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SAVING SCHENGEN

How to protect passport-free travel in Europe

Hugo Brady

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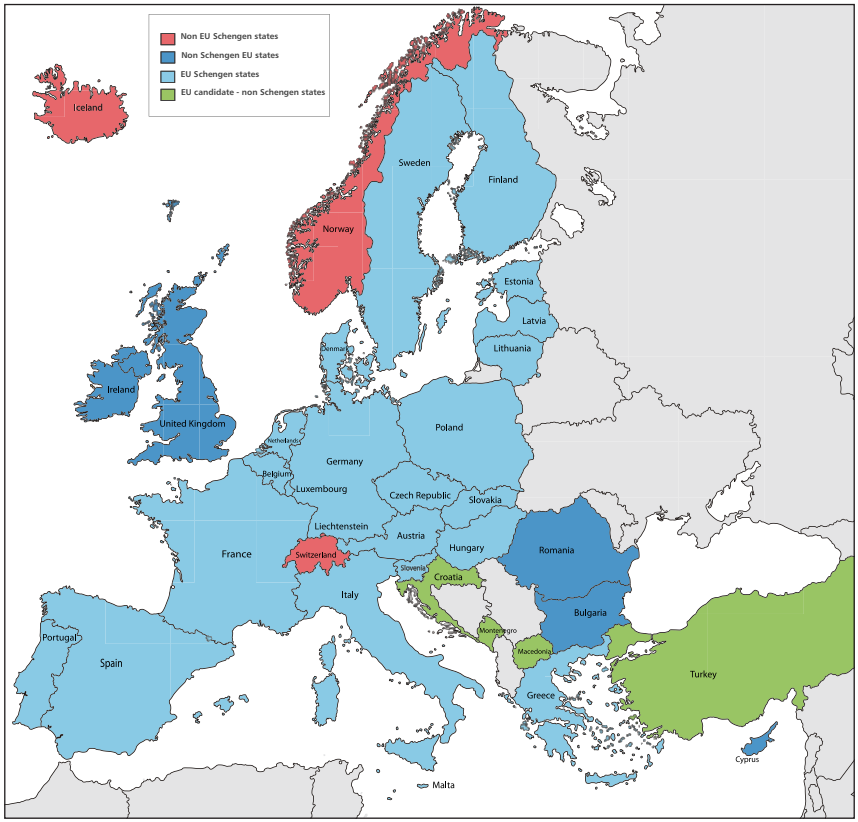
The Schengen area



1 Introduction

Europe's leaders are understandably focused on the euro crisis, to the exclusion of much else. But policy-makers should beware another potential calamity in 2012-13: a serious crisis in the EU's Schengen area of passport-free travel. These two flagship areas of European integration have certain parallels. The same country, Greece, raises fundamental questions about the sustainability of both. Like the eurozone, the Schengen area is vulnerable to systemic shocks that could fatally undermine it. For market panics, read unauthorised migrants, natural disasters or security threats as the potentially destabilising forces. And the demise of the euro would have direct implications for the future of passport-free travel: border checks would probably have to be reintroduced to enforce capital controls during a traumatic return to national currencies.

If the single currency survives, the Schengen area faces grave challenges regardless. The most pressing 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 political unrest in Tunisia led to a rise in uncontrolled migration to the small Italian island of Lampedusa. The number of arrivals was large but manageable, eventually peaking at around 48,000 migrants, many of whom returned home. Nevertheless, Roberto Maroni, Italy's then interior minister, demanded 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 an Italian strategy to pressure neighbouring France into taking in the French-speaking migrants

from its former colony. Maroni issued newly-arrived Tunisians with residency papers, which gave 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 a minor incident over only a handful of migrants. It was resolved swiftly at a bilateral summit the same month between the leaders of the two countries, Silvio Berlusconi and Nicolas Sarkozy. But its political impact reverberated throughout the EU because Maroni's tactics alarmed other Schengen members including Austria, Belgium, the Netherlands and Germany.[1]

[1] *Sergio Carrera and others, 'A race against solidarity: The Schengen regime and the Franco-Italian affair', Centre for European Policy Studies, April 2011.*

The next month, Denmark announced the re-introduction of customs controls at its borders with Germany and Sweden. This was not directly connected to the Franco-Italian border dispute. The new border security measures were intended by the then Conservative-Liberal government to secure support from the anti-immigrant Danish People's Party for budget cuts and pension reforms. (The move was later abandoned following a change of government.) Nevertheless, Denmark's announcement added further fuel to rising media hysteria about the possible re-introduction of border controls throughout Europe.

During their talks in April, Berlusconi and Sarkozy had 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 standards at the common border; and, in extreme cases, temporarily suspend those countries which cannot or will not maintain their borders properly. But negotiations over these changes are 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.

Whatever the outcome of these talks, political tensions within the Schengen area look set to escalate still further throughout 2012 and 2013, in particular if one or more of the following happen: Bulgaria and Romania join the Schengen zone; efforts to reform Greece's border and immigration system fail; and annual migration from North Africa, which usually gets underway in the spring, leads to further border disputes like the one between France and Italy. All three developments are likely. But their collective impact – along with national elections due in France, Greece and, possibly, Italy – could create a 'black swan' moment for the Schengen area: an unforeseen event that shifts public perceptions. Voters in several Schengen countries could suddenly lose confidence in the common management of the passport-free zone, with major political consequences for the future of free movement in Europe.

2 The Schengen area: a pocket history

The EU has been committed to the idea of the free movement of people – along with goods, capital and services – from its outset. But it was not until the 1985 Single European Act that member-states resolved to make those four freedoms a reality by establishing a true single market by 1992. Britain, while in favour of the single market generally, stopped short on the free movement of people. Other EU citizens would no longer need residence or work permits to enter the UK, but London insisted on keeping its own border controls to verify the entry rights of non-EU citizens, known as third-country nationals.

Britain's dissent forced other member-states to differentiate between allowing their workers to move between EU countries without permits, and the ideal of a Europe where all restrictions on movement, including passport checks, would be a thing of the past.[2] In June 1985 France, Germany and the Benelux countries signed a separate agreement in the Luxembourg border town of Schengen to remove their 'internal' border controls, and to create common controls to be applied uniformly at the new 'external' frontier. This also implied the establishment of single European policies on political asylum, immigration and visas, as well as police co-operation and the exchange of information between national immigration authorities outside the EU's formal legal framework.

[2] *Ben Hall with Ashish Bhatt, 'Policing Europe: EU justice and home affairs co-operation', CER report, October 1999.*

In 1990 the Schengen states drew up a convention to implement their earlier commitment. It provided for the removal of passport controls, the operation of a common police database known as the Schengen Information System, and a complex committee structure

for co-operation between national interior and immigration officials. But it was not until 1995 that internal border controls were finally abolished between the five original Schengen participants, Portugal and Spain. (Italy joined a little later after satisfying concerns over its immigration controls and domestic security arrangements.) And it was only in 1997, under the Amsterdam treaty, that these arrangements were formally incorporated into the EU's legal framework. Sweden, Finland and Denmark have since the 1950s had a Nordic passport union together with Norway and Iceland. All five countries became members of the Schengen area when an international agreement between the EU and the two non-member-states entered into force in March 2001.

In 2004, the EU's 'big bang' expansion to 25 member-states meant radical change for the Schengen area and labour migration within the Union. The older member-states began to phase out work permit requirements for citizens from the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Three years after their EU accession, border checkpoints were dismantled with all these new members, save Cyprus, ushering in a freedom to travel across Europe not seen since the outbreak of World War I. In 2008, another non-EU member – Switzerland – joined the Schengen club, agreeing to apply EU consular and immigration rules but maintaining its own customs controls.

