

**The Beginning of the End?
The Italo-French Row over Schengen and the Lessons of
Past ‘Crises’ for the Future of Border Free Europe**

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Abstract

The row between the French and Italian governments over the issue of migrants fleeing North Africa in the wake of the ‘jasmine revolutions’ has raised some serious doubts about the future of Schengen, the policy regime that guarantees the free movement of people across Europe. Does this row really represent, as some commentators have suggested, the beginning of the end for one of the key pillars of European integration? In this paper I contend that the regime, despite some ominous signs, is not doomed. On the contrary, in the long term it might emerge reinforced from its current predicament. To support this argument, this paper reconstructs the evolution of Schengen’s past ‘crises’, showing how their content, dynamics and key protagonists bear striking similarities with the recent Franco-Italian row and its political fallout. From an institutional perspective, these crises represent cyclical adjustment mechanisms that have helped the regime withstand new challenges and consolidate its presence in Europe. The correspondences with past events suggest that the latest crisis is leading Schengen towards a similar institutional path.

Schengen will never die

(Charles Elsen, 2000: 12)

Introduction

The ‘jasmine revolutions’ that swept North Africa in the first months of 2011 have shaken to the core the domestic political foundations of various regimes in the area. These events have also sent shockwaves across the Mediterranean Sea. Thousands of migrants and refugees fleeing the turmoil have in fact landed in Southern Europe and, from there, scattered around the continent. This humanitarian emergency in turn has triggered a different, more political, type of crisis, one involving European countries and European Union (EU) authorities. The dispute centred on the allocation of responsibilities and burden-sharing to deal with the problem of the incoming migrants among members of Europe’s border control regime (known as the “Schengen regime”).

Not for the first time in the recent troubled history of European integration, the ensuing debate has been acrimonious, with Schengen member states reciprocally accusing each other of breaching the European ‘spirit of cooperation’ and EU authorities, especially the European Commission, scrambling to limit the damages and keep the integration process on track. The

sparkle of this crisis was a row between the French and Italian government over the handling of Tunisian migrants. This row quickly reached levels of “muted hostility”¹ and started to spread across the continent, with other Schengen members (Germany at the forefront) joining the fray.

This rising tension has led some policy-makers, echoed by some commentators in the press, to speculate that this crisis could be “the beginning of the end for the Schengen regime”, and with it, of one of the most visible achievements of European integration, namely the free of movement of people across the continent². The Franco-Italian spat and the “race against solidarity” (Carrera et al. 2011) that it has set off could have serious legal and political consequences on the regime’s future. What renders the situation particularly dangerous is that the current crisis builds upon pre-existing fears in many Schengen members regarding the imminent decision regarding the admission of Romania and Bulgaria to the regime, and, more generally, on a resurgent ‘nativist’ and Eurosceptic sentiment that is gripping Europe today. Yet, despite these ominous signs, this crisis might not prove to be as fatal as some doomsayers suggest. On the contrary, Schengen might actually emerge from the present turmoil stronger than before. Indeed, if we look at the history of the regime, especially its formative years in the 1990s, we can notice other examples of ‘crises’ whose features in terms of cast of characters, content and dynamics bear striking similarities with the present predicament. Then, as today, France (the ‘sceptical yet loyal member’), Italy (the ‘recalcitrant victim’) and Germany (the ‘Schengen spirit’s critical guardian’) debated the effectiveness of existing border controls in the face of

¹ “Paris et Rome veulent adapter Schengen”, *Le Figaro*, April 25 2011

² See, for example, “Senseless push-pull with Paris; if that’s how it is better to end Schengen”, says Frattini”, *La Repubblica*, 18 April 2011; Rob Long, “The beginning of the end for Europe”, *Ricochet*, May 18 2011, <http://ricochet.com/main-feed/The-Beginning-of-the-End-of-the-EU>; “Dividing Forces are Mounting in Europe”, *Spiegel Online*, May 13 2011, <http://www.spiegel.de/international/europe/0,1518,762416,00.html>; “The vulnerabilities of Schengen”, Toby Vogel, *The European Voice*, 19 May 2011; <http://www.europeanvoice.com/article/imported/the-vulnerabilities-of-schengen/71103.aspx>; Bruce Crumley, “Berlusconi and Sarkozy want to scrap Europe’s open borders”, *Global Spin*, Time, April 26 2011; <http://globalspin.blogs.time.com/2011/04/26/sarkozy-and-berlusconi-want-to-scrap-europes-open-borders/>

(perceived and actual) growth in illegal cross border activities and the regime's looming enlargement, traded reciprocal accusations of either laxness or lack of trust and good faith, re-imposed - or threatened to re-impose - internal border controls, and evoked the possible end of the regime. In the end, however, Schengen not only weathered the gathering storm and survived the threat of a possible demise, but came out even stronger from these challenges. Indeed, the regime, which started as an intergovernmental initiative developed by a group of European governments in the mid 1980s, by the end of the 1990s had doubled in membership and, with its incorporation in the EU's institutional architecture, became one of the central pillars of the European integration project.

From an institutional perspective, these recurrent crises can therefore be understood as cyclical adjustment mechanisms that have helped the regime withstand new challenges and consolidate its institutional presence in Europe. The current crisis' patterns and dynamics are consistent with the trajectory that Schengen has followed in the past and some early signs seem to suggest that its resolution is once again leading to the regime's further consolidation.

To support the argument about the role of critical junctures in Schengen's evolution, this paper resumes relevant 'stories' of the regime's past crises and then compare them with current events to highlight the common themes and the overarching narrative that runs through them. The two historical examples of crises taken into consideration unfolded in the regime's formative years, namely the 1990s. The first case deal with the squabble over the preliminary conditions for the regime's entry into force, while the second addresses the tension that characterized Italy's entry into the regime. The empirical material used to build the narratives about these crises is extrapolated from official documents, minutes of meetings, interviews, press conferences and

public declarations of national and EU officials involved with the Schengen file during these crises.

