



2020/2640(RSP)

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DRAFT MOTION FOR A RESOLUTION

further to Question for Oral Answer B9- ◀ O-0000/20 ▶ Question for Oral Answer B9- ◀ O-0000/20 ▶

pursuant to Rule 136(5) of the Rules of Procedure

on the situation in the Schengen area following the Covid-19 outbreak
(2020/2640(RSP))

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on behalf of the Committee on Civil Liberties, Justice and Home Affairs

B9-0000/2020

European Parliament resolution on the situation in the Schengen area following the Covid-19 outbreak
(2020/2640(RSP))

The European Parliament,

- having regard to the question to the Council on the situation in the Schengen area following the Covid-19 outbreak (O-0000/20 – B9-◀0000/2020▶);
- having regard to the question to the Commission on the situation in the Schengen area following the Covid-19 outbreak (O-0000/20 – B9-◀0000/2020▶);
- having regard to the 35th anniversary of the Schengen Agreement signed on 14 June 1985,¹ the 30th anniversary of the Convention implementing the Schengen Agreement signed on 19 June 1990² and the 25th anniversary of the entry into force of the Schengen Agreement on the 26th of March 1995;
- having regard to Article 67(2) TFEU according to which the Union shall constitute an area of freedom, security and justice which “shall ensure the absence of internal border controls for persons” ;
- having regard to Article 21(1) TFEU according to which every citizen of the Union shall have the right to move and reside freely within the territory of the Member States;
- having regard to the Charter of Fundamental Rights, including its Article 45 which stipulates that every citizen of the Union has the right to move and reside freely within the territory of the Member States;
- having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)³ which codified Regulation (EC) No 562/2006⁴ of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) which had been the first act adopted under the co-decision procedure in the Justice and Home Affairs Area;
- having regard to Directive 2004/38/EC of the European Parliament and of the Council

¹ Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; Official Journal L 239 , 22/09/2000, p. 13 - 18

² Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; OJ L 239, 22.9.2000, p. 19–62

³ OJ L 77, 23.3.2016, p. 1–52

⁴ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1)

of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and the principle of non-discrimination enshrined therein;

- having regard to the Commission’s “Covid-19: Guidelines for border management measures to protect health and ensure the availability of goods and essential services” of 16 March 2020 (C(2020) 1753) endorsed by the Heads of State or Government on 17 March 2020
- having regard to the Conclusions by the President of the European Council following the video conference with members of the European Council on COVID-19 of 17 March 2020 which endorsed the call to reinforce the external borders by applying a coordinated temporary restriction of non-essential travel to the EU for a period of 30 days, based on the Communication from the Commission “COVID-19: Temporary Restriction on Non-Essential Travel to the EU (COM/2020/115) and its subsequent prolongation;
- having regard to the Communication from the Commission “COVID-19: Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy of 30 March 2020 (2020/C 102 I/02);
- having regard to “the Joint European Roadmap towards lifting COVID-19 containment measures” presented by the President of the European Commission and the President of the European Council;
- having regard to the Communication from the Commission on the assessment of the application of the temporary restriction on non-essential travel to the EU of 8 April 2020 (COM(2020) 148);
- having regard to the Communication from the Commission “COVID-19: Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls” of 13 May 2020 (C(2020) 3250);
- having regard to its resolution of 30 May 2018 on the annual report on the functioning of the Schengen area (2017/2256(INI));
- having regard to its resolution of 11 December 2018 on the full application of the provisions of the Schengen *acquis* in Bulgaria and Romania: abolition of checks at internal land, sea and air borders (2018/2092(INI));
- having regard to the preparatory work for this resolution undertaken by the Committee on Civil liberties, Justice and Home Affairs’ Working Group on Schengen Scrutiny;
- having regard to Rules 136(5) and 132(2) of its Rules of Procedure,

A. Whereas as a response to the Covid-19 pandemic, most Member States, which given the subject matter for this resolution include the Schengen associated countries, have reintroduced internal border control or have closed such borders either partially or totally, or closed them to certain types of travellers, including EU citizens and their family members or third country

nationals residing on their territory or that of another Member State; whereas there was a clear lack of coordination among Member States and with the Union institutions when these measures were introduced;

