration from 11-12/11/2015; the Commonwealth Heads of Government Meeting (CHOGM) from 27-29/11/2015; “In view of the current situation with regard to the global terrorist threat, as well as in view of the fact that Malta is in the process of addressing a smuggling ring that is currently targeting Malta as a destination for illegal migrants travelling from other Schengen States”
95	14633/15 NO - internal borders	NO	26/11-6/12/15	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] a serious threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Norwegian society”; “Norway is, as other EU/Schengen member states, currently facing an unpredictable migratory flow, containing a mix of asylum seekers, economic migrants, potential criminals such as smugglers or traffickers of human beings, also including potential victims of crime”; “[...] need [...] to distinguish between the different categories of arriving migrants. Border control will help identifying the different categories of migrants, enabling adequate support and control procedures, i.e. registration, further identification and return of those in no need for protection”; “Considering the current number of migrants arriving to Norway, and the consequences for Norwegian society, the Norwegian Government deems that the conditions

					now amount to a serious threat to public policy and internal security [...]"
96	14383/15 SE - internal borders - Prolongation	SE	22/11- 11/12/15	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	"[...] due to the remaining serious security threat to public policy and internal security posed by the consequences of the unprecedented migratory pressure and the ensuing significant challenges to the functioning of the Swedish society"
97	14269/15 MT - internal borders – Change of Dates	MT	9-29/11/15	Art. 23 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	"The reasons stated in the letter of the 28 th September 2015 as well as the request for confidentiality also set out in the letter, continue to apply"
98	14212/15 SI - internal borders - Report	SI	17/9-16/10/15	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	"[...] the unprecedented challenge of how to best manage the continuous migration flow, while respecting the Union acquis and acting in accordance with the principles of responsibility and solidarity. Slovenia, the smallest country along the overburdened Balkan route, her also found itself in the middle of this difficult refugee and migration crisis"; "[...] response to the migratory pressure"
99	14211/15 AT - internal borders - Prolongation	AT	5/11/15- 15/2/16	Art. 23, 24 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	"[...] due to the continuing enormous inflow of third-country nationals, Austria will continue to carry out border controls at the internal borders with its neighbouring states [...]" "This is the only way to prevent security deficits within the scope of what is legally and factually possible in the interest of all citizens of the Schengen Area"
100	14047/15 SE - internal borders	SE	12-21/11/15	Art. 23 & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	"Due to the serious threat to public policy and internal security posed by the consequences of the unpredictable migratory pressure and the ensuing challenges to the functioning of the Swedish society [...]" ; "Sweden is currently facing an unpredictable migratory flow. The flows are mixed and may include i.a asylum seekers, economic migrants, potential criminals such as smugglers or traffickers of human beings, but also potential victims of crime. People are now arriving in Sweden, not seeking to legalise their stay, constitute easy targets for perpetrators ready to abuse their vulnerable situation"; "The fact that the migratory flows are mixed creates great difficulties, whereby a reintroduction of border control at internal borders by way

					of identifying the different categories of persons, would facilitate the [Swedish Civil Contingencies Agency]'s work”
101	13788/15 MT - internal borders – Change of Dates	MT	4/11-3/12/15, now: 9/11- 13/11 and 21/11-29/11	Art. 23 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	Valetta Conference on Migration held in Malta from 11-12/11/2015, and the Commonwealth Heads of Governance Meeting (CHOGM) from 27-29/11/2015; Request for confidentiality Dates were revised
102	13726/15 AT - internal borders - Prolongation	AT	5/11/15- 16/2/16	Art. 25 and thereafter 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The European Commission has informed Austria in their statement from October 23, 3015, that the temporary internal border controls at Austrian borders have been justified and that the corresponding measures have been appropriate and necessary.” “[...] due to the continuing enormous influx of third country nationals [...]”; “This further measure is unavoidable in order to not risk public order and internal security”; “[...] continuing and unbroken influx of third country nationals”; “This is the only way to prevent security deficits within the scope of what is legally and factually possible in the interest of all citizens of the Schengen Area”
103	13569/15 DE - internal borders- Prolongation	DE	2/11/15 - 13/2/16	Art. 25 and thereafter 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] unprecedented and uncontrolled influx of migrants seeking asylum. No other Member State of the European Union is affected to such a degree. This seriously affects Germany’s public order and internal security in various ways. Internal border checks are therefore necessary to replace, at least to a certain degree, uncontrolled migration with an orderly procedure”; shortcomings at the external borders; “[...] transit countries within the Schengen area seem to be unable or unwilling to take the measures required by EU legislation to register and check each and every migrant. Especially with regards to persons who may have been radicalized in crisis and conflict regions, threats related to uncontrolled migration are obvious. Human smuggling and related crime have developed in a way that is not acceptable”
104	13171/15 FR - internal borders	FR	13/11- 13/12/15	Art. 23 & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU)	21 st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 21) in Paris from 30/11-11/12/2015