Today, all EU countries are Schengen members except Britain and Ireland, which maintain their own passport controls; Bulgaria and Romania, which are expected to join soon; and Cyprus, which remains out because of its internal division. At its current membership of 26 countries, the Schengen area stretches from Faro in Portugal to Narvi on the Estonia-Russia border, encompassing almost 10,000 kilometres of external land borders, over 280 international airports and a territorial sea area of 43,000 square kilometres.[3] But it is far from being a monolithic 'fortress Europe':

[3] By comparison, the US land border with Mexico is just over 3,000 kilometres long, Russia has 71 international airports and India has a territorial sea area of over three million square kilometres.

national approaches to immigration policy remain very diverse. EU rules on border checks, asylum claims, the return of illegal entrants and the issuing of visas are unevenly applied.

For some countries, Schengen entry has only been a sign of progress towards, rather than arrival at, higher standards and better levels of co-operation. Greece, for example, has struggled since joining Schengen in 2000 to be considered a fully functioning member, because of its hugely challenging frontier that spans many small islands and crosses mountainous terrain shared with Albania, Macedonia and Turkey. Other Schengen countries have for years checked the passports of passengers travelling from Greece.

The Schengen system, with its procedures and technology largely conceived in the late 1980s, began to look archaic even before EU enlargement in 2004. Governments fretted about extending Schengen's land frontier to the Balkans, Belarus, Ukraine and further along Russia's Baltic Sea border. Moreover, global tourism has grown rapidly, with the total number of international arrivals worldwide rising from 687 million in 2000 to 940 million in 2010.[4] European border services, together with aviation and port authorities, have struggled to deal with an unprecedented increase in global traffic while coping simultaneously with onerous new border security requirements designed to deter terrorist attacks. The EU made €1 billion available to the new member-states to bring their border and immigration systems up to standard. But fresh policy ideas were also needed to maintain political confidence in the enlarged Schengen area.

[4] *The Schengen area, together with Britain and Ireland, receives almost half of these, according to the World Tourism Organisation.*

Frontex, the EU's border agency, began operations in 2005. This Warsaw-based body has 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. The same year, governments created a specific budget line for 'migration management' in the EU's overall budget for 2007-13, capped at less

than one per cent. This has allowed the European Commission to allocate €4 billion over seven years to EU interior ministries for the upgrading of border controls, the return of illegal entrants, the integration of immigrant residents and assistance to asylum seekers. (For example, the amount available in 2011 to help EU member-states with border, immigration and asylum challenges was €612 million.) EU governments also asked the Commission to build a Visa Information System (VIS), a database where all short-term visas for the Schengen area could be centrally recorded and assessed. Concurrently, EU officials began working on plans to upgrade Schengen's common external border with revolutionary 'smart borders' technology.

As with economic policy in the eurozone, governments retained direct control over their border and immigration policies despite this revamp: the relevant national officials remain answerable to their respective interior ministries. The EU has no border guard, police or interior ministry of its own. The European Commissioner for Home Affairs, Cecilia Malmström, has no authority to co-ordinate national security services, issue work visas or grant refugee status. The Commission's role is mainly to design the legislation needed for the working of the Schengen area as well as 'flanking measures' needed to address common security questions. It is the EU governments, represented in the Council of Ministers, that ultimately decide on all such measures.[5] The relevant configuration of the Council, the justice and home affairs or JHA Council, meets quarterly to discuss issues concerning border control, migration and security. JHA Council decisions apply to all Schengen countries except Denmark which formally stood aloof from the development of this area of EU policy in 1993. Some apply to Britain and Ireland, which enforce free movement rules as part of the single market, but opt in to EU justice and home affairs policy on a case-by-case basis only.

[5] Under the EU's so-called co-decision procedure, the European Parliament can amend Council legislation on borders, immigration and political asylum. MEPs also received co-decision powers over security and criminal justice legislation following the entry into force of the Lisbon treaty in 2009.

Each Council presidency takes charge of reviewing the border control, consular and immigration regimes of a certain number of Schengen countries once every five years on a rolling basis. The purpose is to check that all members still meet the standards laid down in Schengen's border and visa codes, and ensure that border patrols, immigration services and police forces in the passport-free zone are doing their jobs well and consistently. These peer reviews are conducted by teams of national experts assisted by EU officials, who can recommend that a country under review improve procedures, upgrade certain facilities or install new technology where frontiers need to be strengthened or modernised. This light-touch regime for evaluating Schengen border controls shows how dependent member countries are on mutual trust.

3 The EU's unfocused search for a migration policy

Free movement between EU member-states implies a common approach to admitting people to their territory.[6] But EU countries have been much more willing to work together to combat illegal immigration than to manage legal flows. Although around 650 million travellers legally enter the Schengen area each year, a European immigration policy remains more of a rhetorical aspiration than a realistic goal.

[6] *EU citizens do not need residence or work permits to travel to or live in each others' countries, subject to some initial restrictions for new member-states. This right is often referred to simply as 'free movement'.*

Taken separately, EU countries attract very different numbers of immigrants, and from different locations. Depending on geography, historical ties and how migrants perceive different countries, their border challenges and popular concerns over immigration vary widely. Governments are loath to give the European Commission a role in regulating labour migration. And no dispute resolution mechanisms exist when one member-state takes an immigration decision that impacts others adversely. For example, other Schengen countries were powerless to intervene in 2005 when Spain regularised the status of some 600,000 undocumented residents – thereby giving them the right to travel to other EU countries – despite the widespread belief that the amnesty would trigger further unauthorised immigration to the common travel area.

On the other hand, EU countries usually welcome common immigration rules when they specifically target irregular migration. The EU's population of undocumented resident immigrants is currently estimated at anything from two to four million people. This has significantly decreased from an estimated six million over

the last decade, due in part to the accession to the EU of several former 'sending countries' such as Poland, Lithuania and Romania, whose citizens are now legally resident in Western Europe; and in part to the global economic downturn curbing international migration since 2008.[7] Moreover, the EU has adopted measures to increase repatriation rates of migrants who enter illegally, over-stay their visas or claim asylum as a way of entering the EU jobs market. It has also concluded agreements on closer collaboration with the migrants' home countries – or the countries through which they transit – on repatriation, border patrols and the security of passports and visas.

[7] *Franck Düvell and Bastian Vollmer, 'Improving EU and US immigration systems' capacity for responding to global challenges: learning from experiences', Centre on Migration, Policy and Society, University of Oxford, 2011.*

One EU priority is to curb illegal entry to the Schengen area via the southern Mediterranean. Frontex was first deployed there in 2006 to help stem the organised transport by people smugglers of thousands of migrants to the Canary Islands in make-shift 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 strengthen borders in one area, but the smugglers quickly move on to exploit weaknesses in other areas that then bulge.

If unauthorised migrants are allowed to stay, voters can lose faith in their country's systems for managing borders, immigration and the determination of refugee status. However, public authorities find it difficult to return illegal immigrants against their will: it is an expensive, unpleasant business that may involve coercion and is strewn with legal complications. Some EU countries, after apprehending and detaining irregular migrants, simply release them with administrative expulsion orders, in the unlikely expectation that they will then leave by themselves. Others invest more time and resources to get such migrants to leave, either returning some under guard on specially chartered flights, or offering financial incentives to those who will leave voluntarily.

