
SCHENGEN AND THE CONCEPT OF INTERNAL BORDER SECURITY

Danguolė SENIUTIENĖ

*Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
E-mail: dseniutiene@mrni.eu
ORCID ID: 0000-0002-7572-5239*

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Abstract. *The main purpose of the Schengen Agreement was to abolish border checks at internal borders between Schengen Member States. This principled idea was later transposed into the provisions of the Schengen Convention and reiterated in the Schengen Borders Code. Despite the fact that the priority objective of the Schengen Agreement is to apply the principle of free movement of persons and to abolish internal border controls, there is one exception, in cases where public policy or national security so require, the Schengen State, in consultation with the other Contracting Parties, may decide to carry out border checks at the internal borders of the country concerned for a limited period, depending on the situation at the internal borders. The abolition of controls at internal borders is not an irreversible process, which means that rules governing the reintroduction of controls at internal borders must be introduced into national law. This article analyzes the norms of the Schengen acquis and the main elements of the concept of protection of internal borders, evaluates the principles of reintroduction of control at internal borders. It is assumed that EU countries that have agreed on common security standards have the right to decide and implement national measures to ensure public order and national security.*

Keywords: *Schengen area, Schengen Convention, borders, security.*

Introduction

Membership of the European Union has given to the Member States a new nature of responsibility, that is, the Member States have become responsible for controlling the borders of the European Union. The concept of the European Union's external borders and their protection plays a significant role in ensuring the area of freedom, security and justice that the European Union is building, which is a cornerstone not only of the European Union, but also of the Schengen area. The functioning of the Schengen system is based on the principle of solidarity between states and responsibility for the common interest. (Miller, M. S., Mills, J. T., 2020)

As millions of third-country citizens cross the European Union's external borders legally each year, it is also vital to strengthen control and inspection mechanisms within the European Union itself. It is also important to ensure that the burden of migration control is not unilaterally shifted to the European Union's external borders, to the countries that ensure their security.

The coronavirus pandemic has presented to the European Union, as well as the rest of the world, with a number of challenges, including in the context of border protection, when was taken the decision to close both the internal and external borders of the European Union.

The object of the research is the norms of the Schengen acquis and the principles of the concept of protection of internal borders.

The aim of the research is to review the norms of the Schengen acquis and the concept of internal border protection and their application. Does the Schengen acquis rules succeeds equally standardized application?

Methodology. To achieve the aim of the research theoretical research methods were applied: description, analysis, and comparison methods. The work is based on various scientific

literature: articles, conference proceedings, as well as legal acts, which help to analyze the research topic in detail.

Principal provisions of the Schengen area

Adequate border protection for any Member State of the European Union is not only part of a country's national security, but also an integral part of the Schengen area and global security (Alden, 2017). A Member State of the European Union and a Member State of the Schengen area must inevitably apply common rules and integrate them at national level.

The cornerstone of the Schengen area was laid by five of the ten countries, which were then called the European Community (Belgium, France, Germany, Luxembourg and the Netherlands); on June 14, 1985 signed an agreement on the gradual abolition of checks at their common borders body (*Schengen Acquis*, 2000).

The main objective of the Agreement was to phase out checks at common borders between the signatories to the Agreement, or in other words: "The creation of the Schengen area may stem from the need to remove obstacles to the movement of goods, persons, services and capital within the European Union. The principle of the free movement of goods, services and capital has been implemented, but the implementation of the fourth freedom, free movement of persons, which is at the heart of the Schengen area, caused the most debate, because, in addition to the positive aspects, this principle is linked to the national security of the States" (*Greičius & Seniutienė*, 2005, p. 78).

The agreement was supplemented in 1990 Convention (*Schengen Convention*, 1990), which also included a provision for a common visa policy and a Schengen Information System (SIS), strengthened police cooperation at internal borders and improved the fight against drug trafficking.

In March of 1995 following the entry into force of the Convention, controls were lifted across the internal borders of the five countries, as well as Spain and Portugal (Spain and Portugal signed the agreement in June 1991). Later, most of the other EU countries and several non-EU countries joined these seven countries. Lithuania joined the Schengen area in 2007 December 21 together with 8 other EU countries (Latvia, Czech Republic, Estonia, Poland, Malta, Slovakia, Hungary, Slovenia). On that day, controls on the internal land borders of the 9 Schengen States and on 30 March 2008 on the air borders were lifted.

