

# Schengen: Open borders – Continuously “Temporarily” Closed

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On June 14, 1985, representatives from France, Germany, and the Benelux countries gathered together to sign an agreement “on the gradual abolition of checks at their common borders.” They chose for the occasion the village of Schengen in Luxembourg, close to the borders with France and West Germany, and held the signing ceremony aboard a boat anchored near the borders’ intersection in the Moselle River, the *Princesse Marie-Astrid*. Yet despite the heavy symbolism, the signing passed largely unnoticed in the press at the time, as historian Angela Siebold has pointed out. François Mitterrand and Helmut Kohl, who had only a few months before held hands at Verdun cemetery as a symbol of French-German reconciliation after two World Wars, were nowhere to be seen. Nor were any ministers present. The 1985 Schengen Agreement was signed by secretaries of state who were not household names, and no public celebrations were held.

These modest beginnings form a sharp contrast with the Agreement’s implementation in East-Central Europe a little more than twenty years later. Just before Christmas 2007, crowds gathered at border crossings all along the Polish-German border to celebrate the end of border controls. Donald Tusk, Angela Merkel, and Mirek Topolánek came together at the intersection of the Polish, German and Czech borders. Along the Polish-Lithuanian border, presidents Lech Kaczyński and Valdas Adamkus held joint festivities and confidently proclaimed that “The last stage of European integration has been completed.” The discrepancy between the events of 1985 and 2007 is indicative of how much public perceptions of the Schengen Agreement changed over time—as well as how they continue to evolve today.

## A promise long deferred

The abolition of “obstacles to the free movement of persons, services and capital” had been promised since the 1957 Treaty of Rome, but the European Economic Community (EEC) and its member states seem to have been in no great hurry to implement it. It was not until the 1970s that they began work on a passport union, which was regarded as only the first step. Even so, as Isaac Stanley-Becker points out in his recent book on Schengen, the EEC’s guarantee of “free movement” was purely economic in nature: citizens of the Western European member states were not free to resettle wherever they wanted, nor to cross borders just as they saw fit.

French police, for example, regularly blocked West Germans from joining protest demonstrations against nuclear power stations within the border region. When, in 1979, border guards refused them entry at a crossing immediately adjacent to the town of Schengen, a German Member of the European Parliament complained to the Commission and the Council that stifling transnational civil society in this manner went against the spirit of the European treaties. In response, he was told that the affected individuals clearly had not intended to “exercise an economic activity” and were thus not protected by EEC rules.

By the early 1980s, the purely economic project of European integration had stagnated to the point that social scientists diagnosed it with advanced “eurosclerosis.” In an effort to breathe life back into it, Mitterrand and Kohl in May 1984 proposed the elimination of all remaining border controls

between their two countries. A month later, Mitterrand proudly announced similar measures as part of a package for “Citizens’ Europe” at the European Council meeting in Fontainebleau. Yet countries like the UK, which had had its own “Common Travel Area” with Ireland since the 1920s, were opposed, especially under the eurosceptic leadership of Margaret Thatcher. The Schengen Agreement that was signed in 1985 was therefore designed outside EEC structures, arguably contributing to the development of an oft-maligned “two-speed Europe.”

### **“Open borders” and “compensatory measures”**

The 1985 Agreement was largely a declaration of intent that was short on details. What would it really mean to abolish border controls? The work of sorting out such matters was left to an opaque set of working groups and subcommittees composed largely of non-elected officials from state bureaucracies. European institutions were kept informed about the negotiations, but they participated only as observers. National parliaments were generally not involved until the ratification process, giving them only a yes-or-no vote on complex questions. Though the abolition of border controls was meant to bring a united “Europe” closer to its citizens, it was largely elaborated without the involvement of citizens or their elected representatives.

Though signatories initially aimed to eliminate border controls by the end of 1986, it took until 1990 to draw up the follow-up “Convention Implementing the Schengen Agreement” that put the original Agreement into practice. The primary reason for the delay was the complexity of developing so-called “compensatory measures” that would co-exist with newly opened borders. The term itself suggests a zero-sum game, by which a reduction in border controls would automatically lead to increased security problems. Whether this was true or not, negotiators designed mechanisms to address potential fears about crime, terrorism, and/or migration—the three often conflated with one another. However, in doing so, they gave credence to the idea that “open borders” were insecure borders.