Such uneven efforts are a potent source of political tension within the Schengen area, and in 2008 the JHA Council and the European Parliament agreed on an EU 'returns' directive. This set out the timelines and rules for deportations of illegal immigrants from Schengen countries. The same year Nicolas Sarkozy got EU leaders to sign up to a 'European migration pact', the mainstay of which was a political commitment from all EU governments to do more to return migrants who have no legal right to stay in the EU. Both initiatives appear to have increased the return of irregularly-staying third-country nationals from the EU: of about 570,000 apprehended in 2009, almost half were sent home or returned to a transit country.

Unlike in the area of trade policy, there is no world organisation that agrees and enforces a fair rulebook for international migration.[8] Under international law, countries are technically obliged to take back their own nationals if they have no legal right to stay in another country. But foreign governments often refuse to do this or else throw up administrative obstacles, such as declining to re-issue passports destroyed by immigrants in an attempt to prevent their deportation. EU countries cannot detain unauthorised migrants for very long because this would violate their legal rights and could be hugely expensive. Therefore, if an official decision to repatriate an immigrant is not carried out quickly, it will probably not be acted upon at all. Once illegal immigrants are released, the public authorities tend to lose contact with them.

[8] A UN treaty on the rights of migrants entered into force in 2003 but it has had little impact beacause no country that receives large amounts of immigrants has signed it.

To facilitate the return of illegal migrants, ten years ago EU governments asked the European Commission to negotiate common repatriation deals on their behalf with key countries representing the largest sources of inward migration to Europe, including Algeria, China, Morocco, Pakistan, Russia, Turkey and Ukraine. Such agreements, also known as readmission agreements, commit foreign governments to accept the return not only of their own nationals but also unauthorised migrants who have travelled through their

territory to reach the EU. In return, the sending countries usually demand so-called visa facilitation: for example, co-operating countries are granted a 50 per cent reduction on the cost of a Schengen visa (which otherwise costs €60); some categories of traveller, such as business people and students, may pay no fee at all; and applicants can expect to receive their visas faster and with less hassle. Ordinarily, travellers applying to visit the Schengen area need to provide a lot of background information about their finances, travel insurance and personal situation, and sometimes have to wait a long time for a decision on their visa.

The EU's emphasis on these legalistic accords has had a mixed record, however.[9] Thirteen such agreements are now in force (mainly with aspiring EU members such as Georgia, Ukraine and the Western Balkan countries), out of an original 18 countries that were prioritised. Turkey, however, has proved more problematic. The country is crucially important to the Schengen area, due to its shared borders with Greece and Bulgaria. But in 2009, the AKP government in Ankara refused to ratify a readmission treaty with the EU because the Commission excluded visa facilitation from the final deal, under pressure from several member-states. Meanwhile, negotiations with several other important countries – Algeria, China and Morocco – have failed to get anywhere because they have little interest in admitting emigrants. "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", explains a senior JHA official working in the Council.

[9] European countries think readmission agreements are important for tackling illegal immigration. By contrast, the US has little interest in them because it has the clout to make sending countries honour their international commitments.

In 2005 EU member-states began to package repatriation negotiations into something more palatable to poorer countries with rapidly growing populations. They committed to a more 'global approach' to migration policy where progress on readmission is only one part of an arrangement that includes better trade links, more targeted development aid and other financial incentives. The Commission

developed this concept into 'mobility partnerships' in which, crudely, the EU rewards collaboration on curbing irregular migrant flows with financial assistance, technical programmes and better access to visas.[10] Although the Commission has no powers to offer visas, individual member-states may do so if better co-operation with the country concerned is important to their own efforts to counter illegal immigration. After the Arab spring, Catherine Ashton, the EU's High Representative for Foreign Policy suggested that mobility partnerships should be concluded with all North African countries. Their co-operation on repatriation is critical to securing the southern Schengen frontier. But none of them currently has a repatriation deal with Brussels, because of arguments over visa access and the lowering of EU trade barriers to their agricultural exports.

[10] The EU has mobility partnerships with Cape Verde, Georgia and Moldova. And negotiations are ongoing with Armenia, Morocco and Tunisia.

Towards better migration management?

In an ideal world, policy-makers attempting to create a fully-fledged EU migration policy would find a way to connect three key drivers of national immigration debates in a more constructive way. These are the need for employers to attract 40 million skilled workers over the next 40 years, given Europe's declining demographic profile; the demands of democratic politics, with voters opposing the social changes brought about by inward migration; and the desire of migrants for a better life in a region that boasts one of the world's highest standards of living.[11]

[11] European Commission, 'The demographic future of Europe – from challenge to opportunity', October 2006.

Some countries such as Australia, Canada and Britain have tried to find a fair balance between these factors in their visa policy by creating so-called points systems. In these, ease of access to a visa depends on how many points the migrant accumulates, based on categories of desirable skills, education, language ability and family situation. A 30-year-old, single Jordanian doctor who speaks fluent English will receive a visa to move to Britain without much fuss, for example.

Some EU officials dream of creating a Europe-wide points scheme to meet the foreign labour needs of the single market. The problem is that such systems are inherently likely to fall victim to bureaucratic absurdities. Russian ballerinas and Zambian footballers attempting to enter the UK, where their skills are eagerly sought, have had their visas refused or held up because they have not scored highly enough on the points scale. And such schemes leave no room for countries to benefit from the chief benefit of immigration: the unquantifiable desire of many poor immigrants to succeed. Migrants, for example, are the founders of firms like Google, Intel, PayPal, eBay, and Yahoo; they constituted 67 per cent of the growth in the US science and engineering workforce between 1995 and 2006.[12] But the returns from migration work to a far longer timescale than those which govern electoral politics.

[12] *Ian Goldin and others, 'Exceptional people: How migration shaped our world and will define our future', Princeton University Press, 2011.*

Gary Becker, a Nobel prize-winning economist, has suggested that a fairer way to govern international migration would be to create 'pay to migrate' schemes whereby potential immigrants would pay a simple one-off fee of, say, €40,000 in return for residency and the right to work. This would ensure that "economically active migrants who had a real commitment to the country were most attracted".[13] Given that many irregular migrants pay in excess of €10,000 to be smuggled into Greece or Italy, a more humane version of this proposal could be used to destroy the business model used by people-smugglers. (For example, some EU development aid could be used to fund programmes in third countries that aim to help potential migrants raise funds to migrate through simple saving schemes and small-scale business ventures.) This would create a positive connection between immigration and the cash-strapped European welfare state while diminishing voter opposition to granting migrants the right to work and to access benefits. Most European countries are a long way off considering these or similarly creative ideas for managing migration, however.

[13] *Gary Becker, 'The challenge of immigration: A radical solution', The Institute for Economic Affairs, April 2011.*

4 Black swan rising: Greece and Schengen's Balkan dilemma

Slow-burning, technocratic initiatives at EU level have not kept pace with the speed at which immigration has climbed up domestic political agendas. Net migration to EU and Schengen countries doubled between 2000 and 2008, with the result that about 32 million international and intra-Union migrants are legally resident in the free movement area today. The vast majority of these live in the EU's five largest countries: Britain, France, Germany, Italy and Spain.[14] Greece, the Czech Republic and Ireland also became countries of immigration between 2000 and 2008.

[14] *Katya Vasileva, 'Foreigners living in the EU are diverse and largely younger than the nationals of the EU member states', Statistics in Focus 45, Eurostat, 2010.*

Immigrants now account for between seven and 15 per cent of the population in West European countries. Over a third of this cohort can be attributed to the EU's eastward enlargements in 2004 and 2007, which allowed the movement of several million people from the new member-states into the Union. Around 70 per cent of those from the Central and East European countries which joined in 2004 headed for Britain and Ireland, which, along with Sweden, were the first to open their labour markets to the new members. Britain and Ireland were less generous to Bulgaria and Romania, which joined in 2007, in response to hardening public attitudes over immigration. Accordingly, most Bulgarians and Romanians chose to go to Italy and Spain.

