

The Schengen Crisis in the Framework of the Arab Spring

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The Schengen area – the EU's zone of passport-free travel, which benefits 650 million travellers annually – is in trouble. The most pressing concern is how to secure Greece's porous frontier with Turkey, the largest source of illegal immigration into the EU by land. But political tensions between Schengen members have arisen on other fronts, too. In April 2011, France temporarily re-imposed border checks with Italy, after the political unrest unleashed by the Arab Spring led to a rise in uncontrolled migration from Tunisia to the small Italian island of Lampedusa and to Puglia. The number of arrivals was large but manageable, eventually peaking at around 48,000 migrants. Nevertheless, Roberto Maroni, Italy's then Interior Minister, demanded a major intervention from other EU countries to help deal with the influx, claiming that a "human tsunami" was underway from North Africa.

This exaggerated rhetoric was part of a strategy to pressure neighbouring France into taking in the French-speaking migrants from its former colony. Maroni issued newly-arrived Tunisians with residency papers, giving them the right to move freely around the Schengen area. The French authorities responded by re-instating checkpoints between the two countries and halting trains travelling from the northern Italian town of Ventimiglia, the last town before the border. In the end, this dispute proved to be minor. It was resolved swiftly at a bilateral summit the same month between the leaders of the two countries, Silvio Berlusconi and Nicolas Sarkozy. But the political impact reverberated throughout the EU because Maroni's tactics alarmed other Schengen members including Austria, Belgium, the Netherlands and Germany.

During their talks in April, Berlusconi and Sarkozy agreed that the basic rules governing the Schengen area needed to be renegotiated. EU leaders duly backed this idea at their summit in Brussels in June 2011. Governments want to change the Schengen "border code" so that they can introduce temporary checkpoints more easily; improve the monitoring of the common border; and, in extreme cases, temporarily suspend those countries that cannot or will not maintain their borders properly. But negotiations over these changes have become bogged down in disputes over "legal bases" – in effect, the question of how much power the EU's institutions will have over any re-erection of national frontiers.

Trying (and Failing) to Re-Write Schengen's Rulebook

At a glance, France and Italy's standoff over Tunisian migrants in April 2011 seems to be why EU and national officials are re-thinking the rules governing the Schengen area. But, with the benefit of hindsight, it is clear that Schengen governments seized on the events in and around Ventimiglia as a convenient pretext. In reality, frustrations over Schengen's working arrangements were building for years. But governments cannot now agree either between themselves or with the EU's institutions about the specific reforms needed to make the passport-free zone work better. This is unfortunate, given that the Schengen area is facing one of the most difficult periods in its short history.

Schengen countries have re-introduced border controls on around 70 different occasions since border controls first came down in 1995. The current rules allow them to do this on grounds of national security or public order, such as the need for special security arrangements at major sporting tournaments or in-

ternational summits. But some governments want these rules relaxed or clarified so that they can re-introduce border checks more easily and in other circumstances. France, Germany, the Netherlands and others have already quietly stepped up “spot checks” by police at their land borders since the last Schengen enlargement in 2007. Concern over the latter has led the Commission also to seek new Schengen arrangements but only in order to prevent a creeping return to national frontiers in future.

There are four categories of player in the current negotiations on a new Schengen rulebook:

Nervous policemen: These are the North European countries, including France and Germany, for which Schengen’s border and policing arrangements do not guarantee enough security. Their governments feel constrained by the existing rules and electorally vulnerable to panics over immigration. As a group, they shelter the highest numbers of refugees in Europe and, together with the UK, host the majority of the EU’s migrants, including those from other Member States. Many have tightened their immigration policies and modernised their border controls in response to recent public demand.

Disgruntled border guards: These are the Southern European countries that guard Schengen’s most problematic frontiers. They want the right to make exceptions to the EU’s “Dublin regulation” on asylum, which stipulates that they must care for all asylum seekers who reach their shores first without sending them on to richer countries further north. But though they are annoyed by the lack of solidarity from their Schengen partners, they have no wish to see reform damage the rights of their own citizens to move around freely. Thus Berlusconi’s agreement with Sarkozy in April 2011 baffled expert observers since the current Schengen regime suits Italy better. EU officials say privately that Sarkozy allowed the Tunisians to enter France in return for Italian support to re-open the Schengen agreement.

