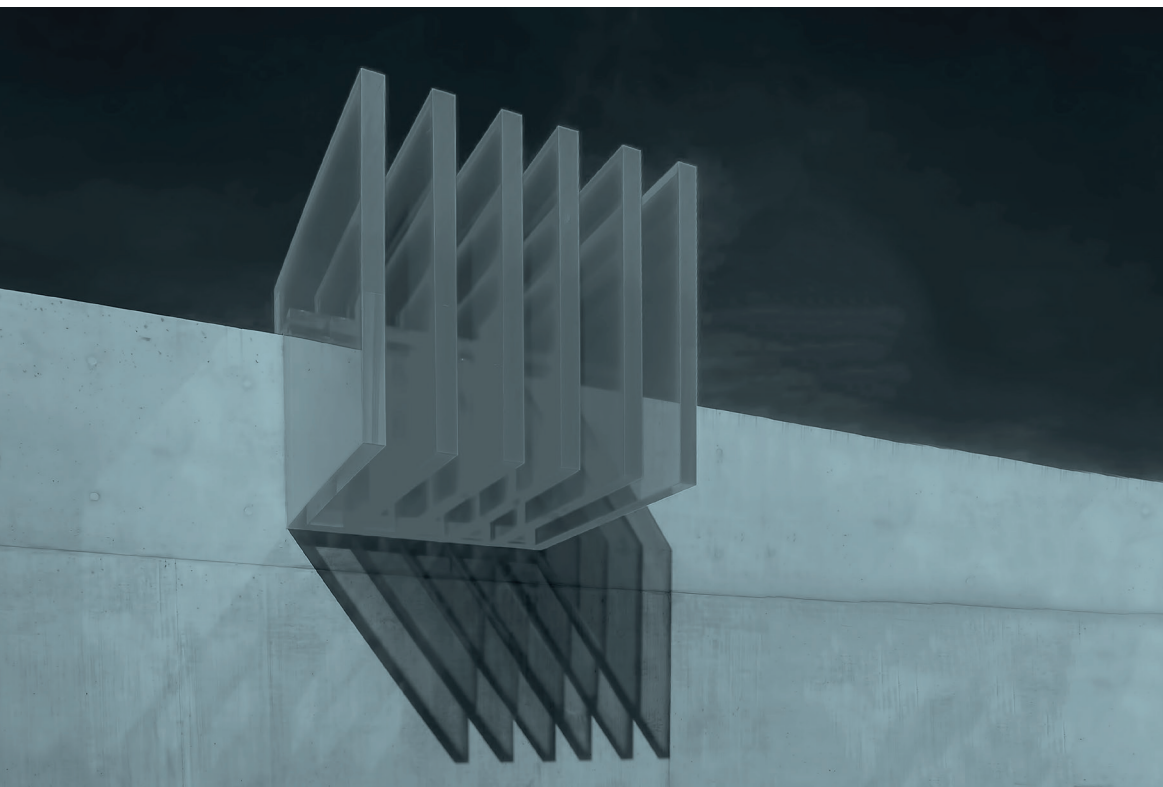# Hertie School
## Jacques Delors Centre

# Crisis-proof Schengen and freedom of movement:

## Lessons from the Covid-19 pandemic

**Daniel Schade,** Guest author

25 May 2021

#Schengen
#FreedomOf
 Movement
#Covid19



The Covid-19 pandemic has restricted the freedom of travel on the European continent to an unprecedented degree. This included the reintroduction of border controls which were believed to be a thing of the past since the introduction Def the Schengen Area. This policy paper explores how the uncoordinated way in which decisions on such restrictions are taken threatens the freedom of movement within the EU even beyond the pandemic. It then suggests how the rules of the Schengen Area can be reformed to ensure its proper functioning in the future.

I

# Hertie School
## Jacques Delors Centre

# Executive summary

The Covid-19 pandemic has restricted travel on the European continent to an unprecedented degree. At the height of the pandemic eighteen of the 26 members of the Schengen Area, the EU's border-free travel regime, had reintroduced border controls among themselves. While these measures limiting cross-border travel were justified given the fight against the spread of the disease, the way in which they were introduced has highlighted acute issues in the governance of the EU's Schengen Area and its freedom of movement regime.

While Schengen has largely succeeded in eliminating border controls on the European continent, the pandemic has highlighted serious weaknesses in its current set-up that were not fully grasped beforehand. This is because the pandemic has affected not just a few but *all* EU countries at once, with accompanying public health measures temporarily curtailing the EU's related freedom of movement regime. While the restrictions introduced helped the fight against the pandemic, these were often imposed in a haphazard and uncoordinated manner, and thus affected even essential travel and the free movement of goods across Europe. Even though it swiftly became obvious that coordinating such measures would be necessary, this has proven to be impossible in many cases despite the best efforts of the European Commission and other actors. The effect is that the ensuing patchwork of travel restrictions threatens Schengen's future, as this creates political tensions between European countries and may make necessary reforms of this key achievement of European integration more difficult.

If the governance of the Schengen Area is to be future-proofed, the crisis has highlighted the need for greater coordination at critical moments. This can be achieved by creating a dedicated EU-level mechanism to control border and travel restrictions in similar situations in the future. Further, existing rules on re-establishing border controls need to be refined, and Schengen members and European authorities alike need to be more willing to stand up for this core achievement of European integration in public.