By 2009, almost 40 per cent of foreigners in EU countries – some 11.7 million people – were from another member-state, mostly from Romania, Poland, Italy and Portugal (in numerical order). The remaining 60 per cent hail from the rest of Europe or Asia, the

Middle East and North Africa, sub Saharan Africa, Latin America and the Caribbean. On average, these migrants tend to be less skilled and have lower rates of labour force participation than the EU natives.[15]

[15] *Rainer Müntz, 'Migration, labor markets, and integration of migrants: An overview for Europe', Hamburg Institute of International Economics, April 2008.*

These influxes to Western Europe have reawakened public anxieties about immigration that followed the collapse of Communist regimes in Central Europe and wars in the former Yugoslavia. A number of other factors have also stoked public tensions over immigration, in the last decade: long-term unemployment, urban 'ghettoisation' and civil unrest amongst first generation immigrants of North African and Turkish origin in France, Germany, the Netherlands and elsewhere. Anti-immigration far-right political movements are now forces to be reckoned with in several countries. These include the Danish People's Party, the Dutch Freedom Party, the French National Front, the Greek Popular Orthodox Rally, the Hungarian Jobbik Party, the Italian Northern League and the Sweden Democrats.

The new salience of anti-immigration politics could not have come at a worse time for the Schengen project. The passport-free zone faces critical trials in 2012, which will also have to be addressed against the backdrop of the continuing eurozone crisis, widespread economic stagnation and national elections in key countries.

First, governments and the European Commission must confront blatant problems surrounding Greece's membership of the Schengen area. When it joined in 2000, the other members believed that Greece was far from ready to replace the border control functions once undertaken by its military. (National armies are banned from maintaining border checkpoints under Schengen rules.) As a result, the country still suffers from leaky borders and has a dramatic problem with undocumented residents, particularly in the city of Athens, according to a senior EU official working closely with the Ministry of Citizen Protection, one of Greece's interior ministries. Unsurprisingly, a team of EU experts reported to ministers in 2010

that Greece had failed its five-yearly Schengen evaluation, citing "serious shortcomings" in its border management.

After initial pressure from other Schengen countries, Greece has created a new civilian border guard service over the last decade. But its focus was the Greek-Albanian border for many years. The service was ill-prepared to deal with a significant increase of illegal entrants to the Greek islands and the north-eastern Evros region, which borders Turkey. Between 2009 and 2011, the latter became the favoured gateway to the Schengen area for both people smugglers selling passages to Europe, and those pushed to migrate by floods in Pakistan, political instability in Iraq and Somalia, or conflict in Afghanistan. In November 2010, the Greek authorities lost control of the Turkish frontier along a 12 kilometre strip of land near the city of Orestiada, leading Frontex to deploy an emergency mission to take over border control functions temporarily.

The period 2009-11 also brought another open secret about Greek immigration policy to public attention: the country has no real system for granting political asylum, despite technically belonging to the EU's common regime for refugee management. This matters because an agreed approach on refugees is essential for countries sharing a common border regime and free movement area. All refugee policies are about determining eligibility for special rights available to asylum seekers under the Geneva Convention: the "modern bureaucratised version of the ancient duty of hospitality".[16] It established the rule that states must check whether apprehended migrants are in fact asylum seekers. The obligation to differentiate between migrants fleeing political persecution rather than just poor economic prospects is the chief reason why governments are not allowed to 'push back' or eject illegal entrants immediately after their detection.

[16] *Christopher Caldwell, 'Reflections on the revolution in Europe', Penguin 2009, p. 61.*

The convention was first agreed for Europeans displaced and uprooted by World War II but now applies to refugees worldwide following the agreement of an additional protocol in 1967.

Collectively, EU countries receive around 70 per cent of all asylum requests made in the developed world, partly due to their accessible position on the Eurasian landmass.[17] The EU has a long-standing goal to move progressively towards a single set of European asylum rules, to replace the different national arrangements that give effect to the convention.

[17] UN Refugee Agency, 'Asylum levels and trends in industrialised countries: First half 2011', October 2011.

Asylum seekers are a political hot potato in national politics, even if the numbers and costs involved are modest. The obligation to take care of large numbers of refugees can cause sharp tensions between EU governments and stoke resentment amongst their electorates. That is why EU countries agreed in the early 1990s that asylum seekers should have their claims dealt with by the first member-state they reach. Most asylum seekers head for North European countries which are amongst the world's most generous when it comes to refugee protection. So, many assumed that the first-country-of-arrival rule, later recast as the EU's 'Dublin regulation', would ensure southern member-states took on a share of the refugee burden. (Under the Dublin regulation, asylum seekers cannot lodge multiple applications across the EU: those who fail to apply for protection in their member-state of arrival should be returned there by other governments.) The deal helped to make the creation of the Schengen area politically possible. But it also put countries with sensitive land borders at a certain disadvantage.

Greece failed to take this challenge seriously. Rather than invest in a working asylum system that could conform to agreed EU standards, the country allowed the problem to grow, treating it mainly as an issue for the police. As a result, there are some 50,000 asylum cases awaiting resolution in Greece with the UN Refugee Agency describing refugee conditions in Evros as a "humanitarian crisis" in 2010. Only a tiny percentage of those who apply to the Greek authorities for asylum are granted it. And many applicants are kept in virtual imprisonment without proper sanitation in filthy, overcrowded detention centres in

Fylakio and Soufli in the Evros region.[18] Several member-states, as well as national and European courts, are refusing to allow the return of asylum seekers to such places on human rights grounds. This means Greece has effectively been suspended from the EU's refugee policy. In the medium to long term, Greece cannot continue to share a common border control regime with other Schengen countries while its authorities are not trusted by its partners to apply EU rules on asylum properly.

[18] *EU Fundamental Rights Agency, 'Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner', March 2011.*

In late 2010, the Greek government made fresh promises to bring its border management up to Schengen standards, agreeing to a 'national action plan on asylum reform and migration management' with the Commission. But it is doubtful whether these commitments will be delivered in anything like the timescale envisaged. Greece is now less reliant on Frontex to maintain its border with Turkey, thanks to redoubled efforts from its border and immigration services. But the number of unauthorised migrants arriving is greater than when the agency was forced to step in to assist the Greek government in 2010, with almost 9,000 illegal entries detected during some busy months – about 300 persons per day – which is an all-time high. Similarly, the country has established a new asylum service but cannot find staff for it because of a lack of domestic expertise in handling asylum claims and a recruitment freeze across the civil service.[19] During a JHA Council meeting in September 2011, German ministers castigated openly Christos Papoutsis, the minister responsible for border and asylum issues in Greece, over the conditions in which asylum seekers there are kept.

[19] *This information is based on interviews with diplomats in November 2011 and on internal EU reports seen by the author on efforts to reform border and immigration control in Greece.*

Greece has argued – quite coherently – that it cannot be expected to build a new immigration and asylum system from scratch, when

national budgets are being slashed under the terms of its eurozone bail-out deals. But its government has failed to use most of the €223 million in emergency funds made available by the Commission for this purpose, due to red tape and a lack of expertise in such matters that dogs the demoralised Greek public service. In November 2010, Papoutsis warned publicly that his country could be forced to leave the Schengen area altogether unless the current situation improved.[20]

[20] *Paul Tugman, 'Greece runs risk of having to leave Schengen area, minister says', Bloomberg News, November 2nd 2010.*

Other Schengen countries have tolerated the Greek 'exception' for almost a decade now. They have done so because it is the only continental Schengen country that adjoins no other member. Irregular migrants who enter the Schengen area through the porous Greek border have to travel south to ports like Patras to secure a passage to Italy, or else brave the security checks at one of Greece's 15 international airports. Schengen governments typically make airlines and ferries enforce immigration rules by fining them for each passenger allowed to travel without a proper passport or visa. Border officials in some EU countries also check passports of travellers arriving from Greece. This connects the Greek situation to the second dilemma facing the Schengen area in 2012: the expected entry of Greece's neighbours, Bulgaria and Romania.