European Union requirements for the implementation of external border controls include:

- the abolition of border controls at internal borders;
- the compatibility of legislation on border protection with the legal framework of the European Union;
- close cooperation;
- delegation of border control functions to a professional border guard service.

The Schengen area currently comprises 26 countries, including 22 Member States of the European Union and four non-EU countries (Iceland, Liechtenstein, Norway and Switzerland). The de facto Schengen area also includes Monaco, San Marino and the Holy See, which maintain open or semi-open borders with the Schengen states. Bulgaria, Croatia, Cyprus and Romania are expected to become part of the Schengen area, although their future participation is subject to the approval of the EU Council of Ministers after consulting the European Parliament (*Schengen Agreement*, 2021).

Currently, about 400 million people live in the Schengen area, all of them can travel freely between Schengen countries without a visa and border controls. Almost half of this number

cross European borders every year, although the number has even doubled during the pandemic (see Figure 1).

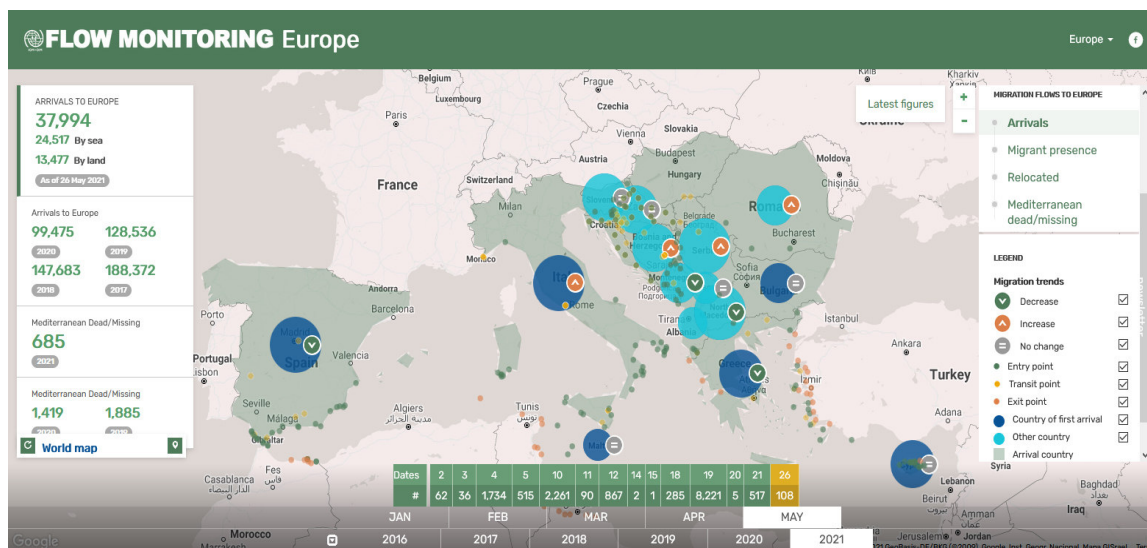


Figure 1. Arrivals to Europe

Source: Flow Monitoring Europe, IOM, 2021 <https://migration.iom.int/europe?type=arrivals>

The Schengen countries are committed to the protection of the common external border in accordance with commonly agreed requirements and standards. Schengen cooperation, launched at the initiative of governments at 1997 is enshrined in EU law and rules on the basis, of the Amsterdam Treaty (*Amsterdam Treaty, 1997*). The creation of the Schengen area is considered as one of the EU's greatest achievements (Wang, 2016, 711 p.). Europe without internal borders offers great economic benefits, which shows how much support the successful Schengen project receives and the enormous benefits of its tangible results for our daily lives and society.

Citizens of the Schengen States have the right to travel freely to and from any Schengen State. In addition, this freedom of movement within the Schengen area applies to foreign travelers with whom the EU applies a visa-free regime. With the abolition of border checks at internal borders, many Schengen countries without external borders do not record the entry of all aliens into their territory, making it difficult to accurately assess the extent of cross-border movement within the Schengen area itself.

The Schengen group has an intergovernmental set of rules called the Schengen acquis. This set of rules includes the Schengen Convention; the protocols of accession of the countries and the declarations and decisions of the Schengen authorities. By abandoning controls at internal borders and at the same time strengthening the security of the European Union's external borders, Member States must apply the compensatory measures provided for in the Schengen acquis as specific measures to compensate for the security deficit.

