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Schengen and Beyond: The EU as an area of freedom, security and justice, and the perspectives for Switzerland

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Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

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It is a great pleasure indeed to be here, just a few weeks, we hope, before Switzerland joins the Schengen area. That will be an historical moment for you and for us, and we look forward to it very much. I will speak tonight about what Schengen means, where it comes from, where it is going, some of the implications for you and for us.

Schengen is an interesting example of how things can develop in the European Union. It began outside the Union's legal framework as an intergovernmental project. It grew and has been incorporated into the normal life of the European Community. And since normal life in the EU is never very normal, it is complicated because of its different membership and because of the pillar structure of the European Union. Some Schengen issues are still "third pillar" intergovernmental ones and of course, as you know, and as you are about to experience, the European Union is not coterminous with Schengen. Schengen today includes non-member countries and not all member countries are part of Schengen; this is art of the strange but rich life of our continent. Schengen takes its name from a picturesque village in the Grand Duchy of Luxembourg, which I urge you all to visit one day. There is a good white wine made there, nestling on the border between Luxembourg, France and Germany. Essentially, a small group of countries decided to build on the logic of the EU's free movement rights and single market to get rid of internal borders and manage their external borders collectively. That idea took hold and Schengen today is, as you know, a vast area from Iceland up in the north, all the way down to Malta and Greece in the south of our continent, and of similar breadth east to west as well. It brings with it external border control, which becomes a common endeavour with common rules, common data systems and interoperable common technologies. It brings with it a common visa policy and a system of police and judicial cooperation between its members. It relies on a network of data bases, including the Schengen Information System, known as SIS, which is itself expanding from its first generation into a second generation system, SIS II.

The idea of an area without internal borders goes back to the early 1970s. In 1974 a European Council meeting in Paris called for a European passport to be used from January 1985 and for the development of a passport union among the Member States of the time. The Single European Act, which came into force in 1987, created

both the objective and the legal means for the abolition of all technical physical barriers within the European Union and the establishment of the internal market promised from the very beginnings of the common market in the European Coal and Steel Community in 1952 and then the European Economic Community in 1958. On the day in 1985 when the Single European Act was signed, the Schengen agreement was also signed between the Benelux countries, France and Germany to set up the system of elimination of internal border controls. This was a forward-looking agreement for its time and shows one of the ways in which the Union developed, which is incremental. Our friends in the United States like to say that their States are "laboratories", experimenting with ideas and projects which, if they are seen to work, can spread more widely. Without really conceptualizing it in the same way, that is what we have done with the Euro, I suppose, and Schengen too. It was seen to be a success and has grown ever since. Not all the Member States, including the one I know best as we say in Brussels, have yet seen the full logic of the Schengen project.

The spread of the Schengen area throughout continental Europe is one of the great achievements of the Union in recent years. When the Nordic countries joined the EU, it became clear that the reality of the Nordic passport area was going to mean that we had to accommodate or find special arrangements for Iceland and Norway, and we did. And the simplest thing to do was to bring these non-member countries into the Schengen area and to develop institutional arrangements to reflect that reality. So we developed the Mixed Committee of which Switzerland is now a member and we have been able, despite the considerable legal and political complexities, to find mechanisms and procedures for managing a vast area together.

Last year we were able to celebrate, and it really was a celebration for them and for us, the huge expansion of the Schengen area to nine of the 10 Member States which joined the Union in 2004, all of them except Cyprus. We hope that one day soon Cyprus, Bulgaria and Romania will join the Schengen area as well, not to forget the United Kingdom and Ireland as well.

So today citizens of nearly all Member States enjoy the free movement without internal border controls which the Schengen area brings, knowing that the common external border is managed to very high standards in accordance with rules applied

consistently across the whole territory and that our police and judicial systems are interconnected through information systems in a way which means security is not only not diminished but is in fact enhanced by the existence of the Schengen area.