Bulgaria and Romania had expected to enjoy passport-free travel by the end of 2011, after EU experts agreed that these countries met the necessary standards to maintain the common border. Bulgaria alone spent over €1 billion to upgrade its Turkish and Black Sea frontiers with new equipment and new technology such as x-ray equipment and sensors for detecting migrants concealed in vehicles and commercial containers. But some EU governments are unhappy that Bulgaria and Romania have failed to resolve thornier issues of corruption, poor judicial standards and the influence of organised crime on politics. Both countries made solemn commitments to deal with these problems at the time of their accession to the Union in 2007.

Successive reports from the Commission, which manages a special 'verification and co-operation mechanism' for monitoring the rule of law, show that corruption, in particular, remains worryingly high in Bulgaria and Romania. This is a key reason why interior ministers from the Netherlands and Finland blocked their entry to the Schengen area in October 2011.

Politicians in Bucharest and Sofia are indignant because progress on strengthening the rule of law is not technically a pre-condition for joining the passport-free zone. But in reality the two issues are intimately connected. The rule of law begins at the border. Poorly-paid officials immersed in a culture of corruption can be easily bribed by smugglers, organised criminals and unauthorised migrants to look the other way. In the case of Bulgaria and Romania, this is not a hypothetical. "Signs of corruption dot both the Bulgarian and Romanian countryside along the borders, in the form of lavish villas belonging to border guards and customs officers. ...So notorious is the behaviour of border guards and customs officers that they are the object of popular ridicule. 'What do you give a border guard for his birthday?' goes one joke. The answer: 'A shift on his own.'"[21]

Once Bulgaria and Romania enter the Schengen area, their governments are likely to relax current efforts to crack down on corruption at the border.[22] Even if not, the opportunities and incentives for corruption will multiply. For example, Bulgaria's frontier with Turkey, and Romania's port city of Constanta, could become favoured spots for gangs of organised criminals that now smuggle people across the Greek-Turkish border. Furthermore, in early 2011 Europol, the EU's police agency, had to advise Romanian officials to address urgently the security of customs controls in Constanta; 3,000 ship containers had been discovered there without proper documentation.

[21] Stephen Castle and Suzanne Daley, 'New conservatism in Europe impedes two of its nations', International Herald Tribune, September 3rd 2011.

[22] Andrew Rettman, 'Romania killing 'pawns' but not 'queens' in EU border-free bid', EUObserver.com, February 2011.

Most seriously, the dismantling of physical border checkpoints with Bulgaria and Romania will create a 'land bridge' between Greece and the rest of the Schengen area. As land routes from there to Western Europe open up, the number of irregular migrants attempting entry at the Greek-Turkish border is likely to increase sharply. This in turn will exacerbate political tensions throughout the Schengen area as governments realise their heightened exposure to Greece's border problems.

Under the same logic that allowed Cyprus to join the EU without a resolution of its territorial conflict, bids by Bulgaria and Romania to join Schengen have built up a seemingly unstoppable momentum. Although the JHA Council is deadlocked on this issue, EU leaders may now overrule it and decide themselves whether Bulgaria and Romania should be allowed to join. Heads of state and government have a tendency to ignore their interior ministers when big picture politics are played out at European level. Furthermore, Finland has dropped its veto on these countries' Schengen membership, following a visit by Bulgarian and Romanian interior officials to Helsinki in late 2011. This has left the Dutch government, which is reliant on the support of the anti-immigrant Freedom Party (PVV), isolated. And with the Dutch now showing a tendency to compromise, the Schengen area will almost certainly enlarge in 2012.

The political context for Schengen enlargement

Another reason to worry about the premature enlargement of the Schengen area is that public concern over immigration in Western Europe is likely to become more pronounced in the short term. Illegal entries to the Schengen area jumped 50 per cent above normal levels in mid-2011, due partly to the Arab spring.[23] Anti-immigrant sentiment tends to be counter-cyclical, meaning that today's migration influx is tomorrow's political problem, even if immigration has already begun to decrease in the meantime. The annual arrival of 'boat people' from North Africa – who make use

[23] *Frontex, 'Frontex risk analysis network quarterly' Issue 2, April-June, October 2011.*

of the warmer weather between February and September to reach Schengen's southern border – will keep public anxiety high over uncontrolled immigration, especially in the Mediterranean member-states. Similarly, a 13 per cent increase in asylum applications to EU countries during 2011 (reversing a trend towards lower numbers in recent years) will surely be seized upon by anti-immigrant political parties.[24]

[24] *UN Refugee Agency, 'Asylum levels and trends: first half 2011', October 2011.*

Hard fought national elections are expected in Greece and France in early 2012 and in Germany and Italy in 2013. Far-right leaders, such as Umberto Bossi of the Northern League in Italy and Marine Le Pen of the National Front in France, oppose the very concept of passport-free travel, and comparable figures could emerge in other countries. In France, the current president, Nicolas Sarkozy, will have to prevent significant numbers of his supporters shifting to Le Pen, in order to beat his Socialist rival, François Hollande. During a speech in Toulon in December 2011, Sarkozy made it clear that immigration would feature in his re-election campaign, adding that the current Schengen area should be "reconsidered" on the grounds that some members could not maintain the external border properly.[25] A fight over passport-free travel during the French presidential election could set a tone for other national polls.

[25] *Andrew Rettman, 'France: EU passport-free travel should be re-considered', EUObserver.com, December 2nd 2011.*

Despite much political bloodletting about immigrants in both Europe and the US, no objective means for measuring 'border security' exists. If it did, the public would have at least one solid indicator to gauge whether governments have sufficient control over immigration. This in turn might help to shift national debates on this issue away from today's rhetorical exchanges over whether migration is good or bad, in a more constructive direction.[26] At present, such debates tend to be polarised between those who have confidence in the

[26] *Edward Alden and Bryan Roberts, 'Are US borders secure: Why we don't know and how to find out', Foreign Affairs, July/August 2011.*

governments' ability to control the border and those who do not. And if politicians can blame immigration on outside forces, they will do so, especially in a political environment soured by high unemployment and a tough economic outlook.

Hopeful candidates in national elections may well argue that officials in Brussels are too insulated from the pressures on national governments and out of touch with popular concerns over immigration.[27] This tactic is already being employed in the Netherlands by the PVV which has controlled the balance of power in the Dutch parliament since 2010. Its leader, Geert Wilders, has forced the current governing coalition to begin re-introducing some controls at the border; to press for a rolling back of free movement rights enjoyed by other member-states' citizens; and to argue for a less generous EU approach to refugees.

[27] *Hugo Brady, 'Immigration: Why Brussels will be blamed', CER insight, September 2010.*

5 What the EU is doing to strengthen Schengen

Many EU and national officials seem unaware that Schengen enlargement could trigger a malign spiral of events in 2012 and 2013. But they do recognise that improvements need to be made to the Schengen system generally. The powers of Frontex, the EU's border agency, have steadily expanded, most recently in September 2011. It is now able to buy its own helicopters, land vehicles and motorboats, open files on suspected smugglers and traffickers, deploy so-called European border guard missions, and co-ordinate immigration officers posted abroad by Schengen countries.

