

FOCUS



“SCHENGEN”: FROM RESISTANCE TO RESILIENCE?

The Schengen area is in the throes of a political crisis that was triggered by the refugee crisis and has been exacerbated by the recent terrorist attacks in Europe. This crisis of solidarity and confidence has left two contrasting visions vying with one another for the upper hand: one based on reintroducing spot checks at national borders, and the other on the Europeanisation of checks at the EU's external borders with the ultimate aim of strengthening the Schengen area as a whole. How this dispute between fellow Schengen members is resolved will depend in large part on the ability of national and EU authorities to highlight the remarkable degree of flexibility offered by the Schengen Border Code, but also to employ political rhetoric which better reflects the 'Schengen spirit'.

1. Schengen and the migrant crisis: distrust slowly being overcome?

Against the backdrop of the migrant crisis, the difficulty of distributing asylum seekers more evenly across the EU has highlighted the lack of solidarity among Member States. In an effort to resolve the problem, the Commission and the Council forced through the implementation of a relocation scheme designed to ease the pressure on countries, such as Greece and Italy, that are dealing with a massive influx of migrants. Some 160 000 asylum seekers registered in those countries are to be selected for relocation over two years, but

progress has been decidedly slow (barely more than 6 000 people had been relocated by the beginning of November 2016). The lack of trust between States is also the source of the main tensions affecting the Schengen area. The other member countries suspect that Greece and Italy have neither the capacity nor the will to ensure that external borders are effectively monitored and therefore regard them just as much as part of the problem as part of the solution. It was inevitable that migrant transit countries that are notorious for their poor administrative capabilities and have no real interest in registering migrants and allowing them to remain in their countries would come to be distrusted. That attitude persisted throughout 2015 and led to national border controls being reintroduced in nine of the 26 Schengen countries, a measure which is permitted under the Schengen Border Code, but often reflects an unwillingness on the part of the States involved to cooperate with one another. The setting-up of reception and asylum application processing centres (or 'hotspots') in Greece and Italy was therefore an effective way of responding to the lack of solidarity, but also the lack of trust, among Schengen Member States. Under the pretext of providing financial and humanitarian aid, national and European experts were also dispatched to the countries dealing with a mass influx of migrants to ensure that

external borders are effectively controlled and asylum seekers registered. This is precisely why the States in a position to benefit from the scheme were reluctant to support it, particularly if provision was not made for the relocation of asylum seekers at the same time. The rapid implementation of the 'European Border and Coast Guard' project is a further attempt to ease the distrust between Member States and constitutes a welcome "federal leap" made possible by the severity of the migrant crisis. The fact that the EU recently sent border guards to the Bulgarian border suggests that those in favour of European border controls around the Schengen area are gaining the upper hand over those in favour of temporarily reinstating national border controls²; the beneficiaries will be the European integration process and European citizens as a whole.

2. Schengen and terrorism: instinctive solidarity, reinforced through cooperation?

Irrespective of whether they are members of the Schengen area or not, European countries – many of which have suffered atrocities in the last few years – have instinctively shown more solidarity with one another in the face of the terrorist threat and attacks. The Paris attacks of

2. By the end of November 2016, only six out of twenty six Schengen States had activated the safeguard clauses: France, Germany, Austria, Denmark, Sweden and Norway (all of them, except France, for a new period of three months ranging from November 2016 to February 2017).

13 November 2015 led to the final adoption of the 'PNR' directive and to work starting on a number of European security measures: strengthening the rules on arms trading, stepping up efforts to cut off sources of funding for terrorists, modifying the Schengen Border Code to enable systematic checks on Europeans returning to the EU to be carried out², activating for the first time the solidarity clause set out in Article 42(7) TEU, which makes it possible for certain countries (e.g. Germany) to contribute to the military intervention in Syria, etc. Although 2015-2016 will come to be seen as marking a real turning point in the European fight against terrorism, that fight will only be effective if States show enough trust in one another, a distant prospect at the moment. The announcement, in late 2015, that systematic checks were being reintroduced at the Franco-Belgian border came against the background of recriminations between the police forces and judicial authorities of the two countries: their cooperation is, however, crucial to ensuring that the fight against

terrorist groups is effective, and the arrest and subsequent handing over of Salah Abdeslam to the French authorities under a European arrest warrant provided a telling illustration of this.

Terrorists are not arrested at borders, but in the places where they hide, which calls for concerted efforts on the part of the police forces, judicial authorities and intelligence services of the EU countries. How can intelligence be exchanged quickly and effectively at EU level when even national services struggle to work together and information would have to be shared between Member States that still occasionally spy on each other³. The general political and security-policy challenge facing the Europeans is that of coordinating approaches to counter-espionage and counter-terrorism more effectively, starting from an acknowledgement that these criminals have to be combated and that sharing information is therefore necessary and desirable. A new counter-espionage paradigm is required, as current methods are a hangover from the Cold War and it is time to make the transition from the craft to the industrial era when it comes to intelligence sharing: the progress made in this area will do much to determine the fate of the Schengen area, which will certainly once again be the focus of tensions and criticism if new terrorist attacks take place.

