

The Schengen area

The Schengen area covers all the territories of the EU Member States (with the exception of the United Kingdom and Ireland), as well as certain non-EU neighbours: Norway, Iceland, Switzerland and, very shortly, Liechtenstein. Controls have been abolished at shared borders within the Schengen area and harmonised at borders with third countries. Bulgaria, Romania and Cyprus have ratified their participation but the EU Council has not yet given the green light for this to take effect.

I. History of Schengen

On 14 June 1985 the Federal Republic of Germany, France, Belgium, the Netherlands and Luxembourg signed an agreement in the village of Schengen, Luxembourg, to establish freedom of movement of persons in their territories and, to this end, remove customs controls at their shared borders. The Schengen Agreements of 1985 would thus be the first step in a policy of freedom of movement of persons which would become the reference for the whole of the movement and immigration policy of the European Union. In addition to establishing the area, these agreements contained early references to a common policy on external border control, police cooperation and increased visa harmonisation. All these elements are still present today in the Schengen Borders Code.

These aspects of cooperation and coordination would acquire further importance in the Schengen Convention signed in 1990 and applied in 1995. This was when the concept of '*douane volante*' appeared (literally, 'flying customs', meaning that spot checks could then be conducted throughout the territory with the aim of combating organised crime and illegal immigration). In addition to the five signatories to the 1985 agreements, the Convention was ratified by Italy at the end of 1990. Spain and Portugal signed in 1991, Greece in 1992, and Austria in 1995. In 1996, Denmark, Finland and Sweden ratified their participation along with Norway and Iceland. The latter were already members of an existing area of freedom of movement together with Denmark, Finland and Sweden – the Nordic Passport Union.

In 1997 the Treaty of Amsterdam provided for the incorporation of the Schengen Convention into EU law, thus creating the Schengen *acquis*. The Schengen principles on the policy of freedom of movement and on immigration policy thus became the principles of the whole of the European Union (except that the United Kingdom and Ireland only partly participate in the Schengen *acquis*). The Schengen *acquis* was embodied in a protocol attached to the Treaty of Amsterdam. Henceforth, the EU Council replaced the Executive Committee established by the 1990 Convention.

The 2004 accession Member States signed to join the Schengen area in the same year, and their membership took effect on 21 December 2007 (except that Cyprus's application has not yet taken effect).

On 15 March 2006 the European Parliament and the Council adopted a Regulation establishing a Community Code on the rules governing the movement of persons across borders. This code, called the Schengen Borders Code, aimed to reaffirm the principles of the Schengen *acquis* while improving the various coordination and cooperation tools.

In 2008 Switzerland joined the area as an associated country with the same status as Norway and Iceland. On 7 March 2011 a formal agreement was signed with Liechtenstein for it to join the Schengen area in the second half of the year.

II. The Schengen Borders Code

On 15 March 2006 the European Parliament and the Council published Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders, more commonly known as the 'Schengen Borders Code'.

This Regulation defines the term 'internal borders' as: '*common land borders, including river and lake borders, airports for internal flights, and sea, river and lake ports of EU countries*'. External borders are defined as any border of a Member State that does not meet the criteria for being defined as an internal border.

The general principle of the Schengen Borders Code is the same as that of the 1990 Convention: removal of internal border controls and harmonisation of the rules on external border controls.

A. Harmonisation of external borders

External borders may be crossed only at border crossing-points and during the fixed opening hours, both established by each Member State.

In this case, two types of check may be conducted:

All citizens of the European Union undergo a minimum check: this consists of a straightforward verification of travel and identity documents.

However, all nationals of countries outside of the Schengen area must undergo thorough checks. These comprise a verification of the conditions governing entry.

Non-EU country nationals must possess a valid travel document.

Non-EU country nationals must also possess a visa if they are originally from countries which appear on the list created by the Council Regulation of 15 March 2001.

They must also justify the purpose of their stay and the duration. In addition, they must have sufficient means of subsistence for their time on EU territory, calculated on the basis of average prices in the Member State(s) concerned for board and lodging, as well as for their return journey.

They must not be the subject of alerts issued in the SIS for the purpose of refusing entry and must not constitute a threat to the national security, international relations or public policy of any of the Member States.

If they meet the conditions of entry, their travel document is stamped.

They are then given a Schengen visa, valid for a maximum of three months, permitting travel throughout the Schengen area.

Border guards must respect certain principles when carrying out border checks. There must be respect for human dignity. Only individuals, and not groups of individuals, may be subject to checks. These must be conducted without discrimination on grounds of sex, ethnic origin, religion, age, sexual orientation or disability. Furthermore, Member States must ensure that

these checks are carried out by trained professionals. Cooperation between States is managed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex¹).

B. Removal of internal borders

Border controls between Member States have been abolished. However, Articles 23 to 31 of the 2006 Regulation establish a system for the temporary reintroduction of these controls, on the basis of Article 2(2) of the Schengen Convention.

Article 23 stipulates that *‘Where there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days’*.

Where a Member State decides temporarily to reintroduce border control, it must notify its European partners, the European Parliament and the Commission at least 15 days before the reintroduction of the controls. It must specify the scope of the application, the proposed duration and also the names of the authorised crossing-points. Following this notification, the Commission may issue an opinion, in consultation with the other Member States.

According to Article 25, where a case requires ‘urgent action’, the State in question may decide to override the 15-day notice period and take immediate measures to reintroduce controls. However, it must notify the appropriate authorities without delay.