This paper is organized as follows. The first section presents the story of the Italo-French row, foregrounding the key themes constituting the latest example of a Schengen ‘crisis’. The second and third sections examine the two historical cases of Schengen crises. The concluding section examines the parallels between the regime’s past and present moments of turbulence and explores their implications for the future of border free Europe.

Of boats and rows: Italy, France and the making of a Schengen crisis

Italy, because of its proximity to North Africa and, even before the latest events in the region, a favourite entry point for migrants trying to illegally enter Europe, has been the country mostly affected by the movement of populations originating from the turmoil in the Arab world. Between January and April 2011, around 25,000 immigrants, mostly from (or travelling through) Tunisia and Libya, landed on Italy’s southern shores. The flow hit a critical point in February, when 4,000 individuals arrived on the Mediterranean island of Lampedusa³. This event pushed the Italian government to declare the situation a humanitarian emergency and to devise a more pro-active strategy to address the problem. This strategy aimed at returning as many individuals as possible to their country of origin or departure and to prevent new departures in the future. As Umberto Bossi, the leader of the Northern League party (a partner in the Italian government and a vocal immigration critic) colourfully put it, the goal was to “empty the bathtub and close the water tap”⁴.

³ “Tunisia boat people put EU to the test”, *EurActiv*, 14 February 2011.

⁴ “Migranti: Bossi, chiudere e svuotare vasca”, *Ansa*, April 5 2011.

The first concrete application of this strategy was the signing of a bilateral agreement between the Italian Interior Minister (Roberto Maroni – another Northern League member) and its Tunisian counterpart (Habib Essid) in which the new Tunisian government pledged to collaborate in facilitate the return of its citizens in exchange for economic aid and the provision of new equipment for the Tunisian coast guard⁵. As complementary measure, on April 8 the Italian government introduced by decree a six months visa for North African citizens present on Italian soil who could not be returned back to their country of origin, or who came before the date of the agreement with Tunisia. The decree's most controversial aspect – and the issue that started the row with France - was the provision allowing the temporary visa holder to “travel freely within the EU, in accordance with the Schengen rules and EU law”⁶. As partial justification for this move, the Italian government lamented the lack of solidarity from its European partners, a theme that would be repeated throughout the crisis⁷.

Because of the fear that the new visa holders would move en mass to France to join the former colonial power's well established North African community, the French government was the most vocal in criticizing the Italian decision. France promised to honour the temporary visas Italy has granted the migrants, but said it would turn away at its borders those who could not

⁵ “Maroni firma l'accordo a Tunisi; ‘Sono previsti anche i rimpatri’”, *La Repubblica*, April 5 2011.

⁶ “Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani”, *Decreto Del Presidente del Consiglio Dei Ministri 5 Aprile 2011* (11A04818). Available at http://www.governo.it/GovernoInforma/Dossier/accordo_immigrazione_2011/decreto_5_aprile_2011.pdf.

⁷ At the April 11 meeting of EU interior Ministers, for example, Italy asked the EU to activate the directive regarding the burden sharing in case of a migration crisis, but only Spain and Greece supported it. Maroni commented that “Italy has been left alone” and “disappointed by member states governments” from which it expected “a response of true solidarity”; “Immigrazione: Europa timida, delusione italiana”, *Ministero degli Affari Esteri, Archivio Notizie*, April 11 2011. Available at http://www.esteri.it/MAE/IT/Sala_Stampa/ArchivioNotizie/Approfondimenti/2011/04/20110411_eutim.htm. At a G8 meeting of Interior Ministers a month later, Maroni again complained that “Europe does not give answers and it is not nice to see the other Union members just sitting and watching”. “Berlino all'Italia: ‘Basta lamentarsi per arrivi. Solidarietà è anche adempiere agli obblighi’”, *La Repubblica*, May 10 2011.

support themselves financially⁸. The threat of border closure within Europe's free travel area that the memorandum evoked started off the diplomatic spat with Italy. Commenting on the French announcement, the Italian Interior Minister Maroni was blunt: "There is only one way to stop this (ND: the flow of migrants across the Italo-French border): for France to leave the Schengen area or to suspend the treaty"⁹.

In order to avert an escalation of the dispute, Maroni and his French counterpart, Claude Gueant, met bilaterally, and, after pledging to work together, announced that they had reached an agreement on the common patrolling of Tunisian coasts and the creation of a joint working group to deal with the migration emergency. The two sides also agreed to the French position on the handling of temporary visas was legally valid (Article 5 of the Schengen Agreement states that immigrants should possess adequate financial resources and documentation). Maroni thus concurred that "on the basis of existing rules the French authorities are free to verify the prerequisites and, in a relationship of loyal cooperation, all these requirements can be met"¹⁰

Despite these re-assuring gestures, the tension remained high. On April 17, the French government reignited the squabble by ordering the temporary closure of the Ventimiglia frontier¹¹. Paris explained that this decision was a response to a non authorized demonstration by Italian activists in support of Tunisian migrants. The French Interior Minister stressed that his government was complying with the Schengen agreement "to the letter"¹², since the agreement

⁸ The guidelines on how to screen migrants at French borders were included in a memorandum issued by the French Interior minister; the April 6 "Circulaire Gueant" is available at: www.lefigaro.fr/assets/pdf/110407-circulaire-gueant.pdf; see also "Lampedusa : une circulaire contre les flux migratoires", *Le Figaro*, April 7 2011.

⁹ "Il governo pronto alla prova di forza con l'Ue; 'Ci aiuti o non controlleremo più i confini', *La Repubblica*, April 8; see also "Immigration: Maroni, France out of Schengen if stops Tunisians", *AnsaMed*, April 8 2011. It should be noted that when the spat over Schengen first erupted, the Italian and French governments were also dealing with other sources of bilateral tension, namely the differences over the military intervention in Lybia and economic activism by French companies in Italy.

