The refugee crisis: Schengen's slippery slope

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While the European Union (EU) is facing one of the most divisive crises in its history, the pressure to take immediate action is enormous. Yet, negotiations in the Council have shown that the prospect of a common European response to the manifold effects and underlying reasons of the refugee crisis still belongs to the distant future. Only a few days after Commission President Jean-Claude Juncker delivered his State of the Union address – avowing that Schengen will not be abolished under his term – national decisions to reintroduce temporary border controls are multiplying. Germany, one of the most ardent defenders of a borderless Union, decided to temporarily reinstate border checks. Austria and Slovenia came next. Slovakia, the Czech Republic, Poland, the Netherlands and France might follow.

In the year that the EU celebrated Schengen's 30th anniversary, the EU has to deal with Schengen's most severe crisis so far. The European Council President Donald Tusk convened an extraordinary summit to discuss, among other issues, the increasing fragmentation of the Schengen area. To better understand what could be the impact of this summit, several questions must be addressed concerning the temporary introduction of border controls.

Are they legal?

A priori, yes. The Commission has been fairly quick in stating that the choices made by Berlin, Vienna and Ljubljana were, *prima facie*, in line with EU law. The Schengen borders code includes a procedure (Article 25) allowing a state facing serious threats to public policy or internal security to immediately reintroduce controls. Initially, a state can do this for a period of up to ten days. If the threats persist, the exception can be extended for several renewable periods of up to 20 days (for a maximum period of two months).

The code obliges the member state that introduces the controls to evaluate their "necessity" and "proportionality". Concerning the "proportionality" of the measure, they must take into account (1) the likely impact of the threats to the domestic public policy and internal security and (2) the likely impact of border controls on the EU citizens' freedom of movement. The "necessity" of the controls refers to them being an adequate remedy to the identified threat. In addition, the Commission must keep the European Parliament and Council informed and make sure that the measures are "necessary" and "proportionate".

Despite these clarifications, the two concepts remain vague and are open to interpretation. Nevertheless, in the current situation, the unparalleled numbers of asylum seekers arriving in Germany – over 63,000 in Munich and Hillenbrand since 31 August – and the death of the 71 refugees in an abandoned truck in Austria can justify the temporary introduction of border controls in order to maintain the public order in these countries. Slovenia, however, took this decision in anticipation of the asylum seekers' arrivals. Therefore, this measure might require further investigation from the Commission.

Are they the 'right' thing to do?

This question cannot be answered with a simple yes or no. Clearly, countries such as Germany were not only logistically, but also politically overwhelmed due to the increasing intensity of the domestic debate. Berlin was in need of some breathing space to absorb the masses of people asking for protection on its territory. German officials had not foreseen that asylum seekers would be arriving so quickly in such numbers. In this context, Chancellor Merkel was left with little choice but to introduce controls. However, this does not mean Germany's borders are closed; it will continue receiving asylum applications.

Still, there is more to these decisions than meets the eye. It is therefore worth decrypting the political message(s) they are likely to hide.

The timing of the German choice to reinstall border controls – just before the extraordinary meeting of the Council on 14 September – might be a way to try and coerce solidarity among EU states. The Commission also hints in the same direction. When DG Migration and Home Affairs publishes a statement related to the validation of the temporary border controls, it underlines the "pressing need to agree on and quickly implement the measures proposed [on 9 September]", which are focused on a more equitable share of responsibility among EU states.

Undeniably, there is no faster way to show that this problem also concerns countries currently 'protected' from the influxes of asylum seekers. The almost instantaneous consequences of one country's unilateral decision – see the change of refugees' route via Croatia after Hungary sealed its border – show the obvious interconnection within the EU. However, political leaders must resist the temptation of fragmenting the Schengen area to convince their partners of how European this crisis is. In the end, exposing the weaknesses of a cherished European accomplishment can, in times of high uncertainty, be very dangerous. It undermines Schengen's credibility, even more so if this comes from a driving force behind European integration, like Germany.

Another motivation can lay behind the decision to reinstall border checks, notably from the side of Central and Eastern European states, which are not facing significant influxes of asylum seekers: satisfying public opinion. However – be it in the context of key domestic political events, such as this year's Polish and next year's Slovak parliamentary elections, or not – this can also backfire. Whereas public opinion in these countries is strongly divided on hosting asylum seekers, most citizens are in favour of maintaining the freedom to move, especially the ones who, as citizens of new EU states, have seen their dream of free movement come true not so long ago. In addition, the perspective of slowing down economic growth can also impact public opinion. In this sense, the disruption of the economic activity by border controls must not be underestimated.

Are they the beginning of the end?

Probably not. Despite its frailty, Schengen remains attractive not only for those inside, but also for those who have been knocking on its doors for a while now: Romania and Bulgaria. The Romanian Prime Minister, Victor Ponta, even indicated conditioning Romania's generosity in terms of asylum seekers' relocation upon its accession to the Schengen area.

Yet, the Schengen area is increasingly fragmented. The outcomes of the extraordinary European Council can significantly influence the current unmatched 'chemical reaction' damaging the credibility of the Schengen commitments. Whereas an agreement on the relocation of 120,000 asylum seekers – from Italy, Greece, Hungary, but also Croatia should be included on this list – will not solve Europe's refugee crisis, it has the potential of reducing the pressure on Schengen, enabling a swift return to a normal borderless Europe. However, if the EU leaders do not find a compromise on this issue, the legal time limits of these border checks will be up without any improvement of the situation on the ground. In this case, with the intense political pressure that exists in Europe, the Commission might show flexibility with respect to EU states' legal obligations. This could subsequently lead to a prolongation of the temporary border checks, creating even more damage to Schengen's trustworthiness.

The lesson to be learned from what we can now call a "Schengen crisis" is that mutual trust amongst EU states and between EU states and EU institutions is at a worryingly low level. At a time when Europe is accumulating crises without truly solving old ones (Ukraine/Russia, Greek crisis), trust is a very precious currency. In order to restore it, the EU should take advantage of a possible calmer winter to enhance the level of preparedness for a similar scenario in the future. Otherwise, the current situation will only be the first episode of a dangerous saga for the European project.

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