Frontex ran out of money in 2011 because of the need to part-finance Greek border operations. This is despite a twentyfold increase in the agency's budget, now €86 million, since its creation in 2004. An EU asylum support office – established in 2010 and currently focused on helping the Greek government improve its refugee protection – is similarly strapped for cash. Hence the Commission's proposal for the forthcoming budget negotiations for the EU to spend nearly €10 billion over seven years on 'migration management' may prove relatively uncontroversial. (Frontex would receive a large chunk of this to support its interventions on the external border.) This is still a relatively modest amount of money given that the annual budget for the UK's border agency alone is £2.5 billion or around three billion euro.

The Commission believes that the introduction of Schengen-wide 'smart border' systems would help restore to national governments a sense of control over flows of migrants, without impeding travellers. As international arrivals rise, interior ministries officials

become more worried that they can never be sure who is entering and leaving their territory. Officials know far less than they would like about the movements of foreigners who may pose a security threat, or the number of visitors who have over-stayed tourist visas. For most countries, the latter is a greater source of immigration than illegal entry.

EU countries such as Britain, the Netherlands, Germany and Spain are gradually updating their border controls so that fingerprint, iris and facial recognition technology can be used to check travellers' identities and rights of entry. Their hope is that the advent of such biometric technology will now make it possible for manned border checkpoints to become more like international turnstiles. These would require less staff and be able to handle higher volumes of people while providing more accurate information about migrants' movements. Border guards used to take little interest in those exiting their territory as the old professional trope "if they are leaving, they are going the right way" attests. Now immigration officers think that, thanks to digitised entry and exit records, it will become possible to know exactly who is in and who is out of their jurisdictions.

These measures are part of a global push to integrate fingerprints and digital photographs into machine-readable passports and visas, while requiring travellers to pre-register their information with immigration authorities before they depart.[28] Immigration officials in advanced countries believe that pre-screening and the use of biometrics could eventually make today's system of applying for visas unnecessary. To this end, they increasingly require airlines, ferry operators and international railway services to share more of the information given to them by travellers when they purchase tickets – so-called passenger name records. This also enables officials to screen this data against police 'watch lists', before the traveller arrives.

[28] Examples include the US ESTA (Electronic System for Travel Authorisation) and APIS (Advance Passenger Information System).

The Commission wants to create a digital 'entry-exit system' for the Schengen area, and to oblige airline companies operating in Europe to gather and share passenger name records with EU governments via a single computer network. But both initiatives will take several years to develop. And Schengen's porous eastern land frontier will to some degree impair their effectiveness. Land borders are impossible to secure completely because it is impractical – and undesirable – to erect continuous physical barriers between countries. The US has erected a border fence along parts of its frontier with Mexico, for example. But even this barrier has only mitigated the problem of illegal entry, not stopped it completely.

Another EU initiative is the establishment of 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, all sorts of different public authorities 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 automatically translate into different languages the records of these agencies, or reports about migratory flows and security threats. And unlike the EU's common customs regime, there are no clear rules for how or when such diverse services should co-operate together. In June 2011, EU leaders gave the Commission a tough deadline to get such a system up and running for the Schengen area by October 2013.

Impressive new IT systems help to bolster the confidence of national officials in the possibility of managing the passport-free zone successfully. They are also a tangible means of reassuring national politicians that membership of the Schengen area does not make their territories unduly vulnerable to illegal immigration. In October 2011, the EU began using a new Visa Information System (VIS) to connect all European consulates issuing Schengen visas in North Africa. The system will be rolled out next in the Middle East (in countries such as Israel and Jordan) and throughout the Persian

Gulf region. All Schengen consular offices worldwide should be connected to the VIS by 2013. Since applicants to Schengen consulates that use the new system must provide ten fingerprints and a digital photograph of themselves, it will soon become one of the largest biometric databases in the world.

However, one should be sceptical of the notion that technological fixes alone will be enough to safeguard the future of passport-free travel. For a start, large-scale IT projects managed by officials tend to be riddled with dangers. As with the troubled Galileo satellite programme, there is a real possibility that the new border and migration systems will over-run their scheduled deadlines, devour public money and undermine confidence in the ability of EU institutions and agencies to implement such projects successfully.

Notwithstanding the successful creation of the VIS, the Commission has already lost precious credibility in this respect. Since 1995, police and immigration officers have used a shared database, the Schengen Information System, to exchange information on crime and illegal immigration within the passport-free zone.[29] In 2001, the advent of new database technology and forthcoming EU enlargement prompted calls for an overhaul of the old SIS to enable more complex forms of information exchange, and to ensure that it could cater for a growing number of users. EU countries duly charged the Commission with delivering an 'SIS II' by 2006 and HP Steria, a French company, was soon contracted to deliver the project.

[29] *Britain and Ireland can also connect to SIS but cannot access its immigration-specific data. Neither can they consult the VIS.*

At the time of writing, the SIS II project is five years overdue and five times over budget. The system has failed even basic tests: national authorities have not been able to connect simultaneously to the central server in Strasbourg. Privately, Commission officials blame what went wrong on a lack of staff skilled at managing large IT projects, governments tinkering with the original system designs, the pressures of EU enlargement and chronic inefficiency from the main

contractor. Critical 'milestone' tests, scheduled for June 2012, will determine the fate of SIS II. Austria and Germany despair of the project. France is said to be working on plans for a 'SIS III', to be built on an inter-governmental basis. Meanwhile, the enlarged Schengen area is managing with an upgraded version of the old database. The total costs of the botched upgrade have reached over €100 million without producing a workable system.

Governments are already establishing a specialised agency in Tallinn and Strasbourg to take over the management of large Schengen IT systems. But the EU's Court of Auditors should open a special inquiry into SIS II, in the interests of public accountability, and to ensure that lessons can be learned for comparable ventures in the future. The debacle has damaged the Commission's reputation in project management, and delayed its smart border programme by absorbing time and energy. If these projects had been completed and delivered to governments earlier and without fuss, the future of passport-free travel in Europe would be more secure today.

6 Securing the future of passport-free travel in Europe

At a glance, France and Italy's standoff over Tunisian migrants in April 2011 seems to be the reason 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 agree either between themselves or with the EU's institutions about the specific reforms are now 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 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 international 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. The media have hardly noticed these, but EU officials are worried. Such checks are forbidden under Schengen rules if, as the Commission suspects, they become routine and represent border controls by another name. So the Commission also wants to re-open the Schengen arrangements, but for different

reasons to many governments. It wants its role in managing the Schengen area clarified so that it can prevent any 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. France in particular has always been a sceptical member of the Schengen area. Paris took much longer than other countries to abolish border checks when the passport-free zone was established.[30]

[30] *Ruben Zaiotti, 'Cultures of border control: Schengen and the evolution of European frontiers', University of Chicago Press, 2011.*

★ **'Disgruntled border guards':** these are the Southern European countries which guard Schengen's most problematic frontiers. They want the right to make exceptions to the Dublin regulation on asylum, so that they can send on to other members some of the asylum seekers who arrive in their territory. 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 as a quid pro quo 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 be the greatest potential threat to the common border (hence the headquartering of Frontex in Warsaw). 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 because of their authoritarian communist past, and they 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 which 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. In 2009 the Lisbon treaty gave them new powers over policies on policing and criminal justice, and therefore key aspects of internal security policy.

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 JHA Council presidency.