¹⁰ "Il governo pronto alla prova di forza con l'Ue", *op. cit.*

¹¹ "Clandestins: le conflit franco-italien s'envenime », *Le Figaro*, April 17 2011.

¹² "Guéant estime que la France respecte 'à la lettre' les accords de Schengen", *Le Monde*, April 18 2011

allows for the temporary reintroduction of border controls in cases of serious threats to public order.

Italy's was visibly annoyed by this gesture. Foreign minister Frattini characterized the French move as "shocking"¹³. He also contested the French government's explanation for the closure, arguing that the number of demonstrators involved (around 300) were "not a big problem of public order" and thus "France cannot bloc the Tunisians". He went as far as to foresee a possible end of the regime. "If the situation persists, then it would be more convenient to say that we turn the page on free movement, which is one of the European Union's key principles"¹⁴.

The issue of North African migrants was one of the key topics of the summit between the French president Sarkozy and the Italian Prime Minister Berlusconi held in Rome on April 26. In the lead up to the summit, however, the tension rose again when a source from the French president office stated that during the meeting there would be a discussion about the possibility of "suspending the Schengen agreement in case of systematic failures", as in the case of Tunisian migrants, which "would be effective until the problem is not solved"¹⁵. Although the idea had already been flagged at high political level¹⁶, the French authorities had to clarify this politically explosive comment by saying that that passage had been "overinterpreted" and that France was not considering the reintroduction of internal border controls and the suspension of the Schengen treaty¹⁷. Sarkozy's special counsellor Henri Guaino stressed that France "did not want to suspend Schengen". It only planned to "review the safeguard clauses in particular situations" and that this solution was "reasonable" and that for this revision to be effective it required an

¹³ "Senseless push-pull with Paris; if that's how it is better to end Schengen", says Frattini", *La Repubblica*, 18 April 2011.

¹⁴ *ibid.*

¹⁵ "Francia ambigua: Schengen? Mai messo in dubbio", *Libero*, Aprile 23 2011.

¹⁶ Laurent Wauquiez, the French minister for European Affairs, for instance, had characterized the proposal for the temporary reintroduction of controls at national frontiers as "a security brake" ("un frein de secours") arguing that "Europe is not about the free movement of illegal migrants", *Journal du Dimanche*, 24 April 2011.

¹⁷ "Francia ambigua: Schengen? Mai messo in dubbio", *Libero*, April 23 2011.

“European agreement”¹⁸. This review would amount to a “roadworthiness test” that is periodically required to ensure that the regime can safely continue its journey¹⁹.

At the Rome summit, the French and Italian leaders affirmed their willingness to reform the Treaty to deal with exceptional circumstances. According to Sarkozy, the changes are needed because “(w)e cannot pretend that rules and institutions are immutable from the time when Europe had only six members. (...). We have the euro, we have reformed the European economy - we would like to see the same thing done to Schengen”²⁰. They also called for a common European solution. Berlusconi said that there should be a “principle of solidarity” among European countries to avoid leaving countries like Italy alone to deal with what are European problems²¹. They then wrote a joint letter to the presidents of the European Commission Barroso and of the European Council Van Rompuy requesting to consider the French proposal for temporary restatement of controls and calling for “a more structured political debate” at European level, providing as example an annual meeting of the European Council²².

In parallel with the row with France, Italy was also under scrutiny from other Schengen members. The German government was particularly critical of the decision to grant temporary visas to Tunisians. The German Interior Ministry’s spokesperson claimed it was “against the Schengen spirit”, and would raise the issue at the following EU ministerial meeting²³. Germany also complained about Italian victimism. In an interview with the French newspaper *le Figaro*,

¹⁸“Schengen : l’Exécutif tente de calmer le jeu’, *Libération*, 25 April 2011; see also “Paris et Rome veulent adapter Schengen”, *Le Figaro*, April 25 2011.

¹⁹ “Frattini: ‘Schengen needs a roadworthiness test’”, *Il Sole 24 Ore*, 24 April 2011.

²⁰ Joint Press Conference, *29 Italo-French summit*, Rome, April 26 2011; Available at <http://www.elysee.fr/president/les-actualites/conferences-de-presse/2011/xxixe-sommet-franco-italien-conference-de-presse.11239.html>

²¹ “Italia e Francia alla Ue: cambiare Schengen”, *Il Corriere della Sera*, April 27 2011; see also “Paris et Rome veulent adapter Schengen”, *Le Figaro*, April 25, 2011.

²² “Italia e Francia alla Ue: cambiare Schengen”, *op.cit.* “France, Italy call for Schengen Treaty re-write”, *EurActiv* 27 April 2011.

²³ “Italia-Francia, ‘Sì a Schengen, ma con le regole’. Napolitano: ‘Ue più coesa’. Lo stop di Berlino”, *La Repubblica*, April 8 2011.

Hans-Peter Friedrich, the German Interior minister, downplayed the magnitude of the crisis and its impact on Italy and argued that Italy “has no reason to complain about the lack of solidarity” and that “(s)olidarity also entails also complying with one’s obligations.” He then espoused the French proposal which would “render more flexible the Schengen treaty” but he also made clear that Schengen, and the principle of free movement that support it, “should in no way be put into question”, for this free movement, is “one of the most tangible achievements of European project for our citizens.”²⁴

While Schengen members were sparring, the European Commission tried to keep the crisis under control by couching it as an opportunity, rather than a challenge, for the ongoing project of European integration. The Commission also supported the Berlusconi-Sarkozy letter arguing that said that “it was going in the right direction” and that the meeting was evidence of “a spirit of cooperation which at the core of the Schengen spirit”. It also denied that the proposed changes could be the beginning of the end of the Schengen regime. This would be dangerous “because Schengen is one of the milestones of free movement”²⁵. On May 4, the EU institution published a proposal to better manage migration in the Union that included references to the French idea of reintroducing border controls in exceptional circumstances. In commenting on this document, Home Affairs Commissioner Malmström admitted that, while she was committed to defend Schengen “with teeth and nails”, the regime had some weak points and that some changes were necessary. Yet she also stressed that “we should not leave it only up to the member states at our external borders to deal with extraordinary migratory situations” and these situations had follow

²⁴ “Friedrich: ‘Le système Schengen doit être renforcé’”, *Le Figaro*, May 10 2011; see also “Berlino all’Italia: ‘Basta lamentarsi per arrivi. Solidarietà è anche adempiere agli obblighi’”, *La Repubblica*, May 10 2011.