				1051/2013	
105	13170/15 SI - internal borders - Termination	SI	Termination on 16/10/2015	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] to continue with this extraordinary measure would no longer be necessary and justified”
106	13129/15 MT - internal borders	MT	4/11-3/12/15	Art. 23 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	Valletta Conference on Migration from 11-12/11/2015: and the CHOGM; “[...] risk of potential disruptive incidents will be decreased and national security will be secured all along”; “The measures are being taken in view of the threat scenarios in international major events and also in the light of the continuous risk of Islamic terrorist illicit activities and attacks”
107	13127/15 AT - internal borders - Prolongation	AT	16/10/15- 4/11/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“In view of the massive influx of third country nationals, such measure continues to be necessary for maintaining law and order, safeguarding internal security and avoiding continuous overstressing of police force, rescue services and public infrastructure, and for allowing the organs of the Austrian federal police force to perform their tasks at internal borders”; “This is the only way to avoid, wherever possible in practice and by law, security deficits in the Schengen area for the benefit of our citizens”
108	12985/15 DE - internal borders - Prolongation	DE	13/10/15- 1/11/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The uncontrolled and massive influx of third-country nationals via the external borders that we are currently experiencing continues unabated. This and the fact that third-country nationals travel on within the Schengen area is not acceptable”; “This is the only way to avoid, wherever possible in practice and by law, security deficits in the Schengen area for the benefit of our citizens”
109	12984/15 DE - internal borders - Prolongation	DE	23/9/15- 12/10/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The situation remains the same: The massive influx of third-country nationals continues unabated. For reasons of public safety and public order, a structured procedure, especially in terms of registration and vetting of third- country nationals, continues to be urgently necessary. Especially in view of the thousands of third-country nationals coming to Germany from crisis and conflict regions, we must avoid security deficits, wherever possible in practice and by law, for the benefit of our citizens”; “If the uncontrolled and

					unmanageable influx of third-country nationals continues unabated, our internal security and public order would be at risk.”
110	12435/15 AT - internal borders – Prolongation	AT	26/9-15/10/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“Due to the enormous migration flows to and across Austria, the security situation has continued to deteriorate dramatically in recent days”; high number of illegal entries; “[...] major challenge not only for the police force and the Austrian federal army which was called for support, but also for rescue workers and all NGO personnel participating in providing assistance to refugees, which can only be managed by controlling the influx of these people in an orderly manner”; “It is indispensable for this purpose, that the persons can be registered at the very border, and that they can be given medical care and initial food provisions”; “[...] such measure continues to be necessary for maintaining law and order, safeguarding internal security and avoiding continuous oversteering of police force, rescue services and public infrastructure, and for allowing the organs of the Austrian federal police force to perform their tasks at internal borders”
111	12418/15 SI - internal borders – Prolongation	SI	27/9-16/10/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] due to uncontrollable migration flow [...]”; “[...] the situation in the area of illegal migration has not changed significantly, nor have countries in the region introduced measures which would indicate that the situation would change”
112	12111/15 SI - internal borders	SI	17/9/15- 26/9/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“[...] uncontrollable migration flows in the region, coupled with the measures recently adapted by the neighbouring countries, including reinstated border controls at the internal borders, presents a serious threat to Slovenia’s national security”; “The aim of this measure is to ensure control over migration flows in the Republic of Slovenia”
113	12110/15 AT - internal borders	AT	16/9/15- 25/9/15	Art. 25 Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“In view of the security situation caused by the huge migration flows to and via Austria and the reintroduction of border controls by Germany [...]”; “[...] as a preventive measure to avert further serious threats to public order and security for the time being”; “In view of the massive influx of third-country nationals, this measure is inevitable in order to prevent a threat to public order