The public must also be notified of the measures except where this is not possible for reasons of national security.

C. National variations

The Schengen Borders Code does not apply in its entirety to all EU Member States. Denmark, although a signatory to the Schengen Convention since 1996, is not subject to the final provisions of Title IV of the 2006 Regulation.

Ireland and the United Kingdom, which were not signatories to the Schengen Convention, may take part in some of the Schengen provisions following a unanimous vote by the Council. As such, the two States participate in the aspects relating to police and judicial cooperation, the fight against drug trafficking and also the SIS.

Bulgaria, Romania and Cyprus are not yet fully-fledged members of the Schengen area although they have ratified their participation. Border controls between these countries and the Schengen area are still in place and will remain so until the EU Council decides to grant them active membership status.

There are also some states which are not members of the EU but which participate in the Schengen Borders Code.

¹ [See the background note on Frontex](#)

Thus, Iceland and Norway, which are members of the Nordic Passport Union, along with Sweden, Finland and Denmark, have participated in the Schengen Convention since 1996. Their participation in the Schengen *acquis* was approved by the Council in 1999. They hold the status of Schengen associated country.

Switzerland has also held this status since 12 December 2008. Liechtenstein signed a protocol on participation in the Schengen area on 7 March 2011.

These associated countries have therefore undertaken to abolish internal border controls and apply the provisions of the Schengen Borders Code, in exchange for being involved in decision making in the form of mixed committees that meet alongside the sessions of the EU Council.

III. The Schengen Information System (SIS)

In response to fears over security following the opening of borders between the Schengen countries, the SIS has been in place since 1995. The SIS is a computer system shared by the Schengen countries. Ireland and the United Kingdom, although not Schengen signatories, also participate in the programme. Like the Schengen *acquis*, the SIS was incorporated into the EU legal framework by the Treaty of Amsterdam. The system brings together diverse information on persons wanted for or suspected of crime by national police authorities. Harmonisation of various national databases of wanted persons thus gives each police force, in each Member State participating in the system, the ability to monitor and apprehend.

With the Regulation of 20 December 2006 the EU Council and the European Parliament gave the green light to an upgrade to SIS which will eventually become SIS II. It will comprise a central data system, located in Strasbourg, together with national systems in permanent communication with the central system. A backup system will also be installed in Salzburg, Austria. The various Member States must keep the SIS II data updated in order to identify non-EU nationals considered undesirable or likely to pose a threat to public policy or security. The type of data will be strictly controlled. Certain details considered 'sensitive' must not be included, such as political opinions or religious beliefs, information relating to the health of individuals or their ethnic origin. Any person will be able to have access to SIS II data relating to him/her and have any errors corrected.

Migration from SIS I+ (an already upgraded version of SIS) to SIS II must be completed by the Commission and the Member States by 31 March 2013 at the latest.

IV. The ALDE position

At the beginning of 2011 the Arab spring revolutions in Tunisia and Egypt, together with the war in Libya, caused several thousand migrants to flee their countries and make for the island of Lampedusa, Italy, in order to gain refugee status. Italy, forced to cope alone with this influx of migrants, decided to grant temporary visas in order to enable some of them to reach France. In response, the French Government decided to invoke Article 23 of the Schengen Borders Code: reintroduction of national borders in the case of a threat to public policy or national

security. This provoked an outcry within the European Union. France and Italy demanded that the Schengen Borders Code be reviewed.

The ALDE Group is opposed to such a review if it constitutes a step back for the free movement of persons.

According to **Guy Verhofstadt**, Chair of the ALDE Group, *‘Reintroducing internal border checks contradicts... the basic principle of the Treaties.’ ‘Answers to migration flows should not be about giving in to insular reflexes and reintroducing border controls... It is about developing a common border management, a common asylum system... What we need is more European cooperation to tackle crime and illegal immigration, not a weakening of one of the EU’s greatest achievements.’*

According to MEP and ALDE Group Coordinator on Civil Liberties, **Renate Weber**, *‘Only a Community approach should drive any improvement of the current Schengen system. The evaluation of the “threat to public order” or “threat to national security” must be done at EU level exclusively, taking into account the security of the whole Schengen area, and in any case we are against additional possibilities for making it easier for Member States to reintroduce border checks.’* This view is shared by **Guy Verhofstadt**, *‘What we need is transparency and accountability. The Commission and Parliament should be involved in the evaluation of the concepts of “public order” inside the Schengen area to prevent unilateral decisions to reintroduce border controls.’*

On 12 May 2011 the Danish Government announced its decision to re-establish customs checks at its borders with Germany and Sweden. According to **Guy Verhofstadt**, *‘Threats to public order or national security will not be effectively met by purely national border measures but must be based on an EU approach that focuses on strengthening the external borders and European cooperation, while maintaining all the benefits of free movement within the Schengen area.’*

According to **Renate Weber**, *‘What happened with Denmark shows that the current system of peer review where countries decide first, then inform the European Commission and their fellow Member States is contrary to the letter and the spirit of the Treaty.’*

Further details:

[ALDE press releases on immigration](#)

[2006 Regulation establishing the Schengen Borders Code](#)

[Commission: DG Home Affairs](#)

[European Parliament: LIBE Committee](#)

[Background note on Frontex](#)

[Background note on European immigration policy](#)