

“Schengen must be alive”

About the inappropriateness of internal border controls within the Schengen area

(Léon Gloden, Minister of Home Affairs of Luxembourg)

For more than 40 years, Schengen has guaranteed the freedom of movement for European citizens and their security, thanks to a mechanism based on mutual trust between states. Its functioning relies on the principle of no controls at internal borders. Regularly endorsed by our citizens in Eurobarometer surveys, Schengen has established itself as a pillar of European citizenship, protected by the primary law of the European Union, including the Charter of Fundamental Rights.

Schengen is the archetype of “living European integration on a daily basis.” Cross-border regions have become shared living spaces, without the borders that once separated our citizens. Studying, living, transporting, working, visiting, or traveling happen without obstacles on either side.

Contrary to certain claims and despite its age, Schengen is not outdated by new challenges in migration and security. The Schengen acquis has continuously adapted and modernized: the Schengen Information System (SIS) has become the reference for security checks; the Entry/Exit System (EES), which came into force on October 12, makes it possible to know who enters or leaves the European territory. The Frontex agency continues to develop to strengthen the protection of external borders. Other tools are in preparation, such as a common return system or the implementation of ETIAS travel authorizations for third-country nationals exempt from visa requirements. We have just celebrated the 40th anniversary of the Schengen Area last March. Yet this area is in peril—and the danger comes from within.

Controls at internal borders for reasons of public order or internal security can be reintroduced for a limited period. Since the terrorist attacks and especially the 2015 migration crisis, about ten Schengen states have reintroduced internal border controls, almost without interruption. Even today, ten states maintain these controls, even though migratory pressure has significantly decreased. The implementation of these controls varies by Schengen state and has a more or less significant impact on the movement of people. Some states maintain “smart” controls—targeted and minimally intrusive—based on risk analysis and mainly aimed at cross-border crime. This is a typical example of an approach that reconciles security and the maintenance of free movement.

Other states, however, organize static controls on major traffic routes, to the detriment of “bona fide” citizens and the economies of neighboring countries affected. The motivation stems from domestic political considerations or supposedly to address illegal immigration, which is not a legally accepted reason under the Schengen Borders Code. Illegal immigration is not facilitated by the absence of static controls at internal borders; it must be fought at external borders.

Ten years of controls have affected hundreds of millions of citizens and countless businesses in their cross-border movements. There is clearly a problem of proportionality!

In the European system, the proportionality check is entrusted to the European Commission: to assess the legitimacy of reinstating controls, ensure the balance between principle and exception, and intervene in case of misapplication of the rules. But was this the right choice?

On this issue, the Commission shows worrying inertia. For ten years, it has not sent a single letter requesting explanations from states that practice “self-renewal” of internal border controls. It has not carried out any unannounced visits, even though it skillfully negotiated to acquire this prerogative. Now, it postpones its opinions month after month on the necessity and proportionality of these controls. Through its inaction, the Commission has reversed the paradigm and tolerated that the exception becomes the rule, failing in its role as guardian of Schengen and guardian of the Treaties.

The practice of illegal pushbacks at internal borders also threatens the implementation of the migration and asylum pact, which established a new balance between responsibility and solidarity. States that must take charge of persons pushed back by a neighboring country will see their capacities reduced, limiting their ability to show solidarity with first-entry states such as Spain, Italy, Greece, or Cyprus.

Is the fight lost? No! Solutions exist. But political courage is needed to use them. Schengen states and the European Commission should work together on alternatives for police cooperation—more effective, less costly in police human resources, and with little impact on cross-border life. Modernizing bilateral cooperation agreements would render the current practice of internal border controls obsolete. The goal would be to maximize operational results by improving exchange of police information, using new technologies, organizing joint controls, setting up cross-border police units, targeting critical points, and agreeing on procedures for transferring persons in irregular stay. These initiatives do exist, such as the fully modernized Benelux police treaty or negotiations for new bilateral police and customs cooperation agreements. Luxembourg is also negotiating such agreements with Germany and France. The aim is to develop reference models for the future.

In the spirit of one of the founding fathers of European integration, Jean Monnet: “We do not coalesce states, we unite people”, we must tackle real problems—not our citizens.

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