					and internal security and a continuous overburdening of the police, emergency services and public infrastructure, and to allow the Austrian Federal Police bodies to perform their duties thoroughly at the internal borders.”
114	11986/15 DE - internal borders	DE	13/9/15- 22/9/15	Art. 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“In view of the uncontrolled and unmanageable influx of third-country nationals into German territory [...]”; “This action is urgently needed in view of the enormous influx of third-country nationals referred to above. We must know who is entering and staying in Germany. Further arrivals would endanger the public order and internal security”
115	11204/15 DE - internal borders- Report	DE	26/5-5/6/15	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“The internal border controls [...] were designed to avoid the threat scenarios arising from an international summit and to prevent potentially violent protesters entering the country from abroad. They were necessary because, amongst other things, experience of similar events [...] led us to anticipate an increased risk of violence” “The threat scenarios arising from an international summit did not materialize”
116	8323/15 DE - internal borders	DE	26/5-15/6/15	Art. 23(1) of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	G7 Summit in Elmau from 7-8/6/2015; “This measure is necessary in light of the threat scenarios arising from an international summit, in particular the generally increased Islamist terrorist threat following the most recent attacks in Brussels, Paris and Copenhagen [...]”
117	5044/15 BE - internal borders- Report	BE	1-6/6/14	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	N/A
118	13818/14 NO - internal borders- Report	NO	24-31/7/14	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	Threat assessment issued by the National Police Security Service on 23/7/2014; “The threat was considered as being a potential act of terror [...]”; Reintroductions had “an important preventive effect contributing to secure the Norwegian society and Norwegian interests”
119	12668/14 EE - internal borders	EE	31/8-3/9/14	Art 23(1) & 24 of Reg. (EC) 562/2006 as amended by Reg. 1051/2013	Visit of the President of the US Barack Obama on 3/9/2014

120	12354/14 NO - internal borders - Termination	NO	Termination on 31/7/14	Art. 23(1) & 23(a) of Reg. (EC) 562/2006 as amended by Reg. 1051/2013	“Norwegian competent authorities decided [...] to terminate the reintroduction of border controls [...]”
121	12283/14 NO - internal borders - Prolongation	NO	28/7-12/8/14	Art. 23(1) & 23(a) of Reg. 562/2006 as amended by Reg. 1051/2013	“[...] updated threat assessments”
122	12230/14 NO - internal borders	NO	24-28/7/14	Art. 23(1) & 25 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	Suspected terror attack based on an intelligence and risk assessments by Norwegian intelligence and security services; “[...] serious threat to public policy and internal security where unknown subjects/persons on their way to the Norwegian territory have the intention to attack harmfully Norwegian interest, infrastructure and/or persons”; “The measures are necessary in order to prevent persons from travelling to Norway thus preventing harmful attack to public policy and/or internal security”
123	10268/14 + REV 1 NL internal borders - Report	NL	14-28/3/14	Art. 29 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	“As a conclusion, the temporary reintroduction of internal border controls helped to provide the internal security and had an important preventive effect [...]”
124	9737/14 BE internal borders	BE	1-6/6/14	Art 23(1) & 24 of Reg. (EC) 562/2006 as amended by Reg. (EU) 1051/2013	G7 Summit in Brussels from 4-5/7/2014; “Considering the serious incidents that occurred during recent G8 and G20 summits in other countries, and based upon a thorough risk assessment, the consequences of this event being organized in our country are to be considered as posing a serious risk to our national public order and internal security”
125	6289/14 + REV 1 NL internal borders	NL	14-28/3/14	Art 23(1) & 24 of Reg. (EC) 256/2006 as amended by Reg. 1051/2013	Nuclear Security Summit in The Hague on from 24-25/3/2014