Revision of Schengen Agreement in the Offing? France and Italy Press for Changes to European Border Protocol

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Last week, French President Nicolas Sarkozy and Italian Prime Minister Silvio Berlusconi issued a joint letter to the European Commission ("EU") demanding that the EU make an "in-depth revision" to the Schengen Agreement.

The Schengen Agreement, initially signed in 1985, essentially allows for passport-free travel within member states, which are collectively known as the Schengen Area.Additional nations signed on to the accord in 1995 and Schengen became part of EU law with the signing of the 1999 Amsterdam Treaty. There are currently twenty-five nations – the twenty-two EU member states along with Iceland, Norway, and Switzerland -- participating in Schengen, with two additional nations scheduled to join in the near future.Notably, because Schengen became part of EU law with the 1999 treaty, it can only be revised through the EU legislative process (rather than through amendment by its members).

France and Italy's concerted action arises after a series of disputes between the two nations over the treatment of a wave of immigrants from the North African nations currently experiencing political unrest.Approximately 30,000 Tunisians nationals, most of them French-speaking, have recently fled to Italy.Many of these Tunisians have attempted to travel from Italy into France, a step Italy initially encouraged by issuing visas allowing Tunisians to travel throughout the continent.In response, France stepped up restrictions on its Italian border, including establishment of new checkpoints and making additional inquiries of entering Tunisians.These anti-immigration efforts come on the heels of recent pushback from several EU nations on the inclusion of Bulgaria and Romania into the Schengen Area. These two nations were originally scheduled to join in 2011 but their entry has been delayed.

The main thrust of the Franco-Italian request to re-examine Schengen is that the influx of North African immigrants is a special circumstance that warrants revision of the protocol.However, the existing SchengenAgreement already allows for the temporary establishment of borders in the event of national security concerns.The EU has historically been reticent to utilize these powers for fear that regularly exercising this option could water down Schengen's effectiveness and encourage attempts by member nations to close their borders.Establishment of temporary borders has historically been limited to circumstances where one-time events have resulted in a huge inflow of individuals into a single country, such as the World Cup or similar events.

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The EU will formally examine the request that Schengen be revised at a previously scheduled June summit of heads of government.

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