The Schengen Acquis consists of EU legislation implementing the provisions of the Schengen Agreement and the Schengen Convention. These acts include: the Schengen Agreement, the Schengen Convention and documents related to the subsequent accession of states to the Schengen Convention; Committee decisions and declarations; Decisions of the EU Council related to the implementation of the provisions of the Schengen Convention (*Schengen Acquis, 2000*).

The Schengen Convention provides for practical ways of implementing the Schengen Agreement, which ensures the free movement of persons. The abolition of controls on persons

at the borders of the Schengen area poses a threat of crime, and the Convention provides for measures to prevent this. Evaluations are carried out each year by several Member States to assess the correct application of the Schengen acquis by the Schengen Member States. The composition of the Schengen Evaluation Commission, composed of experts from the Member States and Frontex, is coordinated by the EU Commission.

Another traditionally established principle is found in the provisions of the Convention - external borders may be crossed only at border crossing points and only during their fixed opening hours. „For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period (...)”. (*Schengen Borders Code, 2016*).

However, the crossing of external borders is a must fulfill the following conditions:

“a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:

- its validity shall extend at least three months after the intended date of departure from the territory of the Member States (...);

- it shall have been issued within the previous 10 years;

b) they are in possession of a valid visa (if required pursuant to Council Regulation (EC) No 539/2001 (25)) (...);

c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence (...);

d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States’ national data bases for the purposes of refusing entry on the same grounds.” (*Schengen Borders Code, 2016*).

The Convention emphasizes that border control must be carried out in accordance with common principles and in the interests of the Contracting Parties. Such a division of responsibilities, its transfer to other Member States of the Treaty, must be based on a strong mutual trust between States, and the establishment of common principles for border control could be seen as one of the means of strengthening such trust.

The Convention requires and presents uniform operating principles at all external borders, such as the verification of travel documents and other conditions of entry, stay, work and departure, and the investigation and prevention of threats to the national security and public order of the Contracting Parties.

The concept of internal border protection

The Schengen Convention emphasizes that internal borders may be crossed at any point without any checks on persons. This provision shall apply between the Contracting Parties: if the border to be crossed is a land border; if the airport is intended for domestic flights; if the seaport is intended for regular shipping services only from other ports or to other ports situated in the territory of the Contracting Parties, without calling at ports outside that territory which are classified as internal borders in accordance with the Convention (*Schengen Convention, 1990*).

The basic ideas of the Schengen Convention are echoed in the Schengen Borders Code. Despite the fact that the priority objective of the Schengen Agreement is to apply the principle of free movement of persons and to abolish controls at internal borders, the Convention also contains one clause. Where public policy or national security so require, a Schengen State may,

after consulting the other Contracting Parties, decide to carry out border checks at the borders of the country concerned for a limited period, depending on the situation at the internal borders.

Similarly, Article 25 of the Schengen Borders Code states that: "Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat." (*Schengen Borders Code, 2016*).

Internal border controls are being renewed only as a last resort. "Where a Member State plans to reintroduce border control at internal borders under Article 25, it shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders become known less than four weeks before the planned reintroduction". (*Schengen Borders Code, 2016*).

Many Member States, including Lithuania, have already successfully used this measure provided for in the Schengen Borders Code.

"To that end, the Member State shall supply the following information:

- a) the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
 - b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;
 - c) the names of the authorised crossing-points;
 - d) the date and duration of the planned reintroduction;
 - e) where appropriate, the measures to be taken by the other Member States."
- (*Schengen Borders Code, 2016*).

The abolition of internal border controls is not an irreversible process, which means that national law must lay down rules governing the mechanism for reintroducing internal border controls. The decision on the temporary return of border checks at internal borders is made by the national government, but the Ministry of the Interior (or an institution subordinate to it) also has such powers when the situation arises.

With regard to the Contracting Parties, the border control system is relatively flexible, allowing for a prompt and preventive response to likely threats to public order and stability.

A response may be needed, especially in the event of unexpected emergencies, and it must also be borne in mind that the free movement of persons also offers greater opportunities for a freer movement of crime, or in other words for the spread of crime between states with only internal borders. In order to reduce the risks to both public order and national security, security deficit measures are needed in the Schengen countries.