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. The dilemmas for national sovereignty on this issue are similar to those facing governments in the eurozone crisis. On one hand, countries want a stronger Schengen regime in which 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. If they did so, they could alienate their own electorates and tie their hands in future emergencies. As one diplomat put it, "how would the Norwegian government look to its own people, if it had to ask the Commission's permission to close the borders after another Breivik?" (In June 2011, deranged extremist Anders Breivik massacred 77 people in Norway, leading to a brief manhunt before he was apprehended and disarmed.)

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. Commission officials further defend their proposals by pointing out that very few border closures in the Schengen area have ever lasted longer than five days. Meanwhile, eastern and southern countries fret that 'a more flexible system' is code for the right to lock them out of the Schengen area on flimsy pretexts.

Separately, EU officials have also proposed amending the Dublin regulation on asylum, to allow for exceptions to the first-country-of-arrival rule, when there are large volumes of applicants. However

governments are unlikely to agree on a relaxation of EU asylum procedures: some countries worry that this would disincentivise the Greeks from reforming their own system (see Chapter four). And the EU already has a 'temporary protection directive' allowing countries to set aside the Dublin rules if one of them is suddenly overwhelmed by refugees in huge numbers.

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.

Peer-to-peer evaluations of border controls, even though supported by EU officials, have palpably failed to resolve persistent problems in Greece and other places. Here again, as in the euro crisis, Schengen countries suffer from a 'politeness problem' in policy co-ordination.[31] 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.

[31] *Mario Monti, 'Europe's problem – too deferential and too polite', Financial Times, June 20th 2011.*

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. Unlike the Commission, it is seen as a service provider, not a competitor for control over national frontiers. 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.

Currently, groups of national officials comprehensively investigate the border and consular systems of every Schengen country, on an alphabetical basis once every five years. In future, these evaluations need to be more flexible and should be carried out when and where Frontex deems necessary. The agency should hand its reports on individual countries to both the Commission and the presidency of the JHA Council with recommendations and proposals for further action.

If Frontex reported that a particular country failed two successive evaluations, without substantial progress having been made on prior recommendations, other Schengen members should suspend it temporarily. Such suspensions would take place in two phases: the re-imposition of checks at air and sea ports, followed by the re-erection of land border checkpoints.

Diplomats call the Commission's current 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. However, as part of the recast proposal, 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 that sets out a realistic timetable for reform of its border, immigration and asylum systems.

During this two-year 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. They should also prepare a temporary force of border guards to be seconded to Greece for a period of 18 months to two years, in case of further border collapses in excess of what Frontex is able to handle. A similar multinational force served at the Greek border for a period after the country first joined Schengen in 2000.

Additionally, both Bulgaria and Romania should be denied land access to the Schengen area until 2014 or until the Commission

reports solid progress towards addressing their problems with corruption for two years in a row. (Schengen governments could abolish checks at air and sea borders earlier, if they wish.) Concurrently, EU officials should propose that new procedures for tackling corruption and malpractice at the border to be included in Schengen's rulebook. Governments have already implicitly accepted that corruption at the border should be a part of Schengen's evaluation criteria. During 2011, ministers inserted a 'rule of law' clause into Croatia's treaty of accession to the EU which obliges it to satisfy any such concerns before entering the Schengen area. Croatia is deemed less corrupt than either Bulgaria or Romania according to Transparency International, a non-governmental organisation that monitors public sector corruption worldwide.[32]

[32] *Transparency International, 'Corruption Perceptions Index 2011'.*

New anti-corruption safeguards are not only needed for new Schengen members. Some Schengen-related scandals have come to light in North European countries, including German officials issuing thousands of Schengen visas under dubious circumstances in Kyiv.[33] Other malpractice has involved the issuing of Schengen visas and public tenders to build parts of the SIS II system, respectively, in Finland and Poland.

[33] *Luke Harding, 'German visa scandal rattles foreign minister', The Guardian, February 15th 2005.*

7 Time for a new deal with Turkey on migration

Greece, Bulgaria and Romania face a tough challenge to maintain Schengen's south-eastern frontier in future years. This is likely to be true even if their governments make impressive progress on reforms to address their own internal problems. Their task would be far easier, and the Schengen border more secure, if the EU could reach a new understanding with neighbouring Turkey on migration and security issues.

Turkey is the most important land route for hundreds of thousands of migrants from Africa, the Middle East and Asia travelling to Schengen countries. Moreover, Ankara is not legally obliged to provide access to political asylum on its territory in the same manner as are EU member-states. It has never fully signed up to an additional protocol to the Geneva Convention, agreed in 1967, which obliges countries to take in refugees whatever their nationality or origin (see Chapter four). That means that asylum seekers from conflict-torn countries like Afghanistan are far more likely to travel through Turkish territory to apply for protection in EU countries.[34] Most asylum applicants in Greece enter the country from Turkey.

[34] However, Turkey does co-operate informally with the UN Refugee Agency and provides a safe haven on its own terms to refugees fleeing places like Iraq and Syria.

Because of their history of armed conflict, disputed borders and divisions over Cyprus, co-operation between the Greek and Turkish governments on border and immigration issues leaves much to be desired. Turkey's border patrol services take back only a small number of illegal migrants that have entered Greece from their territory, turn a blind eye to people smugglers operating on their side

of the border, and allow a thriving local industry to transport thousands of irregular migrants to the Evros region. In addition, the EU-Turkey readmission agreement remains stalled over the issue of visa access to the Schengen area.

The EU should conclude a new treaty with Turkey on migration and security. Negotiations should take place outside of its stalled enlargement talks where justice, migration and security issues are only to be discussed towards the end. The new treaty should offer visa-free access to the Schengen area for Turkish citizens – to be achieved in several phases – in return for much closer co-operation with Turkey on border patrols, repatriation, refugee protection and efforts to combat crime in the Aegean and Black Sea regions.

In its first phase of implementation, the treaty should allow for fast-track visa facilitation to cut red tape and costs for Turkish citizens applying to visit the Schengen area, including those seeking multi-entry visas. The EU and Turkey should agree an ambitious 'mobility partnership', possibly called a 'free movement partnership' in this case to differentiate it from similar arrangements with non-candidate countries. This should establish joint technical and financial programmes aimed at a common understanding and management of migration flows in the region and be buttressed by work permits made available for Turkish citizens by EU member-states on a voluntary basis. For its part, Turkey would ratify its stalled readmission agreement with the EU and improve co-operation with Greece on border management.

The EU and Turkey should also offer a unique 'resettlement and relocation' programme for 15,000 of Greece's current cohort of 50,000 asylum seekers. Under the new treaty, Turkey would resettle several thousand of these on its territory provided EU countries agree to take an equivalent number of undecided asylum cases off the Greek government's hands.[35] This initiative would be a one-off form of 'debt

[35] *Migrants seeking asylum are not proven refugees until their claims are checked and verified either by governments or the UN Refugee Agency.*

forgiveness' for Greece on asylum policy. By reducing its huge backlog of asylum claims to a more manageable number, the programme would give the country more breathing space to create a proper system of refugee protection. It would also help to build trust between the EU and Turkey in a sensitive policy area.

In a second phase, the Turkish border patrol service and national police would have associate membership of Frontex and Europol, to allow closer co-operation in the fight against irregular migration, people-smuggling, drug trafficking and terrorism. (Most of Europe's heroin is smuggled through Turkey from places like Afghanistan by organised gangs of criminals.) The Turkish authorities should be invited to participate in elements of EUROSUR. Turkey would value gaining access to the new system, while regular reports from its frontiers would allow Schengen countries to become aware of forthcoming challenges to their common border. Turkey should also sign up fully to the Geneva Convention and establish a modern asylum system on its territory. Once this is done, full visa liberalisation should be granted for its citizens travelling to the Schengen area, with an agreement to review the arrangement every two years.