²⁵ “EU commission absolves France over Tunisia migrants”, *EurActiv*, May 5 2011.

a joint decision by Member States (taken on the European level) and be closely monitored.²⁶ Some commentators, especially in EU parliament, criticized the Commission's proposal as being the result of French and Italian pressure. The Commission, however, defended the move, claiming that it was not a "knee-jerk reaction", and that the idea had been proposed previously²⁷. The immigration proposal was first submitted to the special meeting of Interior ministries on May 12 and then to the European Council on June 24.

By the time of the June ministerial meeting, the most acute phase of Schengen's latest crisis was coming to an end. All the actors involved in the spat seemed to have overcome most of their differences and found a compromise solution on the issue of how to handle exceptional circumstances affecting the Union and EU member states' borders. By reiterating their commitment to the regime and taking some practical steps to render it more viable, they also fixed (at least momentarily) some of the cracks that recent events had created in Schengen's edifice and, with it, they paved the way for the further consolidation of its institutional foundations. In this sense, the trajectory of latest crisis could follow those of previous crises in the regime. To foreground these parallels and their possible implications, it is to these historical examples that I now turn.

Déjà vue: France's early troubles with Schengen²⁸

Schengen is an ambitious and controversial project in regional integration. This is the case today as it was when it was launched in the mid 1980s. It is therefore not surprising that internal squabbles erupted when the regime's implementation was first debated. At different times, and

²⁶ "A well functioning Schengen", Commissioner *Cecilia Malmström Blog*, May 5 2011; available at <http://blogs.ec.europa.eu/malmstrom/a-well-functioning-schengen/>; "Ue: limiti a Schengen in casi eccezionali, ma si decide solo a livello europeo", *La Repubblica*, May 4 2011.

²⁷ "Barroso: Schengen reform is not 'knee-jerk' reaction", *EuroActiv* 11 May 2011.

²⁸ The analysis in the present and the following sections is based on Zaiotti 2011, pp.93-105.

with different intensity, various Schengen members demonstrated concerns, if not open opposition, to certain tenets of the initiative. The most serious bickering occurred over the conditions for the entry into force of the regime. Although it was often couched in technical terms, this issue was eminently political. The member that was most vocal on this subject throughout the negotiation process was (as it is the case today) France's. If we look at official declarations by French authorities, the various parliamentary reports, and journal articles during this period, Paris seemed in fact to have "more often blew cold than hot" on the project regarding the freedom of movement in Europe (Kerauden 1994: 123). Domestic politics certainly played an important part in shaping this stance. As it is the case for the latest crisis, during most of the debate over the regime's entry into force (1993-1997), a centre-right government was in power in Paris, and its constituency was markedly nationalist and anti-enmeshment on issues of security and sovereignty. Domestic political dynamics, however, cannot explain why France remained engaged with Schengen throughout this period, and why it was eventually persuaded to lift its reservations and fully join the regime. Telling is the fact that although during the parliamentary debate over the Schengen agreement's ratification (June 1991) representatives of the centre-right parties (then in opposition) were openly critical of the treaty, they nonetheless overwhelmingly voted in favour of it.²⁹

The debate over the 'preliminary conditions' took place during the negotiations over Schengen/began in the second part of 1993. By then, all Schengen members had ratified the Schengen Implementation Convention (SIC). On that date, the agreement officially entered into

²⁹ It should also be kept in mind that domestic hostility to Schengen was not solely a French characteristic. The Netherlands is a good case in point. On April 15, 1991, the Dutch government's supreme advisory council, 'Raad van State' (RvS), a body that comments on constitutional issues, argued that the agreement conflicted with International Law, and in particular the 1951 Refugee Convention, and that the government should therefore not sign the Schengen Agreement. It was the first time in Dutch history that the RvS gave such a recommendation regarding an international agreement. Despite the RvS's opposition, the government went ahead with its plan.

force. In practice, however, this implied only the establishment of the Executive Committee ('Comex'), which had to evaluate whether the preliminary conditions to render the Convention operational were met³⁰. According to the ministers responsible for Schengen, these conditions were the establishment of external border controls; the issuing of uniform visa; an harmonized system to manage asylum claims; the realization of the Schengen Information System or 'SIS' (a common database system used for the purpose of maintaining and distributing information related to border security and law enforcement); the respect for the provisions of existing drug conventions; the legal protection of personal data; and the creation of a special circulation regime in airports³¹. These requirements were closely related to the quality of border controls and the participants' attitude towards each another. In the Comex meeting held in Madrid on November 6, 1992, all delegations stressed the importance of the effectiveness of controls at the external frontiers, which was guaranteed if these controls "allow to face risks or threats which entail each concrete situation", and the necessity to carry out these controls "in a spirit of mutual trust and taking into account common interests, relying on means considered necessary by each state"³². Among Schengen members, however, disagreement over the steps that had to be taken in order to meet these conditions soon began to emergence. The diplomatic bickering that ensued represented the first major test of the new border regime.

The French delegation was the most vocal in expressing its concerns, and blamed its partners for lack of political will and laxness at the borders. Troubling for the French delegation was the fact that that the Greek and Italian administrations were not in a position to enforce the planned strengthening of controls at the external borders; and that there were incompatible laws

³⁰ This requirement is mentioned in Article 139 (3) SIC.

³¹ See the declaration issued at the Luxemburg Comex meeting of June 19, 1992.