Idealistic free movers: These are the newer members of the Schengen area to the east. Countries in this category maintain the eastern land frontier with Belarus, Ukraine and Russia, once thought to be the

greatest potential threat to the common border (hence the headquartering of Frontex in Warsaw and not in the Canary Islands, where it was first deployed in 2006).¹ Their border, immigration and asylum systems have yet to be tested by large migrant influxes, since only the Czech Republic and Slovenia have experienced significant inward migration. But they hugely value passport-free travel and are therefore suspicious of any changes to the Schengen system.

Libertarian legal eagles: These are not states but EU institutions such as the European Commission, Parliament and Court of Justice. The European Court of Human Rights in Strasbourg – although not an EU body – is also a player, because it has the power to sanction countries that treat migrants and asylum seekers inhumanely. The mission of EU institutions is to maintain the openness of national frontiers to goods, services, capital and people. They are therefore naturally inclined to increase their own legal powers to oversee Schengen countries’ border and immigration systems. They are also largely immune from anti-immigration politics.

Any new arrangements to govern the Schengen area must balance the interests of all four sets of players. To this end, the European Commission has proposed three main ideas. First, Schengen countries should be allowed to re-impose border controls temporarily, but the Commission and a majority of Schengen members must approve border closures lasting more than five days. Second, countries that consistently fail to maintain their borders to the required standard can be suspended from the Schengen area if a majority of members agree. Third, the Commission should take over the evaluation of Schengen countries’ border controls from the presidency of the Justice and Home Affairs (JHA) Council, the body that ultimately makes decisions concerning the free movement of people in Europe.² Despite their declared desire to change the Schengen system, most EU governments view these proposals – and especially the first – with horror. This is because these ideas all entail giving new powers to the Commission over national border management. The dilemmas for national sovereignty here are similar to those facing governments in the euro-zone cri-

¹ This EU agency began work in 2005 with a mandate to mobilise equipment, expertise and manpower within the Schengen area and to re-direct them to emergencies along any part of the common border.

² The term “justice and home affairs” (JHA) covers all EU policymaking on migration, internal security, refugee rules and private law.

sis. On one hand, countries want a stronger Schengen regime where everyone maintains certain standards and plays by the rules; on the other, they are hugely reluctant to cede control over their own borders to a higher authority that would implement such a regime.

Countries like France and the Netherlands say they merely want the existing rules to be made more flexible. In their view, the current circumstances in which national checks are permitted – to protect national security or public order – should be extended, for example, to mass influxes of immigration. The Commission counters that a looser system needs an independent policeman lest countries claim exceptions all the time, thereby critically weakening the passport-free zone. Meanwhile, southern countries fret that “a more flexible system” is code for the right to lock them out of the Schengen area on flimsy pretexts.

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Schengen rules can only be changed if a qualified majority of Member States and the European Parliament can agree on proposals made by Cecilia Malmström, the Commissioner for Home Affairs. A lot of governments would rather keep the current system as it is than lose some authority over their own borders. Hence, the Commission's Schengen proposals are likely to founder unless they are recast to focus only on how national borders are evaluated and the suspension of countries breaching Schengen standards.

The current peer-to-peer arrangements – where national border guards in Schengen states take it in turn to inspect each other once every five years – has palpably failed to resolve persistent problems in Greece and other places. Here again, as in the euro crisis, Schengen countries suffer from a “po-

liteness problem” in policy co-ordination.³ Officials are reluctant to make hard-hitting criticisms of colleagues in other Member States. And the recommendations contained in their evaluation reports are often not properly followed up by the country under review.

The Commission and the JHA Council should ask Frontex to establish a new regime for evaluating border standards in Schengen countries. Under its careful and methodical director, Ilkka Laitinen, the agency has built up close working relationships with national border, immigration and asylum services throughout the EU. Frontex has deployed border missions all over the southern Mediterranean and Aegean, and has an intimate working knowledge of the chief challenges facing individual countries. If necessary, it should be able to recommend the suspension of governments who refuse to manage their portion of the border properly.

Diplomats call the Commission's proposal to allow suspensions from Schengen area the “Greece clause,” since it is obvious which country would first be subject to this kind of sanction. In November 2010, Greece's already porous border with Turkey briefly collapsed altogether leading to an emergency intervention by Frontex.⁴ However, the Greek government should be reassured that no moves would be made to suspend it from the Schengen area for at least two years. The country should agree a new action plan with EU officials setting out a realistic timetable for reform of its border, immigration and asylum systems. During this period other Schengen members should second a cohort of national experts to Greece to bolster its public administration and border services, not least to help draw down and disperse available EU funding for border and immigration management.

