

# Trickery in Dublin's shadow

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**Border practices at the Italy-Austria border are part of a wider trend of questionable practices used by EU Member States which render irrelevant both the Schengen Agreement and the Dublin Regulation.**

The Brenner Pass on the border between Italy and Austria is the northernmost limit that migrants who cross the Mediterranean Sea to Italy are allowed to go, according to the Dublin Regulation. This is also an internal border of the Schengen Area which allows the free movement of people without border controls, regardless of nationality – in theory. In practice, migrants

who try to cross it face the consequences of conflicting national interests and the dishonest implementation of European laws.

Thousands of refugees have attempted to reach northern Europe via the Brenner in recent years, and the Austrian and German authorities have taken notice. Austrian police increasingly boarded international trains (from Verona in Italy to Munich in Germany)

at the Brenner in 2014 to check passengers' documents and identify irregular migrants, making them get off in Innsbruck, the next city along the route. Under a bilateral agreement with Italy dating back to 1997, Austria is authorised to return travellers coming from Italy who cannot provide documentation valid for a legal stay in Austria. According to the Italian police, over 5,000 returns of this sort were carried out by the Austrian police in 2014. Police checks intensified in November 2014, when daily joint patrols with Austrian, German and Italian officers on international trains began.

Austria and Germany have attempted to isolate themselves from the refugee crisis in the Mediterranean by increasingly monitoring their borders and putting pressure on Italy to help them keep migrants out. The Italians reluctantly cooperate but also try to limit the responsibility imposed on them because of Italy's location. Many refugees cross the Brenner Pass only days after arriving in Sicily, where they should have been registered and entered into the EURODAC database to prove Italy's responsibility for them under the Dublin Regulation. Authorities at reception centres, however, do not hinder new arrivals from leaving before they are fingerprinted and registered, and implicitly encourage the departure of those most likely to obtain asylum elsewhere.

### Dublin versus Schengen

Italy has drawn criticism from northern European countries for its lax approach towards Dublin rules. At the same time, the three-nation patrols on Munich-bound trains probably violate the Schengen Borders Code, which regulates how Europe's internal borders are to be managed. According to the Code, police activities that "do not have an effect equivalent to border checks" are permitted as long as they "do not have border control as an objective ... and are carried out on the basis of spot-checks".<sup>1</sup> Police officers' daily presence on trains heading north amounts to more than spot-checks but one train per day is usually left unchecked, leaving room for a creative interpretation of Schengen rules.

Another example of how southern and northern European countries work against each other using (or ignoring) mechanisms designed to foster cooperation is the way in which 'Dublin transfers' are handled. Migrants who can be proven to have first arrived in a different country can be returned there as a 'Dublin case'; to do so, a request must be submitted to and accepted by the asylum authorities of the receiving country within a certain period. However, Dublin cases whom Austria decides to return to Italy are periodically let off unmarked Austrian police buses at the Brenner, at a roundabout right by the border at the edge of the town, completely bypassing the formal return procedure.

The fact that EU member states try to outsmart each other and the regulations they have agreed on together is the ultimate proof that the current asylum system does not and cannot work. Making matters worse is the fundamental incompatibility of the Dublin Regulation with the Schengen Agreement. Full implementation of one does not allow full implementation of the other. In practice, both are being circumvented as the number of irregular migrants arriving in Europe has rapidly increased.

Immigration hardliners throughout Europe have called for the reintroduction of pre-Schengen border controls in order to keep migrants out of their own countries. It is assumed that closed borders will deter migrants, convincing them to stay in the southern European countries they want to leave. However, to those who have crossed deserts and seas to flee conflict and deprivation, border patrols are merely another obstacle to overcome en route to a better future. Making life difficult for them at the Brenner or elsewhere will only delay their arrival, making it more costly and more dangerous, but will not prevent it.

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1. <http://tinyurl.com/SchengenBordersCode>