3 - Schengen and political mysticism: the noose is tightening
The rules of the Schengen Border Code have been observed during the refugee crisis and in the face of the terrorist threat and no Member State

has asked to leave or been expelled from the Schengen area, proving the prophets who predicted the 'death of Schengen' wrong. That being said, the Schengen area will only continue to 'resist' in this way if its supporters can save it from its current plight of being pulled in two mutually exclusive directions, by nationalist portrayals which exaggerate the extent to which national borders protect citizens, and by 'Europhile' portrayals which play down the extent to which the agreement protects citizens.

It is striking, first of all, that governments favour political rhetoric that emphasises the extent to which national borders protect citizens, sometimes going as far as to announce wrongly the 'closure of borders', which EU countries could only achieve by building walls, as they did during the Cold War. This political rhetoric is both emotional and mythological and plays on the idea of the protection supposedly offered by 'good old borders'. The aim is to calm citizens' fears about terrorism, even though most terrorists launch attacks in their country of birth. Politicians thus risk fuelling the simplistic belief that terrorism = foreigner = return to border controls. As regards migration, the objective of this rhetoric is to deter migrants and their smugglers from trying to enter the country in question, even though border controls have not actually been reinstated.

In both cases, national political rhetoric of this kind serves to delegitimise the existence of the Schengen area. As long as 'Schengen' is viewed as an 'area' in which no checks are carried out, rather than as a 'code' which is intended to make those checks more effective, it will be regarded

2. A new modification of the Schengen Code could intervene at the beginning of 2017 to organise more precisely Member states's reaction to terrorist attacks.



Border fence between Rastina (Serbia) and Bacsszentgyorgy (Hungary). This border wall was built in 2015 in order to stop the incoming refugees & migrants. ©Istock

3. In case anyone has forgotten, the German secret services were recently caught spying on the French Minister for Foreign Affairs.

as a 'Pandora's box' rather than a toolbox⁴, and therefore not as one of the instruments that enables EU countries to protect their citizens more effectively⁵. 'Schengen' is also vulnerable to these nationalist arguments because its advocates invoke quasi-mystical ideas about freedom of movement which tend to ignore its security dimension. Schengen is viewed first and foremost as the source of the greater freedom of movement afforded by the abolition of systematic controls at national borders, the temporary reinstatement of which is often incorrectly presented as a 'suspension' of the original agreement: it would therefore make sense to highlight the fact that countries are in fact 'applying Schengen' by activating the safeguard clauses!

If there is a specific threat to public order, States can notify the EU of their wish to reinstate systematic controls at their borders for two months (in an emergency), then for six months (if planned in advance); if there is a permanent threat to public order, Member States can also reinstate controls at their national borders for two years on the basis of a collective procedure requiring the agreement of the Commission and the Council. These safeguard clauses are an integral part of the Schengen Code and should be promoted as such: when they allude to the need for a 'return to Schengen', the European Commission⁶ or

4. There is provision for the following tools: the 'Schengen information system', mobile customs officers, border area controls, the right to monitor and pursue, etc.

5. See, for example, 'Schengen is dead?' Long live Schengen!', Jacques Delors, Antoniò, Yves Bertoncini and the participants of the Institut Jacques Delors' 2015 ESC, November 2015

6. See for example « Back to Schengen – A

the Bratislava Summit conclusions fall into the old political error of endorsing the idea that Schengen is in itself only a symbol of freedom, thereby undermining its resilience in the eyes of public opinion. Besides their intrinsic faults, the dominant national and Europhile views of the Schengen area both undervalue the economic interdependence that provided the *raison d'être* for its creation. Even though it was created to make life easier for lorry drivers, frontier workers and the companies they work for, who will suffer if it disappears, 'Schengen' is often viewed as an agreement that benefits the elite (business people, the Erasmus generation, etc.), which creates an even greater distance between it and the 'masses' who need to be protected. The political rhetoric surrounding the Schengen Area therefore also needs to be altered in two ways: people must be reminded that the Schengen area was created for economic and pragmatic reasons, rather than in the service of some Europhile or internationalist ideology; and it must be made much clearer that dismantling the Schengen Area would come at a huge economic, financial and human cost⁷ to the tens of millions of European citizens. National authorities are particularly well-placed to deliver this dual message, since they are often quick to decide against reintroducing

Road map », European Commission, COM 2016 (120) Final, March 2016

7. See for example "The consequences of the end of Schengen", Yves Pascouau, Euradionantes/Institut Jacques Delors, July 2015: <https://soundcloud.com/euradionantes/autour-de-schengen-politique-fiction>. or "The economic costs of non-Schengen: what the numbers tell us", Anna auf dem Brinke, Policy paper n° 162, April 2016, Jacques Delors Institut – Berlin.



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the systematic checks at internal borders that are permitted under the Schengen Border Code on the grounds that their very harmful economic and political impact is not offset by any clear improvement in security.

The race to secure the introduction of national or European border controls would be hugely counter-productive if it blinded us to the fact that we Europeans need to act well beyond our borders and resolve the conflicts that lead to the influx of refugees and the creation of terrorist cells at their source. A sense of cooperation and solidarity between EU Member States is therefore crucial in this area as well, since the Member States will always be the first to suffer from their ineffectiveness on the diplomatic and military front, whatever the fate of 'Schengen'.

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