³² Minutes of the Schengen Executive Committee Meeting of November 6, 1992 (SCH/M (92) PV 2). In the remainder of the section, the minutes of Comex will be referenced only by their acronym ('SCH/M'), date and number.

on drugs in the Netherlands and other countries (in this period, Spain and Italy decriminalized the possession of some drugs).

Frustrated by the lack of progress, in the spring of 1993 Paris announced that it was not ready to go along with its Schengen partners and abolish internal border controls as programmed. Alain Lamassoure, the French Minister for European Affairs, told the National Assembly Foreign Affairs Commission that there were dangers in “lifting border controls too quickly”³³. Hence France had to maintain its police controls at frontiers as long as the preconditions for the entry into force of the Schengen Agreement were not fulfilled. The other Schengen members were clearly irritated. The Dutch Prime Minister Ruud Lubbers declared that he was “seriously astounded” by the French decision. He added that France would be bound to honour the Schengen Agreement's provisions³⁴. Other Schengen members shared this view, though not publicly expressing it.

Despite the French scepticism, in the following months concrete steps towards meeting the criteria were achieved: Schengen members drafted a border manual and common consular instructions, harmonized visa issuance, reached an agreement on asylum processing, and introduced a new circulation regime at airports. In light of these developments, the French delegates reconsidered their position, and, at the COMEX meeting of June 1993, accepted to fully participate in the implementation of the regime. The participants, “in order to reinforce the credibility of the Schengen model and to give the long waited positive signal”³⁵ agreed on a common text, indicating the end of the year as the target by which to apply the Convention, but also stressing the need for the ‘extra efforts’ necessary in areas such drug policy, external border controls and data sharing. Technical problems with one of the agreement's main pillars, the

³³ *Le Monde*, May 3, 1993.

³⁴ *ibid.*

³⁵ (SCH/M (93) PV 1.

common police computer-system SIS, meant that the date had to be postponed yet again. The issue was solved in the fall of 1994. As a result, the Schengen Executive Committee was able to reach an agreement on a date (March 26, 1995) for the entry into force of the Convention.

In the first meeting after entry into force of SIC (April 1995), all delegations were satisfied with the working of the system. Only few points needed to be fixed. The most pressing problem was the functioning of the SIS, and thus the Committee decided for an initial phase of three months during which the abolition of controls was the responsibility of member states³⁶. Following concerns over the right of asylum, drugs, and modalities of border crossing, France requested an extension to this probation period. Other delegations, however, denied this request, claiming that it would go against the spirit of Schengen. In response, France, relying on Article 2.2 of the Schengen Implementation Convention³⁷, declared that it would maintain controls over land borders with Belgium and Luxemburg as long as it was deemed necessary. France's action spurred an 'intense debate' at the following Schengen meetings. The discussion centred on the meaning of Article 2.2, particularly on how to define what the notions of 'public order' and 'national security' meant. The goal was to define a more collegial way of approaching this issue, and to avoid narrow 'national' interpretations of this clause, as France was doing³⁸.

In the following months, both in meetings and in public speeches, the French representatives continued to defend their national interpretation of Schengen, justifying their position on the basis of the effectiveness and 'Europeanness' of their approach. Exemplary is the response that then French Foreign Minister, Hervé de Charette, gave to journalists who were asking for how long France would postpone the entry into force of the Convention:

³⁶ SCH/COM-EX (95) PV 1.

³⁷ Article 2.2. SIC allows the resumption of national border control in cases involving 'national security' and 'public order'.

³⁸ See Coordinators Group meeting of spring 1995 (CG 1995 003) and SCH/I (95) 39.

[Schengen] might be at the same time the best and worst thing, *excellent if it works, dangerous if it fails*. For us the question of security holds a great importance, so great that we have to keep in mind that any concession will be made when it *involves the security of France and the French*. [...] Nobody here doubts that *I am a convinced European*, I don't think that being a convinced European must be paid with the price of security of our citizens. If it seems, as it is the case, that our citizens' security depends also on the border controls, it is understood that we have to keep them³⁹.

Without any tangible breakthroughs in sight, however, in the autumn of 1995 France proposed to its Schengen partners a compromise. Paris argued that internal security would be ensured in the best way thanks to a 'mobile and rigorous control' in a border area of twenty kilometres on each side of the border, rather than a traditional fixed control. As the then French European Affairs Minister, Michel Barnier, put it: "In France, we can see the usefulness of such controls. The Schengen Convention does not envisage completely abolishing controls within Schengen, just at frontiers. We now have the concept of mobile controls and mobile frontiers which *could be more effective* than fixed controls."⁴⁰

The idea of 'mobile frontiers' (which would be put in place thanks to bilateral agreements between Schengen countries) was the object of a long debate within the Executive Committee⁴¹. Despite the German support, however, the committee recognized that the French proposition was not the object of agreement at the level of working groups⁴².

The confrontational dynamic between France and other countries thus continued. In the spring of 1996, the Belgian Deputy Prime Minister and Interior Minister, Johan Van Delanotte,

³⁹ Meeting of French Foreign Minister Hervé de Charette with the Diplomatic Press Association, Paris, September 21, 1995; emphasis added.

⁴⁰ Quoted in *Statewatch bulletin*, Vol. 5, No. 6, November-December 1995; emphasis added.

⁴¹ SCH/COM-EX (95) PV4, October 24, 1995; "Schengen: 'Mobile frontiers' introduced", *Statewatch bulletin*, Vol. 5 No. 6, November-December 1995.

⁴² SCH/COM-EX (95) PV 4.

used a debate to mark the first anniversary of Schengen to attack the French attitude and its unwillingness to lift controls at the Belgian frontier. A month later, Paris announced that, despite the improvement in the bilateral agreements with Belgium and Luxembourg regarding transborder police co-operation, it would maintain its reliance on Article 2.2 until a political advancement occurred in the framework of negotiations with the Dutch government over the issue of drug policy⁴³. The Dutch position was that France's reliance on this emergency clause for such a long period contradicted the very content of the Convention and that objectively there was no reason to maintain this position⁴⁴.