And that is not propaganda. There is very clear evidence from the development of Schengen that it actually happens time after time. Some people initially see risks involved in dismantling the internal borders. On the contrary, what happens is that security is enhanced by the ability to share information. Modern police techniques are based on information more than anything else. Intelligence-led policing is far more effective than random border checks. We can show that the internal security of the Schengen countries has improved as a result of the system.

Since December last year one can travel from the Iberian Peninsula up to the Baltic States and from Slovenia to Finland without border checks. In a few weeks' time we will be able to visit Switzerland and you will be able to visit us, again in an area without internal border controls. This will make life easier for your citizens, for our citizens, and also for third country citizens living legally within our borders. It will benefit tourists and business travellers from the rest of the world. Our police forces will still be able to do their work of protecting us, in fact they will be able to do it better.

Now of another particularity of our wonderfully diverse Europe is that Switzerland is not part of a Customs Union with the European Union. This means that there will still be customs officials at the borders between Switzerland and its EU neighbours. We expect customs officials to do their customs work and not to interfere with the free movement of people. They are interested in goods and making sure that the customs rules are applied properly to goods. We all know that customs checks are not systematic. Customs officials don't stop every vehicle; they don't stop every person walking across the border. That is not how they operate in the modern world either. They also depend on intelligence, information and cooperation with their neighbours. We do not expect any increase in the already rather low rate of actual checks carried out at the border on goods. Currently between three and five per cent of vehicles transporting goods across Swiss borders are actually stopped for a check. So I hope very much that we are not going to receive complaints in Brussels saying 'I was

stopped at the border and I was just coming to visit Geneva or Zurich or to visit the beautiful mountains and lakes'. But believe me, people will do so if necessary. We get letters every week from concerned citizens who claim that they are being denied their Schengen rights as they move around Europe. But Switzerland is a law-abiding country and Schengen is very much in your interest as it is in ours, so we expect that things will go smoothly.

Under the Schengen borders code we have, I think, got the right balance between free movement and security, allowing checks to be carried out in certain circumstances. Police controls can still take place at the internal borders but their purpose cannot be border control as such; they should be based on genuine police information and be carried out in a way which is clearly different from systematic checks on persons at external borders, which have now become our collective responsibility. There are mechanisms in place for making sure that all this happens properly.

We have every reason to expect that the "*Schengen Acquis*", as we call it, and it really is an *acquis*, an achievement based on years of hard work at all levels, will be properly implemented.

We have put in place a thoroughgoing system of evaluation of the way the Schengen system works in practice, known as *SCHEVAL* (Schengen Evaluation). This is designed to make sure that the mutual trust between our countries, which is essential for the system to work properly, remains robust and based on genuine evidence of what is happening on the ground. *Scheval* is a constant process, not a one off event. It is a peer evaluation system where Member States and the Commission go around the borders and consulates to make sure that the rules are being applied properly; that the separation of Schengen and non-Schengen travellers, for example, is watertight and that people who enter the Schengen area for the first time are properly controlled under all the rules. Because once they are in, they are in. Once you land in Zurich, in a few weeks time, you will move around freely in the entire Schengen area. So we have carried out a thoroughgoing Schengen evaluation process here in Switzerland and you will help us evaluate the others as well. The Commission will soon propose a strengthened evaluation system. We are thinking, for example, of

carrying out surprise visits. The people at the borders, at the airport, in the consulate would not know that we were coming, we would just turn up and start looking at what they are doing to make sure they are doing it properly. This is not yet law, but we at the Commission believe it is a good and necessary idea.

Data protection is another important issue. As I said, the Schengen system relies on lots of information being collected and disseminated. That process of collection and dissemination must be watertight; there must be guarantees for our privacy. Only the people who need to know the information should have access to it. The information should not be kept any longer than necessary. There are precise rules on these matters.

The plan is that on Friday, in three days time, there will be a meeting of the *Scheval* Committee in Brussels where there will be a last look at reports on the evaluation of Switzerland's readiness to join Schengen. I will not hide from you, it's been in the newspapers already, that there will also need to be some consideration given to the fact that you are going to have a referendum on free movement. The Commission's firm proposal is that we should not delay the entry into force of the Schengen arrangements and should proceed at the land borders to the lifting of the internal checks in December, as agreed. You will vote in your referendum on free movement in February and we hope that the vote will be positive.