The chief compensatory measure was the reinforcement of external borders, with the aim of controlling them more tightly even than nation-state borders had previously been. Other measures increased controls within the Schengen Area, albeit in ways that remained mostly invisible to EEC citizens. For example, police were given enhanced powers within an enlarged border area (and not just at border checkpoints). They could also pursue suspects into neighboring countries, something which would previously have been considered a violation of territory. Authorities in all member countries shared data on travelers through the newly created electronic Schengen Information System. According to historian Andreas Pudlat, these “compensatory measures” meant that police were likely better equipped after the 1990 Agreement to deal with cross-border challenges than they had been before Schengen. Nevertheless, border police fearful of losing their jobs played up the importance of border controls, reinforcing the perception of a contradiction between free movement and security.

### **New Realities after 1989**

The 1985 Schengen Agreement was a product of the Cold War, and it catered to the needs and interests of Western Europe at the time. Negotiations over the Implementing Convention took place against the backdrop of rising xenophobia. This was driven partly by far-right parties such as the Front National in France or Die Republikaner in West Germany. However, mainstream parties too exploited immigration as an issue to obtain votes throughout the 1980s. This would ultimately

culminate in Jacques Chirac's notoriously racist 1991 speech about "the sound and the smell" of immigrants and the 1993 "asylum compromise" between Christian Democrats and Social Democrats that hollowed out Germany's constitutional guarantee of asylum. Against this backdrop, Schengen-related plans to harmonize immigration policy were frequently invoked as a reason to further restrict immigration—including from East-Central and Eastern Europe.

As negotiations for the Schengen Implementing Convention neared completion in late 1989, the world for which it had been created changed dramatically. In quick succession, Poland loosened travel restrictions, Hungary opened its border with Austria, East Germans demonstrated for "*Reisefreiheit*", and Czechs and Slovaks jingled their keys in protest. The fall of communism was greeted with enthusiasm across the continent, but it also provoked anxiety in Western Europe, where governments feared an influx of millions of migrants from the East. As Germany united in 1990, the East-West divide in Europe did not disappear, but rather moved from the Elbe to the Oder. Before Schengen even went into effect, the promise of free movement within the Schengen Area was closely connected with xenophobia towards those just outside the zone, the boundaries of which could seem arbitrary.

Faith in the possibilities of "open borders" was undermined by both the protracted negotiations over "compensatory measures" and by states' reluctance to implement the Agreement. The Schengen Convention was signed on June 19<sup>th</sup>, 1990, and scheduled to go into effect in 1992. However, the date of implementation was repeatedly postponed: from early 1992 to later the same year, then the following year, maybe 1994 instead, and then finally March 26<sup>th</sup>, 1995. Nevertheless, France insisted on continued controls during an additional "test phase" that lasted until September 1995. Repeated delays further reinforced fears that "open borders" would not be secure.

For Eastern Europe, accession to Schengen and European institutions entailed still more waiting. Hungary, Poland, Romania, Bulgaria, Czech Republic, Slovakia, Estonia, Latvia, Lithuania, and Slovenia signed association agreements with the European Community starting in 1991 and by 1996 had all submitted applications to join the (now-renamed) European Union (EU). Before accession negotiations began, the Schengen Acquis was integrated into EU law by the 1997 Treaty of Amsterdam. This meant that new members would enjoy the benefits of free movement, but they would also be obliged to harmonize immigration, visa, and border control policies to a standard set by Western Europe. Siebold has argued that the wholesale adoption of EU norms prevented public discussion—and, crucially, consensus-building—about immigration policy in countries that had had little experience of immigration during the Cold War.

In 2004, eight post-communist states were admitted as new members to the EU (along with Malta and Cyprus; Bulgaria and Romania had to wait longer). It would be three more years before they were allowed to join the Schengen Area. For EU institutions, this marked the most important step in uniting the continent. For many citizens, this expansion of free movement was one of the most tangible benefits of the EU. Yet transitional measures restricted the ability of citizens from new member states to work in Germany or Austria until 2011. When the transitional measures expired, the European Commission issued a statement in which it "concluded that initial fears of massive flows of workers from the East were exaggerated."