**Hertie School**
Jacques Delors Centre

# Table of Contents

# Introduction

When the Covid-19 pandemic initially hit Europe with full force in March 2020, many younger Europeans experienced for the first time the reality of a continent separated by physical borders. European integration had previously made these largely obsolete (and invisible). During the pandemic, one by one European countries started restricting movement across national borders as well as imposing social distancing. This led to the de facto closure of many of the supposedly open internal borders of the Schengen area. In practice, this was achieved through public health rules restricting travel and their enforcement by reintroducing controls at many internal Schengen borders. At the peak of such measures between late April and June 2020, 18 of the 26 Schengen countries had re-established controls at their borders with other Schengen countries, upending Schengen's principal achievement.

This caused significant disruption to economic activity, as well as the lives of transnational families and workers alike. For instance, the sudden closure of Poland's borders in March 2020 led to unprecedented traffic jams of up to 60 km at the Polish-German border and precluded cross-border movements for freight and people until restrictions were in some cases eventually eased. Such measures have also contributed to political tensions between EU member states, such as most recently between Germany and Austria, when travel was suddenly restricted without regard for the specific circumstances in neighbouring regions.

Given these issues many European countries in the end resorted to lifting such internal travel restrictions in 2020. In line with ideas proposed by the European Commission, they also pledged to follow a common set of criteria for any fresh travel restrictions within the Schengen area and affecting travellers returning to it from outside. These would see the introduction of specific restrictions being guided by infection incidence thresholds so as to facilitate coordination as well as introduce a degree of predictability. Despite these coordination efforts, few European countries have followed the common criteria to the letter,[1] and the onset of Europe's third wave in the Covid-19 pandemic has once more led an increasing number of countries to introduce harsher travel restrictions and enforce them through border controls.

This policy paper considers whether these restrictions on the freedom of movement and limitations to the proper functioning of the Schengen area could cause long-term harm to freedom to travel in Europe. This matters because it is a core principle of European integration which many Europeans value as one of its key achievements.[2] The policy paper ultimately argues that the Covid-19 pandemic has neither caused a novel crisis for the idea behind the Schengen area, nor for EU freedom of movement. If measures restricting movements and personal contacts are necessary to combat the pandemic within European countries, then their extension to cross-border movements can only be seen as a rational response.

---

[1]  Schade, Daniel. *"Ever Closed Borders: The fate of Schengen during the Corona Crisis"*. Corona Society Blog. Berlin: Das Progressive Zentrum, 2020.

[2]  In a *Eurobarometer* survey from 2018 68% of respondents believed that the Schengen area was one of the core achievements of the European Union. A December 2020 *eupinions* survey found that close to three in four respondents believe that it would not be worth participating in the EU without the freedom of movement.

However, the way in which these cross-border restrictions have been introduced has highlighted severe governance issues within the Schengen area and freedom of movement, which were virtually hidden from view beforehand. Ultimately, it underscores the necessity for a proper coordination reflex amongst European governments and one aided by the European Commission, particularly in times of crisis. Highlighting these issues is particularly urgent, as the Covid-19 pandemic has reinforced demands for reforming how the Schengen area functions, with proposals due to be set in motion by a 'Strategy on the Future of Schengen' which is being developed by the European Commission. This process was launched in the fall of 2020 after calls by the French government for a "refoundation" or overhaul of Schengen over concerns related to terrorism and illegal immigration.[3]

The policy paper first discusses the important distinction between the issue of freedom of movement per se and the Schengen area itself before outlining how the Covid-19 pandemic has affected both. It then goes on to discuss the initial governance responses to the crisis before outlining the costs associated with these restrictions. Lastly, the policy paper outlines solutions to the issues raised by the Covid-19 pandemic and beyond.

# 1  Differentiating freedom of movement and Schengen restrictions

While for Europeans an obvious impact of the measures taken to tackle the Covid-19 pandemic has been limited ability to travel within Europe, the way in which these restrictions were introduced is more complex. There are two fundamental and intertwined mechanisms which allow Europeans to travel freely across their continent. The first is the principle of the freedom of movement which allows all citizens of EU and European Economic Area (EEA) countries and their dependents to travel freely within Europe and take up residence in any EU/EEA country. While this is established as a legal right and enshrined in the EU Citizens' Rights Directive, personal freedom of movement is technically separate from border-free travel.

The latter is instead covered by the Schengen Agreement which has sought to eliminate physical border controls between its members, essentially making traditional borders invisible. Membership of the Schengen area is distinct from the countries covered by the right to freedom of movement. At present, 26 EU and EEA countries (as well as Switzerland) fully participate in Schengen, with EU member states Ireland outside and Bulgaria, Romania, Cyprus, and Croatia as prospective members for now.

While the two mechanisms are closely linked, each is technically separate and impacted by the pandemic in various ways. Whereas it is the EU's freedom of movement which gives citizens the right to travel, work and settle freely anywhere in the EU, it is Schengen which has made it possible to do so without having to present passports or identity cards at borders between EU members.

---

[3]  Braun, Elisa. *"Macron calls for a 'refoundation of the Schengen area'"*. Politico Europe, November 11, 2020.

