

Challenges to the Schengen area

The 1985 Schengen Agreement and the 1990 Convention implementing the Schengen Agreement, were formally codified in EU law by the Schengen Protocol of the Treaty of Amsterdam. In addition to providing common rules on people entering the Schengen area, and internal frontier-control free travel, Schengen-related measures provide for enhanced police and judicial cooperation, and complement the single market, through giving tangible reality to the four freedoms that are the cornerstone of European integration. Under the Treaties, Schengen-related measures are subject to parliamentary and judicial scrutiny and are part of the *acquis* to be adopted by candidate countries.

Current challenges

The combination of a rising number of asylum-seekers and migrants, security concerns and fragile economic recovery has put the Schengen area under stress, and called into question its functioning and developments. Currently, [seven](#) out of 26 Schengen countries have temporarily reintroduced border controls. In February 2016, the Council adopted a [recommendation](#) requesting Greece to address [serious deficiencies](#) in the application of the Schengen *acquis*, within three months, under threat of suspension from Schengen for up to two years, as provided for under Article 26 of the [Schengen Borders Code](#) (SBC).

Legal and substantial issues

From a legal standpoint, any temporary border control falling outside the scope of Articles 23-26 of the SBC (as a last resort, in case of a foreseeable or unforeseeable event that poses a serious threat to public policy or internal security, or when a Member State is not able to control the Schengen area's external borders), is illegal and would be subject to infringement proceedings. The SBC explicitly states that migratory flows per se cannot be used as a reason to impose border controls. A longer-term reintroduction of temporary border controls or a temporary suspension would require amendment of the SBC or the Treaties.

Doubts have also been cast on the [substantive case](#) for suspending Schengen rules and re-imposing border controls as a response to the current refugee influx. The SBC (Article 3) expressly exempts asylum-seekers from Schengen rules on unauthorised entry across the borders, while the EU's [Asylum Procedures Directive](#) requires Member States to process asylum applications made at the borders. [Others](#) have noted that closing internal borders may simply cause a redirection of migrant flows to new routes rather than a reduction of entries. It has been argued that a [reform](#) of the Dublin system (rather than Schengen) and the [reinforcement](#) of the [EU's common asylum system](#) would provide more appropriate responses to the migration crisis, for instance by addressing the lack of effective and harmonised external border management.

Other [analysts](#) have warned against the potential impact of the suspension of Schengen on other areas of EU law, such as the potential weakening of police and judicial cooperation on terrorism and organised crime; hindrances to intra-European trade; and obstacles to free movement of people goods and services that could result in an estimated loss of [more than €100 billion](#) for the EU economy.

Outlook

Despite its current challenges, the Schengen area is considered one of the great achievements of the EU. For many European citizens, passport-free travel is one of the EU's most [important and recognisable accomplishments](#). A potential reform of Schengen should take into account a number of legal, substantive and economic concerns as noted above. The Commission's December 2015 proposal for a regulation establishing a [European Border and Coast Guard](#), the proposal for a regulation on a [targeted modification of the SBC](#) and the [upcoming revision](#) of the Dublin Regulation could provide means to reinforce the security of external borders, while preserving free movement and complying with international protection obligations. On 4 March, the Commission presented a [roadmap](#), targeting December 2016 for ending exceptional measures.

