



## Exceptions Become the Rule: Internal Border Control Checks in the Schengen Area

Jolanta Szymańska

*The mass-migration crisis has exposed the weaknesses of the border protection system in Europe, encouraging Schengen member states to restore control over the zone's internal borders. Checks inside the zone, which had been rare, are becoming the new normal. Moreover, Schengen member states are demanding a further loosening of the rules. Without clear progress in strengthening the EU's external borders and finding compromise on reform of the common European asylum system, the Schengen zone is threatened with fragmentation. That carries a risk to Poland's interests.*

**Pre-Crisis Internal Borders Checks.** The Schengen system guarantees its members a certain degree of flexibility in reintroducing controls on internal borders. Before the mass-migration crisis, these controls were put in place mainly during foreseeable events, such as a large international conference or sport event, to counter potential threats to national security during the period. In accordance with the general procedure laid down in Arts. 25 and 27 of the Schengen Border Code (SBC), the re-establishment of controls must be notified in advance to the European Commission and other member states, and the duration should not exceed 30 days. Although the rules allow for an extension of up to six months, in practice, member states have rarely needed it. The procedure for special cases requiring immediate action was also rarely used. Under it, according to Art 28 of the SBC, member states can unilaterally, without prior notification, reintroduce border controls for up to 10 days, with the possibility of extending the period for up to two months.

**Ad hoc Modifications—Experience and Limitations.** Following the increase in the number of people arriving to the EU from North Africa shortly after the first events of the Arab Spring in 2010, misunderstandings between Schengen members arose concerning the interpretation of the internal control rules. In April 2011, on the Italian-French border, French officers stopped a train carrying Tunisians who hold temporary residence permits issued by Italy. The incident initiated a discussion on reform of Schengen governance in which many countries (headed by France and Germany) demanded greater freedom to decide whether to impose controls on their own borders. As a result, in a regulation of June 2013, a new procedure (currently Art. 29 SBC) was introduced allowing member states to reintroduce border controls if a frontline state does not fulfil its obligation to protect the external border, thus putting the overall Schengen area at risk. It allowed controls for six months with the possibility of extending the period for up to two years. In practice, this procedure was used for the first time in 2016. Based on the EU Council recommendation of 12 May 2016, five Schengen states—Austria, Germany, Denmark, Sweden, and Norway—obtained permission to maintain control (introduced earlier based on Art. 25 after an unexpected migration flow) at specific parts of their internal borders, citing deficiencies in the border protection system in Greece and the associated risk of secondary movement of unregistered people to other parts of the Schengen area.

**Ongoing Revision of the SBC.** In November 2017, the deadline for the use of the extraordinary procedure under Art. 29 SBC expired for the five countries. At their request, however, the EU Council allowed them to continue the border controls until 12 May 2018, based on the general procedure provided for in Art 25. Apart from these five, France has kept border checks in place since November 2015, doing so by changing the reasons indicated in its notifications of the temporary reintroduction of internal controls—first because of the Paris climate summit, later after terrorist attacks and then the persistent terrorism threat and declared state of emergency, and in the meantime, for the May-July 2016 Euro 2016 football championships held in the country. Although fewer migrants are coming to Europe now than in 2015, certain Western and Northern European countries (Germany, France, Denmark, Austria, Sweden, Norway, Belgium, and the Netherlands) are demanding greater freedom to restore internal controls. Under pressure from these states, in September 2017, the European Commission proposed another revision of the SBC. It called for leaving unchanged the procedure specified in Art. 29 but modifying Arts. 25 and 27 SBC to allow the period of checks at internal borders to be extended from six months to one year, and under a declared state of emergency for another two years. The total allowable control period would therefore be three years. At the same time, the Commission proposed tightening the procedural requirements, including imposing on the state the obligation to carry out a risk assessment and to determine if there are other effective methods to counter the security threats than controlling internal borders.

**Challenges for Poland.** Maintaining controls within the zone is a challenge for Poland. On the one hand, the Polish government supports measures to ensure a high level of security, stressing that states have the exclusive competence to ensure an adequate level of internal security. On the other hand, maintaining controls within the Schengen area entails measurable economic, social, and political costs. The Commission estimates that the full re-establishment of border controls within the Schengen area would generate immediate direct costs of €5–€18 billion annually (or 0.05%–0.13% of GDP) and member states such as Poland, the Netherlands, or Germany would face more than €500 million in additional costs for the road transport of traded goods. Importantly, reintroducing border controls could become an instrument of political pressure or even a kind of sanction on “frontline” countries of the zone like Poland. The symbolism of Schengen is also significant, since the possibility of travel within the zone without passport control has been the most evident expression of Europe’s overcoming the division between East and West and is one of the achievements of European integration most appreciated by Poles.

**Conclusions and Perspectives.** Although the EU seems to be recovering from recent crises, the Schengen area itself remains at risk. The influx of migrants encouraged some countries to reclaim competence over border control, which has resulted in a progressive loosening of the Schengen rules. The crisis undermines mutual trust between its member. The lack of adequate solutions for the protection of external borders at the European level, prolonged work on common mechanisms to address challenges in asylum policy<sup>1</sup> and others related to the secondary movement of migrants, may deepen this trend in the future. In the short term, this will mean more and more frequent controls on the internal borders of the zone. In the longer term, it may result in the permanent fragmentation of the Schengen system, which would strike at the heart of the entire project.

Although the new SBC regulations are controversial, compromise in this matter should be achieved this year. In the discussion on the project, both current security challenges and the wider consequences of the progressive loosening of the system play an important role. According to the Polish government, ensuring security in the zone depends primarily on the effectiveness of the EU system for the protection of external borders, and concentrating on measures to strengthen this protection should limit use of last-resort measures, namely internal controls. In the work on the SBC reform, it is in Poland’s interest to ensure compliance with the new provisions on the restoration of border controls through the proportionality principle to reduce the risk of abuse of this measure. Poland’s active engagement in working out a compromise on the mechanism for sharing EU responsibility for the processing of asylum applications in situations of increased mass-migration pressure will also play an important role.

---

<sup>1</sup> J. Szymańska, “Prospects for Compromise on Reform of the Common European Asylum System,” *PISM Bulletin*, no. 12 (952), 2 February 2017.