Many of the anti-virus public health measures have ultimately impacted the freedom of movement dimension, while it is the reintroduction of border controls between Schengen member countries, as well as to the outside world, which has limited the regular functioning of Europe's passport-free zone. Similarly, another of the EU's so-called four freedoms, namely the free flow of goods between EU member countries, has been affected by border controls. While commercial drivers can normally proceed without checks at national borders, they have been hit by reimposed ones, with knock-on effects on punctual delivery of goods.

Such limitations aren't necessarily problematic from a legal standpoint, however, as under the so-called Schengen Borders Code (SBC) member countries retain the right to temporarily reintroduce physical border controls at land, air, and sea crossings if there are threats to 'public policy or internal security'. Crucially, these are supposed to be time-limited and require a notification to the European Commission and other EU member states via the Council of Ministers. Similarly, restricting people's freedom of movement can explicitly be allowed due to public health considerations.[4] What any measures taken on either legal basis have in common is that the ultimate decision to take them remains in the hands of each national government. While the EU's institutions, and particularly the European Commission have an oversight responsibility, their ability to intervene—especially in the short term—is severely curtailed.

# 2 Covid: Schengen's and freedom of movement's perfect storm

The Covid-19 pandemic is the event which has most severely impacted the Schengen area's functioning since the Borders Code was adopted in 2006. While its proper functioning has been subject to disruption under fallout from the so-called migration crisis in 2015, the pandemic has had a much more pronounced short-term effect for a variety of reasons.

Firstly, the pandemic has led to an unprecedented number of countries reintroducing border controls. As Graph 1 shows,[5] the Schengen area worked largely as intended until 2015 with fully open internal Schengen borders as the norm. After the breakdown of the EU's common asylum system and the Dublin regulation (on first arrival) in the so-called migration crisis, several of its members then resorted to reintroducing internal border controls to limit the number of migrants arriving in their countries. After 2015, however, the Schengen area never fully returned to normal practice as some border controls have stayed in place ever since. This applies to most of the Nordic countries, Germany, Austria, as well as France.[6]

"The Covid-19 pandemic is the event which has most severely impacted the Schengen area's functioning since the Borders Code was adopted in 2006."

---

[4] Goldner Lang, Iris. *"'Laws of Fear' in the EU: The Precautionary Principle and Public Health Restrictions to Free Movement of Persons in the Time of COVID-19"*. European Journal of Risk Regulation. Online first.

[5] The graph and the following data on Schengen border controls is based on an analysis on the official list of member state notifications maintained by the European Commission. It contains data since the inception of the current notification system in 2006.

[6] These countries have also reintroduced border controls for the longest time overall.

**Chart 1: Number of countries having temporarily reintroduced internal Schengen border controls on any given day**
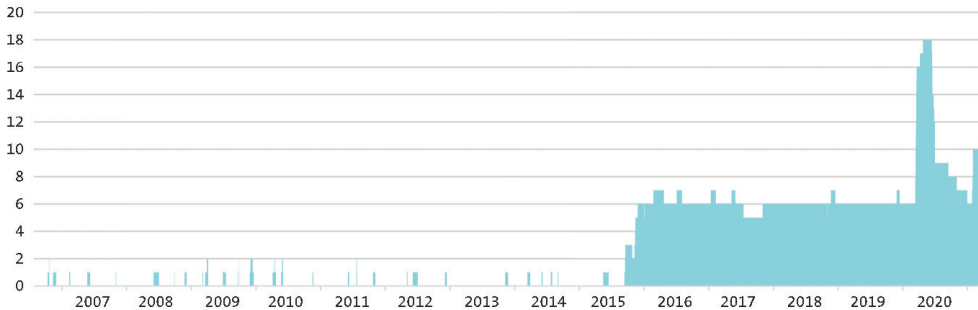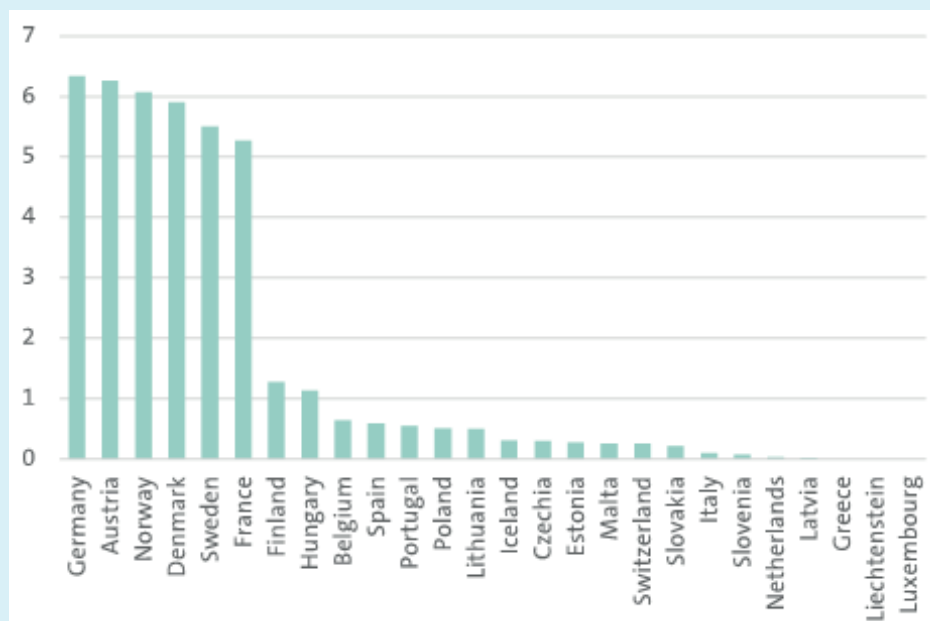


