



The Schengen Agreement and European Integration

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Abstract

Since the conclusion of the Schengen Agreement, the importance of asylum and migration policy for the EU has increased significantly. "Schengen" constitutes an essential element of the freedom of movement formulated by the European Union as the central objective of its policy, i.e. the unrestricted movement of all citizens between EU member states and the freedom of establishment granted therein. Cooperation of EU member states is mainly based on the development of restrictive rules for a common border and visa policy, as well as cooperation to limit asylum immigration. Since the 1990s, tools to improve border controls have mainly consisted of regulations declaring other states "safe third countries" and "safe countries of origin and transit," making them responsible for asylum procedures. Such regulations have often been supported by treaties with countries of origin or transit, which have not always been willing or able to guarantee human rights. Member states in their domestic policies have extensive debates and disagreements on the direction of asylum policy. While some states want to protect the rights of those seeking protection, others prioritize controlling and limiting immigration. In the early 2000s, the EU decided on minimum standards for national asylum legislation and asylum procedures, not in the interests of those seeking protection, but mainly to prevent those seeking protection from moving to find better conditions in other countries according to very different standards. . However, minimum standards have remained limited by national discretion, so differences in procedures and benefits afforded to recognized asylum seekers and refugees remain extremely wide.

Keywords: Schengen Agreement; European Union; Asylum policies; Immigration

1. Introduction

More and more states have participated in the creation of supranational and intergovernmental institutions, transferring national powers to European authorities and agreeing on common regulations. An essential element of the freedom of movement formulated by the European Union as the central objective of its policy, i.e. the free movement of all citizens between EU member states and the freedom of establishment granted therein, is "Schengen", which also stands for border police cooperation between states within Europe and at the EU's external borders.¹

The process of, on the one hand, granting equal rights of movement and spatial settlement to all citizens and, on the other, of limiting state powers to control migration between member states of the European Economic Community (EEC), the European Community . (EC) and the EU began in the 1950s, i.e. long before the signing of the Schengen Agreement in 1985. It did not develop smoothly, continuously and without contradictions and therefore corresponds to the irregular course of European integration: despite many disagreements about its purpose, function, form, scope and

¹ GUILD E. and BIGO, D. 'Policing at a distance: Schengen Visa policies' in *Controlling Frontiers - Free Movement Into and Within Europe*, London, 2005, pp. 103-107.

speed.

Very different ideas on the subject of migration can be identified in the societies of Schengen and EU member states. They also emerged against the background of an extremely heterogeneous European migration history: in some EU countries, such as France, the UK, the Netherlands and Portugal, they were colonial powers for centuries. The process of decolonization from the 1940s to the 1970s led to specific patterns of intercontinental migration. However, in the case of other EU members, spatial proximity shaped migration (as with the great importance of Albanian migration to Greece) or previous common belonging to a collapsed state, as the example of the Czech Republic shows. and Slovakia. Other Schengen states demonstrated intensive involvement in the extensive system of labor recruitment under recruitment agreements from the late 1940s to the early 1970s.²

Even after its end it brought with it extensive subsequent migration, as can be seen, for example, in Switzerland, Austria and Luxembourg. France, Belgium and the Federal Republic of Germany were already countries of immigration in the 1950s and 1960s. Greece, Spain and Portugal remained important countries of origin for intra-European movements until the 1980s. After the Second World War, Bulgaria, Poland and Germany Romania was in the USSR's sphere of influence and did not face migration or asylum problems for many decades. Only after the opening of the "Iron Curtain" in 1989/1990 did the largest migration from there to the west of the continent begin.

2. The Initial Phase of the Integration of a "Europe without Borders"

Debates about a "Borderless Europe" after the Second World War should be seen against the background of a long line of development of assumptions about the advantages and disadvantages of relinquishing control of migratory movements. A central point of departure is the idea of 19th-century liberalism, a free movement of workers and the abolition of passports, visas and border controls which are necessary to empower market forces and enable increased prosperity for all. Since 1802, the United States of America has refrained from requiring passports when entering the country and from conducting checks.³ Great Britain followed in 1836 and many other states in Western, Central and Northern Europe were added, especially in the 1850s and 1860s. However, it should not be overlooked that after several decades of a declining need for control and a decline in the intensity of control since the 1880s/1890s, interest in control and the performance of control infrastructures in the Euro-Atlantic region increased again. The rise of nationalist and racist ideas contributed to this, as did the growing political influence of labor movements and their views on "protecting the national labor market" from immigration of workers who could lower wages and break strikes.⁴

Increasingly, native and immigrant minorities were seen as a threat to the country's internal security, homogeneity, economic stability and culture. Restrictive minority policies and immigration barriers to foreign nationals, as well as the establishment of formal or informal barriers to social groups should minimize the risks assumed to emanate from minorities. The obligation to apply for a visa before entering the country and thus enable the control of migration before it begins has developed into a central instrument for the control of migration movements after the First World War. Although the need to monitor and influence spatial movements was and remained high, many governments in Europe between the wars seemed to need to carefully limit controls: it was often argued that visa regulations would not only affect travel but also impede the flow of goods and capital. Visa waiver in relations between individual states (but by no means between all) was seen as a means of economic development and as a symbol of mutual trust, which was expressed in the privileging of passenger traffic within the framework of numerous bilateral visas. the agreements.