The mechanism for returning border checks at internal borders is functional and realistic. The provisions of the Convention on the abolition of border checks at internal borders are without prejudice to the right of States to provide physical protection at internal borders. This is not regulated in the Convention and it can be assumed that the implementation of the border protection function, which is necessary to ensure territorial control and state sovereignty, continues to be delegated to a Member State on a priority basis. This is an important conceptual provision that does not contradict the traditionally established notion of state "territorial sovereignty", according to which, subject to the relevant Treaty provisions, territorial control is the essence of the state and defined by a geographical area separated and united by a common

legal framework. In this case, ensuring the national security of each Contracting Party is a rather important contribution to the overall level of internal security.

During the coronavirus pandemic, borders and their control have become a major political debate across Europe, in most cases since 2020. Following the global pandemic in February, the Member States of the European Union exercised their right to reintroduce checks at internal borders and closed all external and internal borders (*Guild, 2020, 11 p.*). EU countries have agreed on a harmonized approach to restricting free movement in response to a coronavirus pandemic (the agreement uses a color code to classify regions according to the epidemiological situation there) (see Figure 2). However, in this case, the actions were not maximally standardized, each EU country applied and, if necessary, will apply its own standards in the future to decide whether third-country nationals can enter and what measures to apply when they are already in an EU or Schengen country. Each EU Member State also has the right to decide and implement its own follow-up measures to curb the spread of the pandemic.

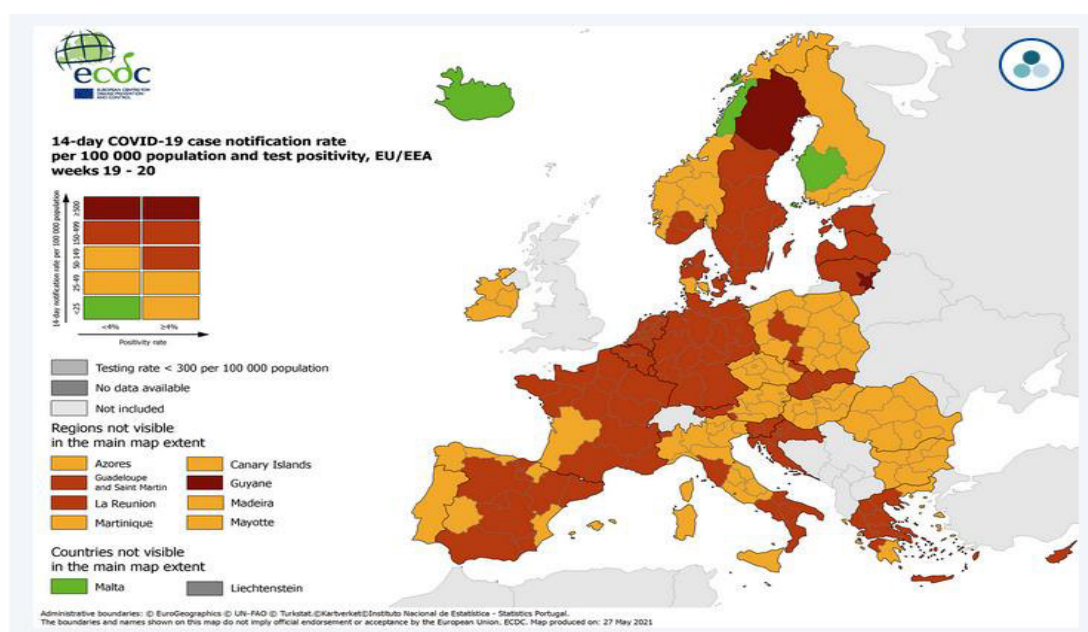


Figure 2. Covid – 19 case notification rate per 100 000 population
Source: An official website of the European Union, 2021 <https://reopen.europa.eu/en>

In a non-standard situation and in the absence of full standardization, the European Commission has reminded Member States that all actions at the external border must apply to all parts of the EU's external border in order to be effective (*COM (2020) 115*), while the protection of internal borders remains mandatory.

Conclusions

Schengen or the Schengen area is the territory of the signatory states to the Schengen Agreement. This space is special in that its external borders are vigilantly protected and controls on the internal borders of the space are lifted. Security in the Schengen area is ensured by enhanced controls at the external borders, cooperation between the border guards of the Schengen countries, police and judicial cooperation, the implementation of the common visa policy of the Schengen countries and the functioning of the Schengen Information System. Controls at the internal borders of the European Union may be reintroduced where necessary

to ensure public order and national security. Provisions governing the reintroduction of internal border controls must be established in national law. The countries of the European Union have agreed on common security standards, but practice shows that in the event of an emergency, they have the right to take immediate unilateral decisions and implement national measures to ensure public order and national security.

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