Source: Own calculation based on official border control notifications since 13 October 2006 as listed by the European Commission

**Box 1: Which countries have made use of increased border controls over time?**

Not all Schengen member countries have regularly used events such as the so-called migration crisis or the Covid-19 pandemic to reintroduce border controls under the Schengen agreement. While Greece, Liechtenstein and Luxembourg have never reintroduced border controls, others have made extensive use of them. This is particularly the case for countries which have used the fallout from the 2015 migration crisis to justify continued border closures. This has had a significant impact on the borders of countries such as Germany, Austria, Norway and Denmark which had notified the reintroduction of border controls for more than 40% of the total time since the Borders Code was introduced in 2006. Not all the countries that have resorted to extensive border controls have justified this exclusively via the migration crisis, however. In the case of Denmark and France the main reason cited has been the risk of terrorist activity within the EU.

**Chart 2: Duration of reintroduced border controls in years**
(between 13 October 2006 and 7 May 2021)



Source: Own calculation based on official border control notifications since 13 October 2006 as listed by the European Commission

The reintroduction of such border controls is usually limited to a six-month period (even shorter for unforeseen events) and must be based on a specific reasoning. In a legally questionable move,[7] these countries have maintained restrictions in place by resorting to a chain of lifting and immediate reintroducing border controls since then.

While this has caused some political friction, it largely remained out of the political limelight. This is because most of the countries involved imposed border controls on very specific occasions only, thus giving the impression that the Schengen area continued to function regularly.

The Covid-19 pandemic has, meanwhile, highlighted the highly problematic nature of reintroduced border controls going beyond a small number of countries. As the pandemic unfolded, up to 18 Schengen member countries reintroduced border controls between April and June 2020. While overall numbers then declined to pre-pandemic levels until early 2021, they rose again in the spring of 2021.

The impact of the pandemic upon the proper functioning of Schengen since 2006 can also be seen when considering the reasons given for reimposing border controls over time, as shown in Table 2. While migration, terrorism and issues related to the governance of the Schengen area's external borders have served as top reasons, the pandemic is already in fourth place and will likely rise even further up the rankings.[8]

**Table 1: Reasons given for the reintroduction of Schengen border controls**
(until 7 May 2021)

| Reason | Days per justification | Times mentioned in individual justifications |
|---|---|---|
| Migration | 9377 | 71 |
| Terrorism | 7542 | 47 |
| External borders | 4756 | 28 |
| Covid-19 | 4713 | 169 |
| Council recommendation | 2684 | 20 |
| Organized crime | 1654 | 11 |
| High level political event | 871 | 37 |
| Sports | 150 | 4 |
| Political demonstration | 6 | 5 |

Source: Own calculation based on official border control notifications since 13 October 2006 as listed by the European Commission

[7] de Somer, Marie. *"Schengen and internal border controls"*. In *From Tampere 20 to Tampere 2.0: Towards a new European consensus on migration,* edited by Philippe de Bruycker, Marie de Somer, Jean-Louis De Brouwer, 120-1. Brussels: European Policy Centre, 2019.
[8] "Days per justification" is a measure of for how many days and countries a particular reason has served to justify reintroduced border controls. "Times mentioned in individual justifications" refers to how often the justification has appeared in a notification letter, no matter if the restriction was put in place for a single day or six months. For any given day and country multiple reasons may be mentioned in parallel, such as terrorism and the situation at the EU's external borders.

Covid-19 has thus led to an unprecedented disruption of Schengen's functioning. While fully open borders as per normal have not been guaranteed since 2015, it is ultimately the sheer scale of reintroduced border controls between Schengen members that has made this situation exceptional.

Reintroduced border controls are, however, not the only way in which the freedom to travel on the European continent has been affected by the pandemic. It is also entirely unprecedented that they were usually accompanied by restrictions on the freedom of movement linked to public health concerns. Such measures affecting the freedom of movement of residents of entire European countries, rather than specific individuals, are unique in EU history. This was done through measures such as limiting travel to essential purposes, quarantine for international travel, and later Covid-19 testing requirements for passengers. And they were usually stricter than the travel restrictions introduced within many European countries.

It is thus the scale of the pandemic at hand and the fact that measures restricting the freedom of movement were taken across the entirety of the Schengen area as well as the area where EU freedom of movement applies that have made this the perfect storm as regards freedom to travel on the European continent. While some restrictive measures were already in place due to the so-called migration crisis, these did not impact the entirety of the European continent at one go, did not affect all kinds of travellers alike, and could thus be more easily ignored. Furthermore, the current crisis does not just test the Schengen area's internal border regime in some places and its external borders in the South (as during the so-called migration crisis). Rather, it affects all external and internal borders (including air borders) and adds an entirely novel public health component.