We do see a very clear link between this and the Schengen area. So we hope that the Swiss people, having voted to join Schengen, will understand the logic of voting again in favour on free movement, both the continuation of the free movement arrangements with the older member states plus the extension of free movement to Bulgaria and Romania. Then in March when the clocks change again, as they just have, and the airlines move to their summer schedules, the airports will have been reconfigured to separate Schengen from non-Schengen passengers and the air borders will be lifted as well. The airports have a lot of work to do because it is quite complicated to split operations between Schengen and non-Schengen. It takes time and investment. The others have done it and you have no doubt seen the way it works in Schengen airports around the continent. I have no doubt you will manage this at your international airports without any difficulty.

Now who will make all the final decision on Schengen membership? The Council of Ministers. Unanimously. We at the Commission are not the people who decide. We are not without influence, I hope, but we will see what happens. Our hope is, I would even go so far as to say our expectation, is that consensus will be reached on Friday, that we will go ahead therefore, and that we trust in the great wisdom of the Swiss people to vote in favour of free movement in the referendum you will be holding in February.

Don't ask me if there is a plan B because there isn't. I do not want to be drawn into speculating on the basis of a hypothetical result of that referendum in February. We will draw whatever consequences have to be drawn, but our position is clear: we believe that there is an underlying logic in the various building-blocks of the Schengen structure and we hope the Swiss people understands that as well as we do.

As I said the institutional and legal mechanisms for implementing the Schengen arrangements can seem complicated. How could it be otherwise with so many different countries involved in a project of such an unprecedented nature? Nobody has tried to do what we are doing on this scale anywhere in the world before. It is not just a matter of EU countries using EU mechanisms which, complicated as they are, are at least well known, tried and tested. No, because not all the EU member States are involved, while some non-EU states are. In addition, the issue of what relates to Schengen, what are Schengen building measures, becomes a very important legal and political issue. Because, for example, if something is Schengen related it means that you are involved and the British are not. Now sometimes that may suit you, sometimes that may suit them, but sometimes it doesn't and of course, as always in law, there are grey zones, there are debates, there is litigation and the Court of Justice sometimes has to determine who is right and who is wrong. So recently, we had a dispute about whether the United Kingdom could play a full part in *Frontex*, the agency we have set up to coordinate cooperation at the external borders The Council said no, we agreed with them, and the Court of Justice ruled in favour of the Council, so the United Kingdom lost the case.

Most issues are resolved without going all the way up to the Court but the legal situation is as clear as we can make it, which I am afraid means not always perfectly clear, remembering that we are legislating in many languages for many countries. You sometimes end up with legislation, which is not as crystal-clear as we would like. But that is the nature of the beast.

We have a Mixed Committee System, which amusingly is called *Comix* in French. *Comix* meets at ambassadorial level frequently. It is basically the *Coreper* (Committee of Permanent Representatives) plus the Ambassadors to the EU of the associated Schengen countries. When it meets at ministerial level, it is the Council plus the Ministers from the associated states. Last Friday at Luxembourg, Madame Widmer-Schlumpf was present as a member of the Mixed Committee looking at Schengen-related issues. The tradition by the way is that the Member State non-Schengen ambassadors and ministers stay in the room, but of course they don't take part in the debates and they don't vote.

We do whatever we can to make sure that Switzerland is closely involved in all the deliberations on legal instruments relating to Schengen. The associated countries are allowed to chair the mixed committee meetings on occasion. I am sure Switzerland would do this well. You have the advantage of a fine diplomatic tradition. And of course you speak our languages (or we speak yours), which is not the case of Norway or Iceland; they usually operate in English.