Another priority is to curb illegal entry to the Schengen area via the southern Mediterranean. Frontex is engaged in an ongoing struggle there to help stem the organised transport by people smugglers of thousands of migrants to the Canary Islands in makeshift boats. Smugglers subsequently switched their routes, first to Malta and Italy, and then to the Greek land border, establishing a “squeezed balloon” dynamic along Schengen's southern frontier. Illegal entries may shrink as the authorities strength-

³ Mario MONTI, “Europe's problem – too deferential and too polite,” *Financial Times*, 20 June 2011.

⁴ Although Greece joined the Schengen area in 2000, it has never been considered a full member. Other members regularly check the passports of travellers from Greece and some have withdrawn co-operation with its government on refugee issues due to human rights concerns.

THE SCHENGEN BORDER CODE

The Schengen Border Code, published in the Official Journal of the European Union in April 2006, is a Community Code regulating the crossing of the external and internal EU borders. The code aims at improving the previous legislation on border checks by describing the conditions for entering and exiting the Union for EU and third-country citizens.

Furthermore the Schengen Border Code regulates the possible reintroduction of internal border checks. In case of a serious threat to public policy or internal security, the code allows Member States to reintro-

duce checks at the internal borders for a maximum period of thirty days. Before doing so, Member States have to inform the Commission and the other Member States at least fifteen days in advance in order to proceed to an examination of the proportionality of the measures to be implemented. In case of exceptional threats to public order or national security, the Member States can immediately reintroduce border checks on the condition that they notify the other Member States and the Commission of their decision.

en borders in one area, but the smugglers quickly move on to exploit weaknesses in other areas that then bulge.

Hence the EU needs to accelerate existing plans to establish – by October 2013 – a single “European border surveillance system” (EUROSUR) to enable the continuous monitoring of the Schengen border and the passing of information in real time between its various parts. At the moment, different types of public authority carry out border controls in the Schengen area, depending on the country: border guards, coast guards, police, customs and sometimes the navy. Currently, there is no way to join up and exchange the records of these agencies or reports about migratory flows and security threats.

Concurrently, the EU needs to get North African countries to sign up to so-called readmission agreements on the repatriation of illegal immigrants. After the Arab spring, Catherine Ashton, the EU's High Representative for Foreign Policy suggested that these should be concluded with all North African countries. Their co-operation on repatriation is critical to securing the southern Schengen frontier. But none currently has a repatriation deal with Brussels, because of arguments over visa access and the lowering of EU trade barriers to their agricultural exports. The EU has new-look “mobility partnerships” with Cape Verde, Georgia and Moldova where, crudely, these countries are rewarded for collaboration on curbing irregular migrant flows with financial assistance, technical programmes and better access to visas. The Commission has recently opened negotiations on similar partnerships with Morocco and Tunisia. But related negotiations have failed in the past because “a country with 2,000 nationals illegally resident in the EU, sending money back home, is infinitely better off than a country with 2,000

extra unemployed people,” according to a senior official working in the JHA Council.

Conclusion

Imagine if EU leaders were given a sneak preview of today's euro zone two years ago. They would then have done whatever was necessary to prevent the crisis in the single currency from escalating into something much worse. The same may be true of Schengen. At present, EU governments risk allowing 2012 and 2013 to become the years in which the future of passport-free travel in Europe is seriously questioned for the first time. Without more assertive political action, the fragile confidence that allows 26 European countries to share a single border and visa policy could collapse.

Furthermore, it is likely that once open borders are questioned, a tit-for-tat retaliatory re-imposition of controls could ensue, perhaps followed by the re-introduction of work and residence permits for EU nationals. Governments and the EU's institutions can snuff out this fuse. But to do so they need to stall the enlargement of the Schengen area for two years, using this time to tackle its internal weaknesses and vulnerabilities, accelerate existing initiatives, and strengthen co-operation with countries in North Africa and Turkey.

Lastly, borders are essentially elastic. They have always been tightened or loosened in response to domestic political imperatives, large influxes of migrants or economic circumstances. And whatever their present concerns over immigration, few voters would be content to return to a Europe where they are confronted with national frontiers when they commute to work, go on holiday or travel to other Schengen countries on business. But it is to be hoped that their governments never allow matters to reach that point.