## 3  Unable to limit the fallout: why Schengen's crisis lingers on

It is important to note that while the Covid-19 pandemic has had significant effects on the freedom to travel across Europe, this does not necessarily represent a legal crisis for either Schengen or the EU's freedom of movement regime. An assessment of the initial restrictions on freedom of movement and the reintroduction of border controls in 2020 has shown that "[f]rom a legal point of view, [...] the temporary reintroductions based upon the COVID-19 epidemic are hardly questionable."[9] This is because EU freedom of movement principles allow for restrictions on public health grounds, while laws governing Schengen can be observed by due notification of border checks.

The crisis lies rather in the amount of unnecessary disruption caused and the inability of Schengen and EU member states, plus the European Commission, to limit this as much as possible. This can be illustrated by the initial chaos and confusion that the restrictions caused at many European internal borders (see following section). While this did spark some efforts to coordinate these in advance and, where possible, lift them in a unified manner, these have failed.

---

[9]  Montaldo, Stefano: *"The Covid-19 emergency and the reintroduction of internal border controls in the Schengen area: Never let a serious crisis go to waste".* European Papers 5:1 (2020): 527.

Initial efforts concentrated less on mitigating the impact on the freedom of travel as such and far more on ensuring that the free flow of goods could continue across impeded internal Schengen borders. Despite the absence of formal competencies in the area, resources were soon pooled within the European Commission to facilitate talks between responsible government officials. These efforts led to the development of the Green Lanes concept,[10] meant to establish a common framework for the continued movement of goods and essential workers. Essentially, these ensured that those responsible for moving freight across European borders would be unaffected by the freedom of movement restrictions put in place, and that necessary border controls would prioritise vehicles carrying goods.

Based on these initial efforts, gradually member states and European institutions alike realised the need for a coordinated approach to restrictions affecting the freedom of movement and the Schengen area. Even though it lacked formal competencies in the area, the European Commission still went ahead and developed several recommendations which were in turn adopted by the Council of Ministers. As so-called 'soft law' these are not technically legally binding but expected to be followed by member states. Amongst others, they included plans to reopen the Schengen area's external borders to travellers from certain countries based on a set of scientific criteria and, later, common criteria for the reintroduction of travel restrictions within the EU. While these again lack any binding legal value, member states were expected to comply henceforth so as to avoid any repeat of March 2020.

> "Gradually member states and European institutions alike realised the need for a coordinated approach to restrictions affecting the freedom of movement and the Schengen area."

**Box 2: Summary of existing recommendations on coordinating the freedom to travel**

**Within the EU/ Schengen area**
- Common set of criteria for the introduction of freedom of movement restrictions (Incidence/risk threshold)
- Common set of possible restrictions to be introduced (limits on non-essential travel, quarantine, passenger locator forms, …)

**For travel from outside the EU/ Schengen area**
- Travel allowed for 'essential' travellers (EU citizens & long-term residents, healthcare workers, international students, …)
- All travel allowed for Covid-19 low-incidence countries (common European list regularly redrafted according to scientific criteria)
- Consideration of reciprocity (other countries' allowing travel by Europeans)

A 3 May 2021 proposal by the European Commission would further allow for the resumption of travel from outside the EU/Schengen area for those individuals who have completed their Covid-19 vaccinaton course.

---

[10]  European Commission: *Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services.* C(2020) 1897 final. Brussels: European Commission, 2020.

However, it soon became clear that few member states were willing to implement the reopening of external borders in the manner intended, causing fresh concerns for Schengen's internal borders.[11] The ensuing patchwork of external border restrictions and reopenings was later mirrored by most member states ignoring the common criteria developed for restricting freedom of movement within Schengen.

While the spread of novel variants of the SARS-CoV-2 virus, the rate of Covid-19 infections and divergent domestic public health policies since early 2021 certainly justified rapid transnational containment action, the form this took largely mirrored the uncoordinated response observed initially in March 2020. What's more, although the reintroduction of border controls and outright restrictions had been promised only *in extremis,* some member states still reverted to them. This included Germany, whose chancellor Angela Merkel had specifically signed up to the promise that border controls would always be a 'measure of last resort'. The German example will be used to illustrate the negative consequences that these entailed.

Germany hastily reintroduced border controls towards neighbouring Austria and Czechia in February—barely a month after the chancellor's statement. This step was taken following a reclassification of the infection risk in those territories by German authorities. The way in which these were introduced once more caused severe temporary disruption even to essential logistics covered by the Green Lanes concept. For instance, since both the border controls themselves and associated SARS-CoV-2 testing requirements for lorry drivers were introduced at such short notice, essential goods flow between Italy and Germany via Austria slowed down extensively. This forced Austria to then hold in check lorry drivers at its own border with Italy to avoid a traffic gridlock within its Tyrol region.

While these measures have since been rescinded by Germany, their introduction nonetheless revealed that once more little coordination with neighbouring governments had taken place in advance, leading to knock-on effects at the Italian-Austrian border and an unclear situation for cross-border commuters. While the introduction of restrictions might be necessary and proportionate, most negative consequences could be averted by coordinating any restrictions with neighbouring countries in advance. These would then be able to point out any unforeseen difficulties (such as Tyrolian residents relying on passage through Germany for transit into other parts of Austria), prepare for changes, as well as adapt their procedures in advance.