Some of you may have heard of the strange Brussels science of *Comitology*. Is everybody familiar with this expression? Comitology is a system where the Council delegates some follow-up implementation powers to the Commission. Not to the Commission alone but to the Commission assisted by a Committee of the Member States. There are various types of committee and rules governing their operation. Only *comitologists* truly understand it all. When these "comitology committees" meet to discuss Schengen business, Switzerland will be there.

So, welcome to the worlds of Schengenology and comitology.

You have also heard no doubt about the famous *guillotine* clause, which apparently terrifies everybody. This is a provision relating to the implementation of the Schengen Aquis in Switzerland. You are supposed, like all Schengen countries, to implement Schengen rules within a certain time limit. We recognize of course that under the direct democracy system in Switzerland the calling of a referendum is something which can't be predicted at the very beginning and may intervene. This can interfere with the timing and even the whole decision, if the answer to the referendum question is no.

So if it turns out that Switzerland does not, cannot, take on board a measure which is agreed to be a development of the Schengen rules, then the famous guillotine clause is triggered, which could terminate the Schengen association and put the borders back in place. Nobody expects that to happen, nobody wants that to happen but we have to be realistic: it could happen and border controls would then be re-imposed unless the Mixed Committee, unanimously, decided otherwise. The burden of proof would be on those who don't want to re-impose them. The default option is the re-imposition of border controls. That is not in any way intended to be an interference with the Swiss system of direct democracy. Everybody who has studied Switzerland's relations with the European Union over the years, particularly when considering the prospect of Switzerland's joining the Union, knows that marrying the Swiss system of direct democracy to multilateral system of law-making in the EU is a very complicated subject. We are what we are. Frankly speaking as a convinced European and friend of your country, I would rather have the problem than not have it. Working out how to improve ties between us is a worthy task. Your system is not simple, but then neither is ours. We have invented yet further gifts to political science and law. We speak of our variable geometry; we have opt-ins and outs. We have emergency brakes and we have enhanced cooperation.

We know that in addition to a referendum on free movement you will have one on the introduction of biometric identifiers in passports. Our view is that there is no need to fear biometrics in passports. What are they? They are unique identifiers of us, as individuals, essentially a modernisation of signatures or photographs, except they can not be falsified anything like as easily. They are reliable. Biometrics are being introduced widely in various public and private applications. They have the enormous

advantage for identification purposes that they can be put on a chip and included in a document. So when I present myself to the border guard and say I'm Jonathan Faull, I produce the document, the official looks at the image which the chip produces, looks at my fingerprints and sees if they match. That "one-to-one" identification is pretty foolproof. Where the issue becomes much more delicate from a privacy point of view is when that information is used to check the fingerprints against other databases. Not one-to-one but one-to-many. And there you have all the issues of which databases are checked, how did my fingerprints get in to the other databases, how long are they kept, what officials, what agencies have access to them. All the normal data protection issues arise and quite rightly should be gone into carefully. For one-to-one personal identification frankly I think there is nothing to fear unless you want to cut yourself off from the rest of the world – it's happening, it is going to happen everywhere. It is not the EU imposing it on Switzerland, there is an international movement, the standards are set by the ICAO and country after country across the world is producing biometric passports.

How are they extended to private systems? I am sure that in this university you need some sort of badge to get into some buildings. Will they be replaced by biometrics rather than a simple magnetic strip? My guess is probably yes. Will they be used to log in to computers? Yes, they will.

There are financial implications in the Schengen system. It costs money. It costs money in a rather unbalanced way. Because the countries inside the Schengen area are in fact sharing their border management responsibilities and "landlocked" countries are outsourcing their land border management to the countries at the external border. We have an External Borders Fund to help the countries most needing assistance in organising external border controls and to give real meaning to a word which we use a lot, solidarity, which is at the heart of this system. We are still negotiating, but I'm very hopeful that we will soon finalize discussions with the Swiss authorities on your country's contribution to the External Borders Fund. There are also negotiations under way for Switzerland to participate fully in the joint operations organised by the Frontex agency. Switzerland has considerable experience and expertise in border control. You have done it for very long time. You will not be doing

it with your neighbours anymore but you have a wealth of experience and ideas to share with other Schengen members.