B. Whereas internal border controls affect the rights and freedoms of people enshrined in Union law; whereas travel restrictions at the external borders shall not affect the right to seek asylum;

C. “Whereas the free movement of persons provided for in the Schengen Agreement and the Convention implementing the Schengen Agreement is accompanied by compensatory measures aiming to guarantee security within the territory of the Schengen States”;⁵ whereas these compensatory measures include instruments, such as the Schengen Information System (SIS) and other large-scale IT systems, to ensure the exchange of information among the authorities of the Schengen States and common rules for the protection of the external borders;

D. Whereas the key requisite for the proper functioning of the area without internal border control is mutual trust among the Member States;

E. Whereas, following the original lifting of internal border controls, such controls were rarely reintroduced, whereas, however, since 2015 several Member States have maintained internal border control based on the justification of increased levels of migration and/or security threats; whereas the European Parliament has raised questions about the legality and the proportionality of those internal border controls;

1. Recalls that the Schengen area is a tangible and cherished achievement at the very heart of the EU project, allowing for unrestricted travel for more than 400 million people, with priceless value for citizens and businesses alike, unique across history and the world;

2. Expresses concern about the current situation with regard to the internal border controls introduced by so many Member States, and the various other measures taken which include the closure of borders fully or partially, or their closure to certain type of travellers, including EU citizens or third country nationals residing on the territory of the Member States, and the very serious impact those measures are having on people and businesses;

3. While fully supporting the public health measures put in place aiming to limit the spread of COVID-19 through physical distancing, including confinement measures imposed as decided by Member States to be applicable on their territories, points out that Member States have provided little justification in their formal notifications under the Schengen Borders Code as to how border control is an appropriate means to limit the spread of COVID-19; recalls, in that regard, that border control is defined in the Schengen Borders Code as “the activity carried out at a border [...] in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration”; believes that more targeted restrictions applicable at regional level, including cross-border regions, would have been more appropriate and less intrusive;

4. Points out that the rules governing the Union’s internal borders are laid down in the Schengen

⁵ DECLARATION OF THE EXECUTIVE COMMITTEE of 26 June 1996 on extradition (SCH/Com-ex (96) Decl. 6 Rev. 2)

Borders Code and that, when adopting any measures that have an impact upon the crossing of internal borders, Member States must respect both the spirit and the letter of that Code;

5. Recalls that the terminology of the Schengen Borders Code is unequivocal: control at internal borders is to be the exception, a measure of last resort, based on objective criteria, likely to adequately remedy the serious threat to public policy or internal security, strictly necessary and proportionate, with a strictly limited scope and for a strictly limited period of time; considers that many of the notifications provided by Member States lack sufficient detail to allow for a verification of whether those principles have been respected;

6. Points out that the notion of “last resort” requires a verification as to whether other measures may be equally or better suited to achieve the objective; calls on Member States to recognise the option of imposing minimum health checks as a superior alternative to introducing internal border controls; recalls in this regard the health-related measures detailed in the Commission guidelines⁶; recalls in addition the Commission’s recommendation on proportionate police checks⁷ according to which “where in a situation of a serious threat to public policy or internal security, Member States consider applying chapter II of Title III of the Regulation (EU) 2016/399 [introducing internal border control], they should first assess whether the situation can be adequately addressed by way of stepping up police checks within the territory, including in border areas.”;

7. Acknowledges that the Schengen Area has never before experienced the outbreak of such a serious pandemic on its territory; recalls that the provisions of the Schengen Borders Code state explicitly that a threat to public health may constitute a ground for refusal of entry at the external border, and further recalls that the Code does not - and the Convention implementing the Schengen Agreement did not - mention public health as a ground for the reintroduction of internal border control; foreseeing the reintroduction of internal border control only to address serious threats to public policy or internal security;

8. Deplores the collateral consequences of border checks observed at some internal borders such as excessive waiting times without adequate hygiene facilities and without adequate physical distancing, thereby creating health risks both for the persons subject to the border checks and for border guards, and the additional burden placed on already over-stretched border guards and police officers, who are not trained health professionals; expresses concern, moreover, at the numerous obstacles encountered by many cross-border workers within the Schengen area since the outbreak of the pandemic;