Also problematic is the muted response of most European governments to such actions, particularly the absence of a pushback by the European Commission itself. While the recent example of German border closures has indeed led to criticism within the affected countries, as well as from France,[12] most EU countries fail to follow collective European guidance. The European Commission has recently come to be more pro-active in demanding an alignment with the established recommendations on border restrictions,[13] but to little effect. Two other factors affecting the

---

[11]  Schade, Daniel. *"Ever Closed Borders: The fate of Schengen during the Corona Crisis".* Corona Society Blog. Berlin: Das Progressive Zentrum, 2020.

[12]  French European Affairs Minister Clément Beaune has been particularly critical of the German measures taken, calling them "painful" in an interview with France Info on 15 February 2021.

[13]  The European Commission sent a letter to 6 countries on 22 February 2021 in which it asked these to reconsider some of their travel restrictions in light of the European guidelines.

role of the Commission in the process reinforce this state of affairs: First, its lack of reaction to the introduction of the repeated border restrictions post-migration crisis has made a strong Commission response (legally allowed for in the case of Schengen border controls) unlikely and lacking in credibility. Second, its merely advisory role on a common European approach to freedom of movement restrictions is a further brake on its capacity to act.

# 4  The costs of freedom of movement restrictions

The recent freedom of movement restrictions have had a number of negative consequences for EU citizens, the European economy and European politics more widely. It is hard to assess these so far – such as whether they are the direct result of the restrictions introduced or rather a side effect of the uncoordinated way in which the measures have been taken.

Crucially, it isn't travel restrictions or border controls as such which engender most of the negative associated effects. To the contrary, travel restrictions played a key role in combating the pandemic internationally, as well as domestically, and could thus easily be justified between EU members. What made these problematic and thus costly, however, was **that the measures have been inconsistent across European countries and were often illogical:** With only some European countries implementing the common guidelines on entry of travellers from third countries into Schengen via airports while not controlling land borders, various loopholes have been created. This shows clearly why such measures should be applied uniformly.

For instance, while some countries have continued to restrict entry for third country travellers even from those countries technically approved by EU-level guidelines, others have implemented the guidelines fully. This leads to a situation where an international traveller might be able to legally enter the Netherlands but not legally travel further into Germany across the open border given the country's different entry restrictions. With the reintroduction of travel restrictions within the EU since the spread of different Covid-19 variants at the beginning of 2021, similar situations have also been created for intra-EU travel. For instance, while at one point air carriers were barred from transporting Portuguese residents into Germany, the latter could have travelled to France and still enter Germany via its land borders.

The European Commission has attempted to counteract the effects of some of these uncoordinated measures on individual travel with a dedicated portal entitled Re-open EU to provide up-to-date information on travel restrictions in place across relevant EU and EEA countries, but this can only achieve so much. Similarly, while the new 'Green Lanes' concept has helped to re-establish the free movement of goods, its flow, including for essential products, should never have been interrupted in the first place.

These developments first and foremost introduce political threats to the future of the Schengen area as originally crafted. The uncoordinated way in which Schengen and freedom of movement restrictions were introduced **creates further incentives for Schengen fragmentation** on top of what has already been observed since the so-called migration crisis in 2015. In fact, the only way for individual Schengen

*"The uncoordinated way in which Schengen and freedom of movement restrictions were introduced creates further incentives for Schengen fragmentation on top of what has already been observed since the so-called migration crisis in 2015."*

member countries to effectively address the loopholes introduced by the uneven application of the EU-level recommendations is to either introduce further limitations at the national level, or for a subset of Schengen members to agree on applying the same rules. The latter would strengthen earlier calls for limiting the geographic extent of Schengen, or splitting it into different areas, such as when Denmark proposed the establishment of a "mini-Schengen" amongst the Nordic countries over concerns related to the management of migration flows in 2016.[14]

As has been described earlier in the case of Germany and Austria, **the inconsistency of travel and border restrictions has also heightened political tensions** amongst European governments when joint decision-making was urgently required to combat the pandemic and limit its economic and social fallout. In the long run, the experience we have witnessed of individual governments being willing to entertain travel restrictions without prior consultation and coordination with their neighbours may make political reforms to Schengen more difficult to enact post-pandemic. Such permanent damage to one of the achievements of European integration most cherished by EU citizens could contribute to a further **decline in public support** for the EU. While re-establishing the freedom of movement has so far been a lower priority for EU citizens than, say, the distribution and development of vaccines,[15] this may soon change as more Europeans get vaccinated and the traditional summer travel season begins.

While the short-term economic and social impact of the freedom of movement restrictions we have seen pales in comparison with the potential political costs outlined above, these still need to be taken into consideration. For the European economy at large, the reintroduction of border controls has principally contributed to **difficulties for transnational integrated supply chains** and prevented cross-border workers (in some instances) from reaching their places of employment. While no studies exist yet as to the precise economic impact caused by recent closures, previous studies have shown that a long-term reintroduction of border controls within the Schengen area could cost 100 billion to 230 billion euros over a ten-year period if Schengen were to be suspended indefinitely.[16]

Aside from the costs themselves, the temporary difficulties in even shipping essential goods such as medical items across European borders when the pandemic initially hit home have underlined the dependence of the European economy and societies more widely on its open border regime. These effects aren't evenly distributed across the continent, however, with the division of labour between EU countries leading to a situation in which manufacturing supply chains have been particularly impacted by border closures affecting Central Europe.