Parallel to eastern expansion, the EU worked to reinforce its changing external borders through the creation of Frontex. Founded in 2004-2005, the Warsaw-based agency was initially tasked with coordinating border policing measures and facilitating their application by member states. The

organization's budget and powers were expanded considerably in 2016, when it formally became the European Border and Coast Guard. However, search-and-rescue operations remain decidedly secondary in importance to the agency's role in "integrated border management." Frontex is closely associated with the idea of a "Fortress Europe" intent on keeping migrants out at all costs. Human rights organizations have repeatedly accused Frontex (and the member states that it supports) of engaging in illegal "pushbacks" that prevent migrants from exercising their right to apply for asylum.

### **Reintroduction of border controls: The exception becomes the rule**

Migration has been at the heart of repeated suspensions of the Schengen Agreement by member states. Schengen rules allow member states to reintroduce border controls under certain circumstances and for limited amounts of time. Until 2015, member states reintroduced border controls on only 36 occasions, mostly for short periods of less than 30 days and in connection with foreseeable events such as international summits, papal visits, football tournaments, and certain protest demonstrations. Emergency provisions also allow for the immediate reintroduction of border controls in exceptional circumstances, such as to contain the spread of a terrorist attack. These measures were enacted for the first time in 2011, when a Norwegian rightwing terrorist set off a car bomb in Oslo and subsequently murdered scores of young people on Utøya island. While the Schengen system's emphasis on controlling external borders implies that threats such as terrorism are extrinsic to the Area, the perpetrators of the worst such attacks in Europe have mostly come from within it.

Since 2015, member states have suspended the Schengen Agreement more than 420 times, frequently in an attempt to limit inward migration. Germany under Angela Merkel was the first to reintroduce border controls in response to a "big influx of persons" in September 2015, followed immediately by Austria, Slovenia, Hungary, Sweden, and France, then shortly thereafter by Norway and Denmark. Some of these countries have renewed "temporary" border controls more or less continuously since that time: Austria and Denmark have done so with only a three-month break since 2015; France and Sweden have maintained some border controls without interruption for nearly ten years. As political scientist Jolanta Szymańska has written, border controls that were supposed to be exception have now become the rule for parts of the Schengen Area.

There have, of course, been other reasons to suspend free movement at different points in time. In November 2015, France immediately closed most of its borders in response to the coordinated terrorist attacks in Paris perpetrated by French- and Belgian-born Islamic State sympathizers. In the period 2019-2021, many borders were temporarily closed and then tightly controlled for months in relation to the COVID-19 pandemic. However, member states have cited migration-related reasons in nearly 180 suspension notifications issued since 2015. If one excludes suspensions justified solely on the basis of COVID, 71% of the notifications that member states have issued since 2015 to impose exceptional border controls have been related to migration.

Perhaps more than migration itself, Europeans' fear of migrants has led to acute, enduring crises in the Schengen system. In 2021, Alexander Lukashenko's regime began facilitating the arrival of large numbers of migrants from the Middle East and the Global South to Belarus' borders with EU states. The state of emergency, media blackout, and illegal pushbacks implemented by Poland have, in the view of Adam Bodnar and Agnieszka Grzelak, undermined Europe's credentials as a defender of human rights guided by the rule of law. The European Union has, in contradiction with its own laws, tacitly supported Poland's actions and is currently debating whether or not to

provide funds for border fencing. However, even draconian measures meted out to migrants have failed to assuage the fears of neighboring Schengen states: Germany has recently reintroduced border controls (again) along its border with Poland. Lukashenko has thus largely succeeded in using Europeans' own xenophobia to undermine the EU's international position and to foster distrust between member states.

The EU today proudly touts the Schengen area as guaranteeing the rights of 450 million European citizens and legal residents. However, the meanings ascribed to Schengen have varied considerably over the forty years since the Agreement was signed. Free movement had been proclaimed long before 1985, but putting it into practice was largely an afterthought for the economic EEC. The Schengen Agreement was designed for Cold War Western Europe, but it became far more important as a result of the fall of communism in Eastern Europe. Since 1995, the openness of the Area's internal borders has been coupled with the "compensatory" reinforcement of its external ones. And for most of the last decade, the greatest limits to free movement have been imposed by Europeans' own fears of refugees and migrants. Throughout its history, Schengen has paradoxically fostered both a specifically European cosmopolitanism and a specifically European xenophobia. Will these forces continue to coexist in tension for another ten years? Or will one of them prevail over the other?