9. Notes that, under the Free Movement Directive, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public health; insists, nonetheless, that the safeguards laid down in that Directive must be guaranteed by all Member States and that in particular, non-discrimination between Member States’ own nationals and resident EU-citizens must be ensured;

⁶ Commission Recommendation C(2020) 1753 final of 16 March 2020 on Guidelines for border management measures to protect health and ensure the availability of goods and essential services

⁷ Commission Recommendation C(2017) 3349 final of 12 May 2017 on proportionate police checks and police cooperation in the Schengen area

10. Considers that returning to a fully functional Schengen area is of the utmost importance, and depends both on the political will of the Member States and their commitment to coordinate measures under the Schengen *acquis*; calls on the Commission to take the lead for coordinated action at European level, with the objective of addressing the challenge posed by COVID-19 to the health of European citizens, while maintaining the Schengen area as an area without internal border control, in full respect of the principles of solidarity and mutual trust; believes that the search for European responses will deliver mutual benefits; deeply regrets and rejects any uncoordinated, bi-lateral or multilateral action by individual Member States, discussed outside the Union framework; requires that any arrangement must respect the principle of non-discrimination;

11. Calls on Member States to reduce restrictions on the freedom of movement to the same extent that COVID-19 containment measures are relaxed; considers that with the appropriate Union-level coordination, a more regional approach may be more proportionate than national border controls and might allow for restrictions on freedom of movement to be lifted where the public health situation in neighbouring regions has comparably improved;

12. Calls urgently on Member States to discuss, together with the Parliament, the Council and the Commission, a Recovery Plan for Schengen, including the ways and means to return to a fully functioning Schengen area without internal border control, as quickly as possible, in order to prevent temporary internal border controls becoming semi-permanent in the medium term;

13. Recalls that according to the Schengen Borders' Code, the assessment of the necessity for internal border control and its prolongation when introduced as an immediate action should be monitored at Union level; calls in that respect, on the Commission to exercise appropriate scrutiny over the application of the Schengen *acquis*, and in particular to assess the measures already taken by Member States, the timeliness and quality of notifications made by the Member States, to closely monitor developments and, where necessary, to remind Member States of their legal obligations and to adopt opinions; encourages the Commission to make use of its prerogatives to request additional information from Member States; calls on the Commission to enhance its reporting to the European Parliament on the way it exercises its prerogatives under the Treaties;

14. Deplores the fact that the provision of the Schengen Borders Code, under which Member States are to report within four weeks of the lifting of border control to the European Parliament, the Council and the Commission, has lost its intended purpose, leaving the Parliament uninformed; calls, therefore, on the Member States which have introduced internal border controls to report in a timely manner, at least every six months, to the European Parliament by providing accurate and detailed data on the basis for the reintroduction of internal border controls; deeply regrets that the Commission has, since 2015, not published the annual report on the functioning of the area without internal border control, something it is obliged to do under the Schengen Borders Code;

15. Recalls that temporary travel restrictions applying to all non-essential travel from third countries to the Schengen Area have been introduced; underlines that all decisions on refusal of entry at external borders need to be in accordance with the provisions of the Schengen Borders Code including the respect of fundamental rights, in particular as laid down in its Article 4;

16. Calls on the Council and the Member States to increase their efforts to achieve the completion of Schengen integration with all Member States of the Union; reiterates its call on the Council to present a new draft decision on the full application of the provisions of the Schengen *acquis* in Bulgaria and Romania as soon as possible; when consulted by the Council in accordance with Article 4 of the Act of Accession is prepared to express its opinion on the full application of the provisions of the Schengen *acquis* in Croatia; considers that solidarity and responsibility is for all, and that the future of the Schengen area can only be one without fragmentation;

17. Considers that, in the medium-term, a reflection is necessary on how to enhance mutual trust between Member States and ensure that the Union's legislative tools provide for a truly European governance of the Schengen area, which would allow for an effective European coordinated response to challenges such as the Covid-19 pandemic, while maintaining the right to freedom of movement and the principle of the absence of controls at internal borders, which is at the heart of the Schengen project cherished by EU citizens; calls, to that end, for a proposal from the European Commission to reform Schengen governance in light of new challenges;

18. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.