As negotiations progressed, France remained isolated, and its stance appeared more and more unsustainable. Paris had to defend itself not only within the closed doors of the Schengen Executive Committee, but also publicly. Tellingly, an embarrassed French foreign minister could not respond to the sarcastic question posed by a journalist on the reasons why France was the only Schengen country requiring derogations from the regime: “Why then do all criminals choose to go to France and not to other countries?”⁴⁵.

By mid-1997, the Schengen regime had been operational for more than two years. The experiment had been overall successful. No major security breach had occurred and the system of pooled border management was functioning smoothly. These positive results persuaded other countries to join the regime. In 1995, Sweden, Denmark, Norway and Iceland became Schengen members. Its enlargement proved that the regime, despite its intergovernmental origins, could indeed function as laboratory for the EU.

⁴³ SCH/Com-ex (96) PV 3. The terrorist attacks that hit Paris in late 1996 made the French government even more nervous about border controls. In December, the French delegation announced the introduction of an anti-terrorist plan known as ‘Vigipirate’. Its application was on all French territory, including border areas; however, that did not entail the reinstatement of border controls at the frontier with Spain and Germany (COMEX Luxembourg, December 19, 1996 SCH/Com-ex (96) PV 5 rév)

⁴⁴ COMEX April 25, 1997 Lisbon SCH/Com-ex (97) PV 1 rév. 2.

⁴⁵ Joint Press Conference of Michel Barnier, French Minister in charge of European Affairs, and Vande Lanotte, Belgian foreign Minister and president of Schengen Executive Committee, June 29, 1995.

Faced with mounting evidence of the regime's achievements, the French delegation started to soften its 'nationalist' position, and to slowly move towards that of the other Schengen members. Despite the claims to the contrary, in this period France *de facto* applied Schengen at the Belgian and Luxembourg borders. While the policing of the drug trafficking route to and from the Netherlands continued, no systematic checks were performed along these frontiers. Only in times of sudden crises were border controls reinstated (e.g. the December 1996 bombings in Paris). These actions, however, were generally circumscribed and temporary. Albeit reluctantly, France therefore eventually accepted the Schengen's 'spirit' when sitting at the Schengen Executive Committee's table and in the everyday practices at the border. It was with this newly achieved consensus that Schengen members could start the debate over the regime's formal incorporation in the European Union.

The tribulations of Europe's soft underbelly: Italy's accession to Schengen

The original group of Schengen members included countries that had the will and capacity to carry out the task of dismantling borders across Europe. In the mid-1980s Italy lacked both, and this partly explains why it was not among the first participants of the initiative. At the same time, there was a widespread lack of confidence from the part of the five original members on the contribution that Rome could offer to the project (Hein 2000). This attitude also characterized the relation with other Southern European countries. What distinguished the Italian case was that Italy, together with the then five Schengen members, was one of the founders of the European Community. Seen from Rome, not participating in a European project was considered politically embarrassing. The assumption was that Schengen was Europe, and as a self-proclaimed Europeanist country this was not acceptable (Toffano 1989: 542; Fridegotto 1993: 17). The same

could be said, *mutatis mutandis*, for the existing members. For them, the inclusion of Italy into Schengen represented a legitimizing move, proof that their project was not only working by attracting new members, but that it was really a European enterprise.

It is in this context that in late 1985, soon after the first Schengen Convention was signed, Italian officials from the Foreign Ministry contacted their French counterparts to inquire about the possibility of participating in the regime. The idea was that of a bilateral agreement (whose content reflected that of the Schengen Conventions), whereby France would have functioned as mandatory for all the other Schengen members (a possibility mentioned in Art. 28 of the 1985 Schengen Agreement). The dialogue was interrupted in January 1986 for problems in harmonizing visas. As it is the case with the most recent crisis, the main bone of contention had to do with North Africa. Italy in fact wanted to maintain its relations with countries in the area. France—together with Germany—wanted some action taken immediately. The main fear was the potential mass illegal immigration that opening the borders with Italy would produce.

Contacts were resumed the following year. On June 1987, Italy formally requested to be part of the agreement. The application for entry was accepted in principle, with certain conditions attached: the total acceptance of the *acquis*, and that the entry of Italy would have not slowed down the ongoing proceedings. Other requirements were informally demanded: the introduction of visas for Northern Africa states; the signing of an admission agreement with other members; the denouncement of Italy's 'geographical reservation' for asylum claimants to Eastern Europe (Fridegotto 1993: 18). With the acceptance of these requests, Italy was included in Schengen as observer. From September 1987, diplomats from the Italian Foreign Affairs Ministry and national experts began to participate to works in the various Schengen groups.

Negotiations, however, did not take off, and Italy's requests to create a working group to draft the accession agreement were not addressed. The official reason of the delay regarded the delicate phase of the negotiations among the existing members (who, at the time, were finalizing the SIC). It was made clear, however, that there were doubts about the Italian capacity (especially in terms of administrative structures) to join the Schengen system (Fridegotto 1993: 19). Despite the scepticism of the existing members, later that year the Italian embassy sent a letter ('note verbale') to the Schengen ministers (28 November 1988) requesting to join Schengen. In the following meeting of December 12, 1988, the Comex took notice of the letter, demonstrating their satisfaction of the Italians' willingness to join, as 'original founder of the Community', and put in place procedures so that negotiations could quickly lead to adhesion. Yet it asked each delegation to come up with a questionnaire on Italy's structures and practices regarding border control to formulate potential 'problems and/or difficulties' its entry might create⁴⁶.