The way border controls were introduced, and travel limitations implemented, has also significantly impacted **companies relying on cross-border workers** who couldn't work from home. Some of them were either temporarily unable to reach

---

[14] Bossong, Raphael, and Tobias Etzold: *The Future of Schengen: Internal Border Controls as a Growing Challenge to the EU and the Nordics.* SWP Comment, 5-6. Berlin: SWP, 2018.

[15] European Commission: *Standard Eurobarometer 94 First results,* 30. Brussels: European Commission, 2021.

[16] Lilico, Andrew, Summayah Leghari, and Marika Hegg: *The Cost of Non-Schengen: Impact of Border Controls within Schengen on the Single Market.* European Parliament Research Service Study. Brussels: European Parliament, 2016. Auf dem Brinke, Anna: *The economic costs of Non-Schengen: What the numbers tell us.* Policy Paper 162. Berlin: Jacques Delors Institute, 2016.

their places of employment or only able to do so with great difficulty. From an individual's perspective this has also put the free movement of workers as a cornerstone of European integration in peril. Once more, the negative consequences are distributed unevenly across the continent, with certain parts of Eastern Europe having a particularly high number of cross-border workers.[17]

Continued **essential travel,** whether for business purposes or for family reasons, is also further impacted by far fewer travel options being available and very different testing, quarantine and entry requirements making it considerably harder to reach other destinations within Europe or to connect via other European countries. This has come to prominence with the 'Love is not tourism' campaign which was launched to address the issue of transnational couples unable to unite with their partners because of pandemic-related travel restrictions. While various attempts were made to facilitate continued essential travel on an equal basis, the kinds of measures taken have nonetheless made such necessary travel significantly more difficult or indeed impossible in the already challenging pandemic environment.

## 5  Inducing change: radical and realistic solutions

Reforming the functioning of the Schengen area has been on the agenda since 2017 when the European Commission initially proposed some modifications to address weaknesses identified during the so-called migration crisis.[18] This would have represented the second such modification to the Schengen Borders Code in the wake of a stress-test, following its initial 2014 amendment in reaction to earlier border checks between France and Italy starting in 2011.[19] However, even the limited proposed alterations to the Schengen Borders Code failed to garner support at the time.

It is only recently, in the wake of completing a set of country-based evaluations of their Schengen performance along with a set of French suggestions, that reform attempts have once more gotten underway.[20] While the French proposals were aimed at Schengen's external borders during a heightened terrorist threat across Europe[21] and not the Covid-19 fallout, these have nonetheless initiated a reflection process which could help address some of Schengen's current governance issues. This resulted in a *Schengen Forum* amongst its stakeholders and is due to produce a novel strategy on Schengen to be published by the European Commission later in 2021. Similarly, the European Parliament has also provided input on the state of the Schengen area, albeit only on how monitoring schemes are implemented.

[17]  Kudzko, Alena: *Nothing but Schengen matters: Updating Schengen: Political and technocratic patches.* Policy Paper, 15. Bratislava: GLOBSEC Policy Institute, 2020.

[18]  European Commission: *Communication from the Commission to the European Parliament and the Council on preserving and strengthening Schengen.* COM(2017) 570 final. Brussels: European Commission, 2017.

[19]  de Somer, Marie. *"Schengen and internal border controls".* In *From Tampere 20 to Tampere 2.0: Towards a new European consensus on migration,* edited by Philippe de Bruycker, Marie de Somer, Jean-Louis De Brouwer, 120-1. Brussels: European Policy Centre, 2019.

[20]  Given its focus on freedom of movement restrictions, other related developments such as the introduction of ETIAS or the FRONTEX Standing Corps will not be addressed here.

[21]  Braun, Elisa. *"Macron calls for a 'refoundation of the Schengen area'".* Politico Europe, November 11, 2020.

The following proposals on rendering the Schengen area more crisis-proof are meant to inform this debate and offer several avenues to address its current issues. The proposals range from the radical to more limited amendments which could even be implemented without significant legal changes. While these only address Schengen itself and not the EU's wider freedom of movement regime absent a current reform agenda there, a similar logic could be employed to future-proof the EU Citizens' Rights Directive.

### 5.1  A crisis mechanism for Schengen

First, the pandemic has shown that certain crises can affect the entirety of the Schengen area at once. This runs counter to the current system for reimposing border controls which is built around the idea that any difficulties are likely to affect only individual or a handful of its members at a time. A crisis governance mechanism for Schengen is thus needed which would come into force in a pan-European crisis of freedom of movement such as now. In the event of any kind of crisis affecting the entire Schengen area, decision-making could then shift to the European level until the crisis is resolved. Under such a system member states could retain their right to reintroduce border controls for events only affecting them, while a majority of member states in the Council could, for instance, vote on activating the crisis mechanism with strict time limits once proposed by the European Commission. Under such a system the Commission would then gain the legal right to propose the reintroduction or cancellation of specific border controls and travel restrictions. To ensure sufficient political support, these measures would then take effect subject to approval by a qualified majority of member states in the Council of Ministers.