However, all negotiations on visa agreements in Europe in the 1920s and 1930s made it clear that they could not be limited to regulations for business people and tourist travel. They inevitably had to touch on the question of whether and to what extent visa freedom also applied to those who wanted to be employed as migrant workers in the country of arrival or to seek protection status as politically persecuted people Even after the Second World War, regulations to limit passport and visa requirements and to facilitate border clearance were first implemented in Western Europe with the help of bilateral agreements. Many states concluded such treaties again in the 1950s. Belgium, the Netherlands and Luxembourg agreed to a passport union in 1960. These, but also bilateral agreements on visa-free travel and easier border clearance for people and goods, formed a precondition for a multilateral agreement to waive border controls at

² European Council on Foreign Relations. (n.d). *The future of Schengen*

³ Milward, Alan S. 1994. *The European Rescue of the Nation State*. London: Routledge.

⁴ Park, J. (2015). *Europe's Migration Crisis*. CFR Backgrounders

internal borders.⁵

In the founding documents of the EEC, the regulations on freedom of movement referred exclusively to economically active women and men and their family members. In the 1970s, the jurisprudence of the European Court of Justice, established in 1952, ensured that it applied to others and the decisions were later incorporated into EEC/EEC regulations. Based on this, freedom of movement became the main goal of the EU, which was eventually included in the "Treaty on the Functioning of the European Union" when the EU was founded in 1992. The "Union" was also included in the bill of rights of "citizens of the union". According to Article 20, all citizens of the Union have "the right to move and reside freely within the territory of the Member States".⁶

3. The EU Asylum Policy in the Schengen Area

As in Europe, migration and border policy measures have been mainly justified by the interest in promoting the economy. In view of the severe economic crisis of the late 1990s and early 2000s, there has been a move away from the idea of understanding migration policy primarily as a matter of economic development and above all from the discussion of how to manage hundreds of thousands of migrants. The undocumented, many of whom have been particularly affected by the consequences of the economic crisis, have led to a political initiative that has significantly increased the chances of citizens of Member States to obtain a residence permit in another partner country. Because uncontrolled internal borders allowed asylum seekers to move relatively unhindered within the Schengen area, where rules relating to the common processing of asylum applications had already been discussed at the end of the 1980s.⁷

Almost at the same time as the Schengen Implementing Convention, which already contains some provisions on asylum, the "Convention on the determination of the State responsible for examining an application for asylum lodged in a Member State of the European Communities" was signed in Dublin in 1990. It entered into force in 1997 after long debates about implementation and entry into force. On the one hand, it stipulates that an asylum procedure must be carried out in the EU country in which the asylum seeker entered for the first time. In this way, it is intended to ensure that asylum seekers do not leave individual countries and therefore can travel from one country to another within the Schengen area without any procedure (discussed under the formula "refugees in orbit"). In addition, if a member state rejects an asylum application, the regulation aims to prevent the submission of another application in another country (the so-called "asylum market").⁸

Because the states at the EU's external borders are primarily responsible for receiving asylum seekers and conducting asylum procedures, the Dublin system led to significant imbalances (in the 1990s, particularly to the detriment of countries bordering eastern Europe, since the early 2000s, especially the Mediterranean countries Spain, Italy and Greece). However, a mechanism for the further distribution of those seeking protection within the EU proved to be unworkable due to resistance from various states, most recently especially those in Eastern Europe.

The differences between the asylum systems of the member states could not be resolved. The member states agreed on a "Common European Asylum System". However, it was only able to contribute to the rudimentary harmonization of national asylum regulations. Since the 1990s, the EU Parliament and the European Commission have mostly called for closer cooperation between member states, cited the advantages of introducing common rules, and tended to aim at strengthening the rights of those seeking protection.⁹

In the early 2000s, the EU decided on minimum standards for national asylum legislation and asylum procedures - less in the interests of those seeking protection, but mainly to prevent those seeking protection from moving to find better conditions good in other countries according to very different standards. However, minimum standards remained limited by national discretion, so differences in procedures and benefits granted to asylum seekers and recognized refugees remain extremely large.¹⁰ Furthermore, the minimum standards have not been reached in all Member States