This request further delayed the beginning of negotiations. On May 1990 Italy gave some satisfactory technical responses to a memorandum issued by the Schengen group on issues of police and security, movement of persons, transport, customs and movement of goods. Moreover, the Italian Parliament approved a new law on immigration ('1990 Martelli Law'), which included the drop of the geographical reservation on asylum and the introduction of visas for countries that were the primary sources of immigration in Europe. Official negotiations could therefore start (June 20, 1990). Without further difficulties, Italy was able to sign the accession agreements in the Comex meeting held in Paris on November 27 1990. The French presidency, in welcoming Italy to Schengen, stressed the fact that this proved the role of

⁴⁶ "Conclusions of Ministers and Secretaries of State held in Brussels on December 12, 1988; Note verbale of the Belgian Presidency" (SCH/C (88)).

Schengen as “laboratory for the 12”. The Commission saw in it the proof of the role of ‘engine’ of Schengen, and emphasized its function as ‘precursor’ of the objectives that the Community was trying to achieve⁴⁷.

The signing of the Convention did not automatically mean the accession of Italy to the regime (which anyway at that time had not yet entered into force). Italy had to apply the necessary preliminary measures outlined in the Convention. At its first constitutive meeting in October 1993, the Comex announced that the application of the Schengen Implementing Agreement had (once again) been postponed until February 1, 1993. Besides the issues of the control of external borders, the fight against drugs, the setting up of the Schengen Information System, one of the reasons that were adduced was that Italy (together with Portugal) had not yet deposited its instruments of ratification. Some of the founding members also expressed (once again) doubts on the organizational and technical capability of Italy, Portugal and Greece to effectively implement the agreement's measures in the field of policing and external border control. The Executive Committee therefore agreed that these three countries were not going to implement the agreement on at the same date as the existing members⁴⁸.

These preoccupations were not new, and to a certain extent reflected the attitude of Schengen members towards Italy in other political domains. What is interesting to notice in this context are the kinds of arguments that were formulated to support these criticisms. In the months that followed the application of the Schengen regime, for example, Germany became particularly vocal about the supposedly lax attitudes of the Italian authorities regarding border control. The then Interior Minister, Manfred Kanther, told the *Berliner Morgenpost* newspaper that Italy was letting hundreds of illegal immigrants into the EU from the former Yugoslavia,

⁴⁷ SCH/M (90) PV 3.

⁴⁸ “The long march towards the implementation of the Schengen agreement”, FECL 21, December 1993/January 1994.

Albania and Turkey, who then showed up in Germany or France. And he added, with words that are almost verbatim those used by his successor 20 years later: “It is not right that on one side Schengen is made to function with great amounts of effort and money and on the other side streams of refugees are allowed into and through the country *against the spirit of Schengen*”⁴⁹. Apart from the irony of the fact that Italy was not yet fully part of the Schengen regime, what the German Minister of Interior pointed to was the existence of a common understanding of what Schengen was all about, and according to those standards, Italy was breaching this ‘spirit’.

It is on this ‘spirit’ that existing members pressured the new applicants, which at the time included Italy, Austria, Greece, Portugal and the Scandinavian countries. In the new rounds of negotiations that started in the second part of 1996, however, technical issues were again raised⁵⁰. The Italian delegation openly criticized the impression of political reservation that was given regarding the country’s integration into Schengen. The Schengen presidency reiterated that, besides the worries related to the SIS, a series of questions were addressed to Italy, Greece and Austria in a questionnaire drafted by Germany and edited by France and Spain. This questionnaire aimed at better knowing and understanding the measures undertaken by these countries to prepare the application of the Convention (and thus similar to that adopted in Bonn on December 1994 for the other Schengen members). The Italian delegation agreed to comply with this request, but manifested its disapproval of the approach adopted⁵¹.

To ease the tension now manifest around the negotiating table, the Luxembourg presidency held a political discussion with Italy, Austria and Greece on 28 November 1996. There it announced that that from a technical point of view it was not possible to apply the

⁴⁹ Quoted in *Statewatch* bulletin, “Schengen: the first three months”, May-June 1995, Vol. 5 No. 3; emphasis added.

⁵⁰ In the meetings in the autumn of 1996, the Schengen presidency listed the necessary conditions for the application of the Convention to the applicants’ countries. It mentioned data protection legislation, external border control having reached a required level, adaptation of airports, and the uploading of SIS.

⁵¹ GC SCH/C (96) PV November 13-14, 1996, Brussels.

Convention in any of these countries before May 1997, but it suggested that the date for their inclusion in Schengen Information System would be October 1997. In the following Comex meeting, the Italian, Greek and Portuguese delegations begrudgingly accepted to respond to the questionnaire (with the delay it would entail), wondering aloud about the rationale for this exercise⁵².

In the following months the issue of enlargement remained at the top of the Comex's agenda. The Report of the Frontier Commission—sent by Comex in February 1997 to evaluate the Italian frontiers—highlighted some problems at the Slovenian border; the Albanian crisis also raised concerns⁵³. The ratification of adhesion agreements in some member states was also delayed. Despite these obstacles, following a positive report by the Portuguese Presidency on the state of the preparatory measures undertaken in Italy (and the other countries), the Comex meeting that took place in Lisbon on June 24, 1997, confirmed the date for the entry of Italy into Schengen (July 1, 1997) was confirmed. The German delegation did not, however, approve the Presidency's assessment, and indicated the necessity of further improvement regarding the control of external borders. It also argued that, "keeping in mind the Schengen spirit of solidarity", it was necessary to find a compromise solution which avoided the creation of a Schengen external border between Italy and Austria⁵⁴.

In order to overcome the German doubts, a trilateral meeting between the German, Italian and Austrian heads of governments was held in Innsbruck (Austria) on July 17. In this meeting, Italian and Austrian representatives gave the necessary political assurance that they would

⁵² IGC SCH/C (96) PV 15 – December 18, 1996.

⁵³ In 1997, thousands of Albanian nationals were landing on the Italian coasts. At the height of the crisis (March 25, 1997), Italian Interior Minister Giorgio Napolitano presented the government's counter-measure to his counterparts in the Mediterranean. Later in the year, Italy led a humanitarian operation ('Operation Alba') to stabilize the Balkan country (Perlmutter 1998). According to an Executive Decree, 16,000 Albanian refugees should have been returned before the end of August 1997; but by mid-August only a third were back in Albania; the deadline was therefore moved to the end of November.

