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# The Schengen Area: why free movement in Europe is more important than ever

By Diana M. Stancu

The creation of the Schengen Area has brought important benefits to European citizens and businesses alike. However, in recent months the system has been severely challenged by terrorist attacks and the refugee crisis, prompting the reintroduction of internal border controls by some member states.

## The Schengen Area: free movement in Europe

Originally, the concept of free movement was to enable the European working population to travel freely and settle within any EU state, but it fell short of abolishing border controls within the union. A breakthrough came in 1985, when cooperation between individual governments (namely, Belgium, France, Germany, Luxembourg and the Netherlands) led to the signing in Schengen (a small village in Luxembourg) of an agreement to gradually abolish checks at common borders; this was followed, in 1990, by the signing of the convention implementing that agreement. The developments brought about by the Schengen Agreement were incorporated into the legal framework of the EU with the Treaty of Amsterdam in 1999. Today, the Schengen Area encompasses 26 states consisting of all EU member states, except for Ireland and the United Kingdom (opt-out clause), Bulgaria, Croatia, Cyprus and Romania, and also four non-EU member states - Iceland, Norway, Switzerland and

Liechtenstein. Bulgaria and Romania are currently in the process of joining the Schengen Area.

While the agreement allows European Union citizens, many non-EU nationals, business people and tourists to freely circulate without being subjected to border checks, Schengen member states have made investments and tightened controls at their common external borders to ensure the security of those living or travelling in the Schengen Area. For some states, notably those situated at the external frontiers of the union, the financial implications of maintaining control borders can be significant due to particular migratory pressures. Therefore, the EU Internal Security Fund supports those frontier countries by contributing towards the costs of implementing external border controls. While this established solidarity between the states, we must question whether these funds are sufficient to deal with the pressures brought about by the current migrant crisis.

Apart from abolishing the controls at the internal borders, the Schengen cooperation created a set of rules (The Schengen Borders Code) for external border checks on persons with harmonised conditions of entry and rules on visas for short stays, enhanced police cooperation and strengthened cooperation between the judicial authorities. Operational cooperation between member states is coordinated by the European Agency for the Management of Operational Cooperation at the External Borders ('FRONTEX').



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**Fomer hijacker, Julie Busic, to speak at IER:** Julie Busic will be speaking at Inflight Emergency Response and explaining the motivation for her involvement in the hijacking of a TWA airliner in 1976. She will also explain how the hijack was effected, the response from the crew and the impact of the event on her life. This is a rare opportunity to hear from an somebody who has targeted the industry and who is willing (unpaid) to share her story with those who aim to protect aviation today.

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A number of information-sharing mechanisms are at the heart of European cooperation on border management. For example, the Schengen Information System (SIS) allows states to exchange data on suspected criminals, on people who may not have the right to enter into or stay in the EU, on missing persons, and on stolen, misappropriated or lost property. Similarly, the Visa Information System (VIS) permits European authorities throughout the Schengen Area to efficiently share and use visa application data. Also, EURODAC is a fingerprint database which has been established to manage asylum requests and proposals are being considered to use these fingerprints in checks undertaken on the external borders.

### The Cost of Non-Schengen

Temporary border controls not only hamper the free movement of persons, they also come at a significant economic cost. The European Commission has estimated that a full re-establishment of border controls within the Schengen area would generate immediate direct costs of between €5 and €18 billion annually (or 0.05%-0.13% of GDP). Obviously these costs would be concentrated on certain regions, but would inevitably impact the EU economy as a whole.

The new restrictions on movement within the Schengen Area have not, as yet, included any reinstatement of border controls at airports. Should this change, the impact could be significant; in the 30 years since the inception of the Schengen Area, airports have made huge investments to develop their premises in order to separate Schengen Area from non-Schengen Area originating passengers. Reintroducing internal border controls at airports would create record levels of congestion and flight disruptions, with potential spill-over effects across the entire European airport network. The current minimum connecting times between flights could not be guaranteed and, therefore, travel times would have to be extended, thereby potentially seriously degrading connectivity.

Last February, the European Council endorsed a proposal by the European Commission providing for systematic document and security checks at airports of all persons - including citizens of the member states of the Schengen Agreement - against relevant databases whenever they exit or enter the Schengen common area. Systematic checking is reliant on the checkpoints having rapid internet connection, travel document scanners and centralised access to the pertinent databases. The proposal also includes the deployment of additional police and border control staff at airports - a necessary step for reinforcing Schengen's external border and, I believe, a welcome initiative. It remains to be seen how, in reality, the various stakeholders will cope with the demand for an increase in resources.

### A Coherent Approach to Internal Border Controls

Since September 2015, eight member states unilaterally reintroduced security controls at their internal borders; the Schengen Borders Code provides member states with the option to temporarily reintroduce controls at internal borders where there is a serious threat to public policy or internal security for a total duration of eight months. In exceptional circumstances, and as a last resort in order to protect the common interest of the Schengen Area, controls can be prolonged beyond this eight-month period. However, deficiencies in management of the external Schengen border can put at risk the functioning of the internal area of free movement. In these cases, the European Council is empowered to recommend border controls at one or several internal borders. The concerned member state(s) then has three months from the date of adoption of the European Council recommendations to complete the remedial actions. If the recommendations are not sufficiently addressed within three months, the European Commission is empowered to trigger, as a last resort, measures to reintroduce internal

border controls, subject to a clearly defined process. These controls can be prolonged for additional six-month periods up to a maximum of two years.

According to the conclusions of the European Council of 18-19 February 2016, if the current migratory pressures and the serious deficiencies in external border control were to persist beyond 12 May 2016, the European Commission would need to present a proposal recommending to the Council a coherent EU approach to internal border controls until the structural deficiencies are remedied. The objective is to lift all internal border controls by December 2016 at the latest, so that there can be a return to a normally functioning Schengen Area by then.

“...it would be the zenith of absurdity to reintroduce internal border controls in a unilateral fashion...”

The Schengen Area is one of the most cherished achievements of European integration and the cost of losing it would be substantial. It seems to me that it would be the zenith of absurdity to reintroduce internal border controls in a unilateral fashion. Any changes to internal border controls must occur as the result of a coordinated strategy across the body of member states, and not in a fragmented manner, as doing so will impact upon the integrity of the union as a whole. Indeed, an internal area without border controls is only possible if the external border controls are strongly protected, and this must be the shared responsibility of all member states within the framework of the Schengen Agreement. Consequently, a solution may only be found through a collaborative effort in order to avoid the loss of the European *acquis* (of which the Schengen rules are a part), which means changing habits without throwing the treaties in the bin, and incurring the expense - economic and otherwise - of erecting internal borders which can, and should, be avoided in favour of reinforcing external frontiers. ■

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*Diana M. Stancu is the Managing Director of Safe and Secure Skies, based in Brussels. With a Masters in Air & Space Law, she started her aviation career at the Romanian Aviation Academy as a legal advisor, whilst also providing courses on international aviation legislation. She became an inspector, in which capacity she organised and conducted on-site audits and inspections. She was later appointed Head of the Air Operators Surveillance Unit with responsibility for the process of certification of the national air operators, performing safety and security audits and assess security, safety and quality management systems.*