I should also say a few words about the common asylum rules and the so-called Dublin System. 2007 figures show 220,000 new asylum applicants in the EU plus Norway and Iceland. Clearly in an area without internal borders the potential for secondary movement, so-called asylum shopping, is considerable and one of the first challenges we have tried to meet through the so called Dublin System is to determine which country should deal with an asylum application and make sure that there are no multiple applications seeking to take advantage of gaps between us.

Since the Dublin Convention came into force in 1997, now the Dublin Regulation of 2003, we have essentially separated the Dublin System from the Schengen system and we don't consider asylum law and a Dublin System to be directly Schengen-related. We have tried, not altogether successfully, to harmonise the conditions under which asylum applications are processed in the Member States and the level of rights granted asylum seekers. We have created the *Eurodac* data base of fingerprints of asylum applicants, which is also a considerable success. It enables countries to check in real time on a "hit-no-hit" basis whether fingerprints have already been deposited in the system by someone applying for asylum. The system is available to all the countries concerned, including their embassies and consulates around the world.

As I said, the common asylum system is far from perfect and we are still far from a harmonious system. We will make proposals next month to revise the reception conditions directive and the Dublin and Eurodac regulations. Then next spring there will be a second package with two proposals: rules on qualification and asylum procedures. We will also propose the creation of a common European asylum support office, so we can build up shared evidence of what is really happening in certain foreign countries, which will help determination of the asylum claims from people coming from these countries. We need to have, as much as possible, a common view of the human rights situation, for example, in certain foreign countries.

What does all this mean for Switzerland? In the area of asylum, Switzerland's participation will be limited to the Dublin Acquis *stricto sensu*, that is to say the Dublin and the Eurodac regulations. Unlike Schengen the Dublin agreement does not refer to preconditions for a country to become a Dublin member, there is no evaluation assessment system as there is for Schengen. You don't need to show a particular level of protection of asylum seekers compatible with our own standards. We know that Switzerland abides by international law; some would say that your standards are at least as high as ours, if not even better.

Of course cooperation in areas governed by the Dublin system have to be based on principles of democracy, freedom, rule of law, and respect for human rights. The Geneva Convention is the corner-stone of asylum law. We have added our own domestic legislation, codifying the notion of subsidiary protection, creating a status for persons needing international protection but not covered by the definition of refugee in the 1951 Convention. We will continue to talk to Swiss officials about ways in which our systems can at least converge around some common notions in this area. My personal view is that this should not prove to be particularly difficult.

The level playing field we often talk about is necessary within the EU and more generally between the EU and the other countries participating in the Dublin system, Norway and Iceland, you and soon Lichtenstein, so that broadly speaking people face the same general treatment and conditions across the whole area. We know that you are in the process of amending your asylum law nationally. We will follow this with great interest and will obviously talk to your officials about these issues.

Cooperation is important and once again mutual trust is indispensable in this area. Switzerland has already been attending informal Dublin expert meetings that we organise regularly. And the expert group known as Eurasyll is another forum in which Switzerland and our countries share their experience and practice in order to understand how things operate on the ground.

Looking to the future: how do we think the Schengen area may develop in the years to come? Let's start with external border control. We have now brought the Schengen system into the normal legal framework of the European Union and the Schengen

area has grown to encompass 25 countries. We need to work on our evaluation systems. We need to use modern technology to best effect.

We are a few weeks away from a system of Schengen with you, a system without internal border controls that I do believe is in the best interests of all Europeans. It will open new areas for cooperation between us. You are here in the middle of Europe. We need your involvement in our work of building an area of freedom, security and justice in our continent. You are finding your place, with full respect for your national sovereignty, within our system being creating around you. Criminals don't have all the legal and democratic constraints that we have. They take advantage of modern technology, the ability to move around quickly. They are just as clever as we are, I'm afraid, and so we have to develop systems while respecting our respected democratic systems, which enable our police and our authorities to do their work. We are doing that and I hope that you will help us do it as well.