While this proposal would represent a radical overhaul of the current functioning of the Schengen area, including substantive legal changes, it would logically follow the attempts at increased EU-level coordination which the member states themselves have undertaken. The first such attempts date back to the time of the refugee crisis when the Council of the EU collectively legitimised the continued border controls imposed by the Nordic states, Germany, and Austria. Similar desires for coordination and subsequent legitimation were behind the move to provide the European Commission with an important coordinating role in handling the fallout of the March 2020 border closure, as well as the later recommendations taken at the EU level. While all these measures were ad hoc and based on informal agreements, the creation of a permanent crisis mechanism would also make it easier to identify responsibilities, and therefore allow for coordination to kick in more effectively.

### 5.2  Limiting the damage: Restrictions on the freedom of border control reintroductions

While the above would address some of the difficulties of the Schengen area in times of crisis, its functioning also needs to be adapted to ensure a return to a normal state in a post-pandemic environment. Here, some member states have repeatedly abused the current system which has allowed them to keep border controls in place almost indefinitely since the height of the so-called refugee crisis.

> "A crisis governance mechanism for Schengen is thus needed which would come into force in a pan-European crisis of freedom of movement such as now."

Here, a more clearly defined time limit on Schengen border controls, a mechanism requiring member states to state more clearly why they need to be introduced (and for how long), as well as European Commission oversight of the necessity of such measures could form the basis of reform.

The legal changes to implement this would represent an important curtailment of the current rights of Schengen members. The likely reluctance of some governments to reduce their powers could be partially addressed through, for instance, only requiring clearer reporting commitments for any prolongation of reimposed Schengen border controls. In such a scenario member states would still retain the right to re-establish border controls relatively easily, but the hurdles to maintaining these for longer periods of time would gradually increase over time. This would ensure that once the crisis is resolved no member state can cling onto border controls for dubious reasons as happened earlier. Such changes were already proposed under earlier Schengen reform attempts but have yet to win universal agreement. One can only hope that the experience of the pandemic will shift the position of EU governments to tackle this issue going forward.

### 5.3  Soft but firm: border control coordination & calling out on violations

In the absence of such wide-ranging reforms to the Schengen area's legal principles, more emphasis should be put on ensuring that 'soft law' attempts at finding and maintaining common solutions to a crisis affecting the entire continent are respected. In its recent consultation on potential Schengen reforms, the Commission noted the lack of coordination amongst Schengen members as a key issue impairing its functioning.[22] Indeed, many issues arising out of the reintroduction of border controls and diverging travel restrictions could have been resolved by prior coordination between governments. If these prove unwilling to implement changes to Schengen's legal framework, then they must be incentivised to establish such coordination as the norm whenever freedom of movement restrictions are considered.

Already today member states and the Commission could technically resort to taking responsible member states to court over the measures that they have introduced. However, the duration of such proceedings and the risk that this would reduce the flexibility that member states have on reintroducing border controls overall make this an impractical solution. Rather, both the Commission and member states questioning specific decisions on border controls should increasingly resort to the public realm to make their voices heard.

Whereas governments and the Commission alike have stayed largely silent on prior violations of Schengen's core principles and the lack of consultation, this needs to be called out more openly. If most Schengen members publicly voice their discontent over disproportionate measures violating the spirit of the accord, then this will force the governments in question to better justify their actions. It may also incentivise them to consult early on so as to avoid public criticism in future. The Commission has already taken a first step in this direction during the Covid-19 pandemic when it addressed letters to some member states over what it believed

to be excessive departures from the previously agreed common European position. Ultimately, the responsibility lies with the member states, however, as the Commission also has a duty to ensure it can continue as an arbiter and facilitator for coordination measures in the future.

## Conclusion

The Covid-19 pandemic has severely affected Europe's freedom of movement as it has virtually all aspects of contemporary politics. However, neither the pandemic nor the travel restrictions themselves have contributed to the current crisis in this policy area. Rather, the pandemic has served to further underline pre-existing deficiencies in the construction of Europe's freedom of movement and border-free travel regime. It is these weaknesses which are likely to threaten this core achievement of European integration. Current reflections on changes to the EU's Schengen regime should therefore serve as an opportunity to render it crisis-proof. This policy paper has offered several options for addressing Schengen's current governance problems, with some requiring extensive legal changes, and others instead requiring greater political will within the pre-existing setting. While all of these could be combined to render the Schengen area more crisis-proof, even a focus on the soft law measures outlined could significantly improve its resilience.

Despite the overall problems caused by the Covid-19 pandemic there is hope that it will at least have contributed to focusing political minds on the existence of issues to be resolved; and that some of the creative and voluntary attempts at coordination and crisis-management can be translated into lessons learned and form the basis for more permanent solutions. While the recommendations in this policy paper were focused on the Schengen regime, they can similarly be applied to ensuring that freedom of movement under the EU Citizens' Rights Directive can be upheld during times of acute crisis.

# Hertie School
## Jacques Delors Centre

## On the same topic

- Lucas Rasche
  Four implications of the Covid-19 pandemic for the EU's asylum and
  migration policy
  Jacques Delors Centre, Policy Brief, July 2020

- Lucas Rasche, Marie Walter-Franke
  Clear, fair and fast? Border procedures in the Pact on Asylum and Migration
  Jacques Delors Centre, Policy Paper, December 2020

- Nicole Koenig, Thu Nguyen
  Five takeaways from the German „Corona Presidency"
  Jacques Delors Centre, Policy Brief, December 2020