⁵⁴ SCH/Com-ex (97) PV 2.

comply with Schengen standards, and committed themselves to improve their mutual co-operation on issues related to border control and police co-operation. As a result, the three delegations agreed that the entry into force of the Convention could take place on October 26, 1997 for Italy and December 1 for Austria, with the simultaneous abolition of controls in airports (Land border control would instead be lifted on July 1⁵⁵).

In September, on the table of Schengen Executive Committee there were still the three draft decisions regarding the entry into force of the Convention in Italy, Austria, and Greece. The Dutch and German delegations argued that the abolition of controls at airports should occur gradually⁵⁶. Practical measures at the borders, supported by a good dose of political pressure within the Schengen Executive Committee, persuaded the two sceptical delegations to drop their reservations. In early October, the Schengen ministers took notice of Italy's declaration specifying that all international airports would be completely functional from October 26, 1997. After a long discussion, they reached a consensus on the entry into force of the Convention for the candidate countries⁵⁷. The Convention indeed entered into force in October 1997 (Greece had to wait until December). Italy finally ended a long and painful period of purgatory.

Back to the future: long live Schengen?

The Italo-French row over Tunisian migrants and its political fallout has seriously put to the test Europe's border free area. This 'crisis', however, is not unique in Schengen's history. This paper has shown that there are remarkable similarities in terms of actors, content and dynamics between current and past phases of turmoil that have characterized the regime in the last two

⁵⁵ 1998; SCH/C (97) PV 8 – July 18, 1997.

⁵⁶ SCH/C (97) PV 9; "Projets de décisions du Comité exécutif sur la mise en vigueur de la Convention de Schengen en Italie, en Grèce et en Autriche", (SCH/Com-ex (97) 27 rév. 2, 28 rév. 2 et 29 rév. 2.

⁵⁷ SCH/Com-ex (97) PV 3.

decades. In these circumstances, a sceptical Schengen member (France), worried about the laxity of others, relied on the regime's 'special circumstances' clause to maintain or reinstate internal border controls and pushed for the regime's reform. Another member (Italy) was the object of mistrust among existing members and was criticized for its laxity with regards to border controls. In turn, this Schengen member repeatedly complained about the lack of European solidarity and good faith from its colleagues. A third member (Germany) was irritated by its partners' actions, complaining that they were weakening the 'Schengen spirit' and exerted political pressure to ensure that this spirit would be upheld. Although a 'European dimension' was repeatedly mentioned by all the actors involved, national governments have taken centre stage throughout these crises, not just as their initiators, but also as key players in their resolution. EU institutions have remained by and large in the background, trying to act as moderators but incapable of exerting effective political pressure on national governments⁵⁸. In the end, all the major players in these crises (from the 'sceptical yet loyal' France, to the 'recalcitrant victim' Italy and to the 'Schengen spirit critical guardian' Germany) eventually were persuaded to agree to a compromise solution which, although it only in part addressed their requests, they deemed politically acceptable. In past crises, the result of these compromises was that the threat of a possible dilution, or even the demise of Schengen did not materialize. Indeed, the regime not only managed to withstand existing tensions, but its 'spirit' came out reinvigorated. In the second part of the 1990s, Schengen expanded to new members and was officially incorporated in the European Union's institutional framework. Thanks to the regime's institutionalization and expansion, Schengen has been hailed as one of the most visible achievements of European

⁵⁸ It should be noted that before 1999 (when Schengen was incorporated in the EU) the European Commission had only observer status in the regime. Its power to influence the course of Schengen's early crises was therefore limited.

integration and established itself as one of the key pillars of European Union's political architecture.

Will the history of the Schengen regime repeat itself? Will the regime not just survive, but emerge once again unscathed from the turmoil that periodically shakes it? Some contextual factors characterizing the latest crisis seem to cast doubts over this optimistic vision for the regime's future. The latest crisis is in fact taking place in a political climate that is rather gloomy. The inward looking attitude of a growing swath of the electorate across Europe and the parallel rise of xenophobic political movements, together with the fear of further enlargement of the regime and, more generally, a steady decline in support for further European integration, have seriously curbed the enthusiasm for the border free Europe project. Yet, even previous crises in the regime unfolded in equally challenging times. The most glaring example is the fall of the Berlin Wall in the late 1980s, which occurred right in the middle of the crucial last rounds of negotiations over the Schengen Implementation Convention, the document (signed in 1990) that opened the door for the eventual entry into force of the regime. One of the greatest fears stemming from the collapse the Communist bloc was the possible 'invasion' of newly freed Eastern European citizens into the Schengen area. As one participant in the negotiations over the Implementation Convention put it, "Talking about freedom of movement (then) was considered by many as a profession of faith" (Hrebly 1998: 16). This faith clearly paid off, for the regime successfully survived the challenge and, after its entry into force, continued its path towards further expansion and consolidation.

Despite the current sceptical political climate in Europe, there are some signs that the faith that Schengen members demonstrated towards the regime in the past is still present today. Throughout the recent crisis, European policy-makers, side by side complaints, criticisms and

reciprocal accusations over the handling of North African migrants, have repeatedly emphasized the achievements, both practical and political, that Schengen has accomplished over the years, and its fundamental importance for the European integration project. Crucially, they have also vowed their allegiance to the regime and their commitment to support it in the future. Does this state of affairs mean that Schengen “will never die”, as Charles Elsen, former Director General at the European Council’s General Secretariat, predicted on the eve of the regime’s incorporation in the EU? Probably not. After all, all policy projects, like the individuals who create them, are bound to get old age and eventually pass away. Schengen is no exception to this rule. Its periodical ailments and the healing periods they require are testament to its mortality. As it has been the case in the past, however, today’s problems seem to be still treatable. Schengen is therefore likely to live on for some more time to come.

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