Since the 1990s, the instruments for advancing border controls have mainly consisted of regulations declaring

⁵ Balch, Alex und Andrew Geddes. 2011. *The Development of the EU Migration and Asylum Regime*. In *Migration and the New Technological Borders of Europe*

⁶ Lehne, S (2016). *How the Refugee Crisis Will Reshape the EU*. Carnegie Europe

⁷ Bendel, Petra und Ariadna Ripoll Servent. 2018. *Asylum and Refugee Protection: EU Policies in Crisis*. In *The Routledge Handbook of Justice and Home Affairs Research*

⁸ GUILD E. and BIGO, D. 'Policing at a distance: Schengen Visa policies' in *Controlling Frontiers - Free Movement Into and Within Europe*, London, 2005, pp. 103-107.

⁹ COSTELLO C. – MANN I. "Border Justice: Migration an Accountability for Human Rights Violations", *German Law Journal*, 2020.

¹⁰ EAVA. (2016). *The Cost of Non-Schengen: Civil Liberties, Justice and Home Affairs Aspects*

other states "safe third countries" and "safe countries of origin and transit" and making them responsible for asylum procedures. Such regulations have often been supported by treaties with countries of origin or transit, which have by no means always been willing or able to guarantee human rights. Cooperation and association agreements between the EU and third countries, including the European Neighborhood Policy framework, regularly include provisions on migration policies in the form of "mobility" or "migration partnerships". The initial focus was mainly on aspects of border protection, movement control and readmission of third-country nationals.

4. Conclusions

The emergence of a migration and border policy in the Schengen area and in the EU reveals two areas of tension especially in a community of states characterized by a wide heterogeneity of migration policy ideas. First, it moves between the poles on the one hand, a supranational effort for unification and, on the other hand, the preservation of national autonomy, which is mostly willing to coordinate with each other without giving up sovereign rights, and second, between the implementation of human rights that are understood as universally valid and internal security environments. In member states, migration and asylum policy are largely considered highly sensitive areas for internal and national identity politics, in which the limitation of national sovereignty appears particularly threatening given the seemingly limitless claims of those seeking protection, because they are defined in terms of human rights. Emphasizing common interests and developing common regulations has been particularly successful in recent years where controls and restrictions on access to Europe have been strengthened.¹¹

Since the conclusion of the Schengen Agreement, the importance of asylum and migration policy for the EU has increased significantly. Until the 1990s, joint activities in these areas were possible through procedures. In particular, the interior and justice ministries of the EU states agreed on joint political initiatives and regulations. However, since the late 1990s, procedures have been communited, meaning that EU member states and supranational bodies decide together: legislative proposals originate exclusively from the European Commission and are approved by the EU Parliament and Council. . The field of migration for employment reasons continues to be excluded from joint initiatives. The request of the Treaty of Lisbon, which entered into force in 2009, for the development of an EU policy on immigration remained largely without consequence.

Because "Schengen" seemed to bring with it considerable risks, the first step would have to be that control capacities could be significantly increased through significantly increased police cooperation and through intensified surveillance of external borders. Only then can the internal borders be opened. The compensatory measures adopted in the Schengen Implementation Agreement led to a significant increase in personnel at the external borders. Border protection remained the responsibility of individual states. However, these are supported by the EU border protection agency Frontex, established in 2004.¹²

The main task of Frontex is to collect data on crime across national borders, smuggling of people and goods and the cross-border movement of people without a residence permit. These data must be analyzed, results prepared for member states, concepts for border protection developed, research initiated, border protection activities coordinated and national border police supported. Frontex is a sign, on the one hand, of the growing importance of the idea of the need to secure the external border, but on the other hand, also of the willingness to ease the burden of the member states involved in the adoption of external border security measures for the whole EU. But Frontex is also a sign that countries at the center of Europe are not always convinced that states on the outer borders are doing this efficiently enough.

Beyond the activities at and across the external borders, the number of controls inside the country has increased. Border protection moved from the border line to the border area, which includes the entire territory of a state or the Schengen states as a whole. The intensified cross-border cooperation between the security authorities of the Schengen states also targets the entire Schengen area and not the line itself border. In addition, private actors are increasingly involved in the border regime: Since the late 1980s, individual states, transport companies - and especially airlines - have required personal documents to be checked before traveling to the Schengen area. In the case of transporting persons with invalid documents, companies must cover the costs of return transportation and pay fines. This obligation was included in the Schengen Implementing Convention.

¹¹ Fink, Melanie. 2018. *Frontex and Human Rights*. Oxford: Oxford University Press

¹² Bossong, Raphael. 2019. *The Expansion of Frontex. Symbolic Measures and Long-term Changes in EU Border Management*.

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