Initially, there would be significant political opposition inside the Schengen area to such an accord. Countries such as Austria, France, Germany and the Netherlands are instinctively opposed to visa liberalisation with Turkey. But they ignore the reality that visa liberalisation is already happening by the back door in some cases. A series of judgements of the European Court of Justice mean that more and more Turks are successfully challenging visa requirements laid down by EU countries, including the UK. EU judges say that, under a so-called 'standstill clause' included in the EEC-Turkey Association Agreement in 1970, Turkish citizens can in many cases travel visa-free to the EU if they intend to provide or receive a service. Under EU law tourism is regarded as an instance of receiving or providing a service, meaning that this exemption can be used to chip away at visa requirements

throughout the Schengen area for Turkish travellers. Currently, they need to provide vast amounts of supporting documentation before being cleared for a visa.[36] The lure of visa-free access to the Schengen area, therefore, may diminish over time as a tool for the EU to leverage greater co-operation from the Turkish authorities.

[36] *See the relevant rulings of the ECJ in Veli Tum (2007), Soysal (2009), Bozkurt (2010) and Dereci (expected in 2012), http://www.curia.europa.eu.*

Schengen countries are also reluctant to agree to visa liberalisation with Turkey because of the AKP government's policy of dropping visa requirements with countries in North Africa and the Middle East. Citizens from Syria, Tunisia and Yemen can travel to Turkey without applying for a visa. Furthermore, Ankara has shown a willingness to extend this privilege to Egypt, which is the most populous country in the region and highly unstable. Hence Schengen countries may fret that visa liberalisation with Turkey would negatively affect their security and make immigration problems worse, not better. But visa liberalisation does not mean the same thing as abolishing border controls or sharing the same visa policy with Turkey. Any traveller who arrives at the border from Turkey will still need to present a valid passport to enter the Schengen area. But Turkish citizens will no longer have to apply for a visa in advance. (Citizens of EU countries enter the US in the same way under its visa waiver programme.) The EU-Turkey treaty should include clauses to ensure that security procedures for issuing Turkish passports are robust and comparable to Schengen standards.

Greece and Cyprus may oppose such a treaty with Turkey on principle because their disagreements with Ankara are territorial in nature. Cyprus, which takes over the EU presidency in the second half of 2012, often blocks advances in EU-Turkish co-operation to gain advantages in its own dispute with Turkey. But the negotiations should be started by the Danish presidency and handed straight to Lithuania, due to take up the EU presidency in the middle of 2013. This is because Cyprus and Ireland, which has the presidency in the first half of 2013, are not in Schengen and therefore are unsuited to

conduct any such negotiations. As for Greece, it is unlikely to be able to remain in the Schengen area indefinitely without better collaboration with Turkey on border, immigration and asylum issues. It cannot achieve this bilaterally. Greece's need should also help to placate Cyprus, which hopes to join the passport-free zone one day, too.

A new settlement between the EU and Turkey on migration and security matters would help insure the Schengen area against the risks posed by its enlargement to Bulgaria and Romania. It would provide a boost to EU-Turkey relations at a time when Turkish accession talks are deadlocked. And it could provide a new path for Turkey's eventual integration into the Schengen area in a similar manner to Britain. The UK maintains its own border controls but has access to the SIS and can carry out police surveillance in other Schengen countries.

If this approach to securing Schengen's south-eastern frontier works, an EU-Turkey treaty could be a model for co-operation with the Union's eastern neighbours. Schengen states need to collaborate with these countries in order to maintain their long eastern land border, which is potentially far more vulnerable than the Southern Mediterranean frontier. For example, the EU needs assistance from Russia and Ukraine to control cigarette smuggling into Lithuania, to assist thinly-stretched border services in Latvia and to fight organised crime in the Black Sea area. France and Germany have already signalled their willingness to consider visa liberalisation with Russia. Nonetheless, this is likely to be a long and arduous process, not least because of divergences with Moscow over asylum issues, human rights and concerns over Russia's murky police and security system.

As a start, the Commission could propose the establishment of a Black Sea Task Force (BSTF) to improve co-operation with police, border guards and customs services in the relevant EU countries, Russia, Turkey and Ukraine. A similar arrangement already exists between the EU's Baltic member-states and Russia's border and

security services. The BSTF could become a clearing house for working jointly with Turkey and Russia to combat organised crime, customs violations and people-smuggling in the Black Sea region. To this end, the Commission could fund BSTF programmes on promoting information exchanges between the relevant services, special surveys on local crime trends, joint training and judicial co-operation. The initiative could be launched ahead of the Sochi Winter Olympics in 2014.

8 Why Schengen need not be like the euro

Imagine if EU leaders were given a sneak preview of today's eurozone 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 since 1995.

Without more assertive political action and a fair amount of luck, 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. Other scenarios include the Schengen area shrinking back to its original core membership or degenerating into a muddle of different free movement zones.

Governments and the EU's institutions can snuff out this fuse by stalling the enlargement of the Schengen area for two years. They should use that time to tackle its internal weaknesses and vulnerabilities, accelerate existing initiatives such as EUROSUR, and strengthen co-operation with countries in North Africa, Russia and, most importantly, Turkey.

If they do this, there are good reasons to be optimistic about the long-term future of the Schengen area. The economic rationale for keeping borders open is strong: border checks and onerous immigration requirements impede trade and tourism. For example,

the re-introduction of border controls between the Czech Republic and Slovakia resulted in a dramatic loss in trade between the two countries following the break-up of Czechoslovakia in 1993.[37]

[37] *Pankaj Ghemawat, 'World 3.0: Global prosperity and how to achieve it', p. 44, Harvard Business Review, 2011.*

Also, easier access to the Schengen area has become too useful a tool for EU foreign policy to be discarded. As one official in the EU's External Action Service puts it: "When we have a bilateral with the Indians, the only issues they want to talk about are support for their membership of the (UN) security council and visas." The promise of visa liberalisation has driven impressive improvements in the Western Balkans where all countries – except Kosovo – have been granted access to the Schengen area in return for wide-ranging immigration and security reforms. (However, interior ministries across the EU grumble about the impact of greater mobility from this region on asylum figures, illegal immigration and organised crime.) And unlike EU membership, easier access to Schengen visas or full liberalisation is a carrot that can be withdrawn. Restrictions can be re-imposed if commitments are not kept to, reforms stall or political circumstances change.

Lastly, borders are essentially an elastic policy instrument. They have always been tightened or loosened in response to domestic political imperatives, large influxes of migrants or economic circumstances. In contrast to the eurozone, a collapse of political and popular confidence in the passport-free zone could probably be rectified after a time through tough reforms and political deals. 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.

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CENTRE FOR EUROPEAN REFORM

SAVING SCHENGEN

How to protect passport-free travel in Europe

Hugo Brady

The Schengen area – in which internal borders have been abolished – is one of the EU's most courageous achievements. But it is under threat. Some Schengen governments are demanding more control over their own borders, as concerns over immigration in Western Europe run high. And now Bulgaria and Romania are due to join Schengen, further raising tensions. Hugo Brady argues that Schengen should not be enlarged until 2014, while governments and the European Commission sort out problems such as Greece's dysfunctional immigration and asylum system. He concludes by proposing an EU-Turkey accord on migration and security, to secure Schengen's south-eastern frontier.

Hugo Brady is a senior research fellow at the Centre for European Reform.

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