



Key elements for a futureproof Schengen

Introduction

The free circulation of persons within the Schengen area is one of the crowning achievements of the EU. However, over the last years, the free movement within the Schengen area has been put to the test by a series of challenges in the field of internal security, migration, or health. Pressing examples are the high numbers of unauthorized external border crossings and increased secondary migration. Therefore, Europe needs new policy initiatives to address these challenges; to counter secondary migration and prevent abuse of the Schengen area by organized crime and terrorists. Our main focus should be to strengthen compensatory measures at our internal borders, in order to ensure that internal border controls will only be introduced as a measure of last resort. We need to acknowledge the necessity of these measures to keep our Schengen area open; a revamped approach is needed – including new policy and legislative proposals. Of course, more flanking measures are essential to make Schengen future-proof, such as well-managed external borders, a robust Frontex, and an effective fight against migrant smuggling. An enhanced Schengen governance framework should further contribute to the consolidation of a futureproof Schengen.

- 1. Increased efforts to counter secondary migration within the Schengen area**
 - In a situation of high migratory pressure within the Schengen area and demonstrated deficiencies in the application of the Schengen acquis through Schengen evaluations, **the Commission** should issue a **recommendation** to deploy **risk-based spot checks** by the Member States concerned.
 - **EU cooperation** on (law enforcement) **spot-checks at internal borders** within the Schengen area should be **intensified**, in order to tackle irregular migration and stop migrant smuggling. Coordination should be improved, and an overview of measures taken within the Schengen area should be available. EMPACT could play a vital role in this.
 - It should be explored how the **Frontex mandate** could be adjusted for it to play a role in assisting Member States **to counter secondary migration at internal borders**.
 - Investment is needed to highly stimulate the use of **modern technologies** by Member States at internal borders, such as camera systems (e.g. Automatic Number Plate Recognition), with the possible future perspective of sharing outputs. Data protection legislation should be respected.
 - Advance Passenger Information (**API**) **should be extended to selected intra-EU journeys** and to **non-air modes of transport** to combat irregular migration. API could also become interactive to prevent travel of persons that do not fulfill the entry-conditions in an earlier stage.
- 2. Innovative solutions to strengthen our external borders**
 - Full, speedily and reliable **implementation** of the rules on **screening and border asylum** procedures should start as soon as possible. Funds and a strategy for implementation of the Pact is required.
 - The **border pilots** in Romania and Bulgaria have been successful. More of **these innovative cooperation frameworks** should be developed, including with third countries, to strengthen external border management, as well to achieve accelerated asylum and return procedures at the borders.
 - **Respect for fundamental rights** at the EU borders is essential and should be guaranteed at all times. In order to ensure those rights, permanent independent national monitoring and follow-up of compliance with fundamental rights at the border is necessary.
 - Further development of **common standards of the EU external border surveillance** should be considered.
 - For **bonafide travelers**, we need to stimulate innovative **border control practices** to boost safe and secure travel fluidity. Border checks and surveillance should be made more effective through information-based operations, based on (pre-border) information flowing from i.e. the Smart borders package IT systems and pre-enrollment initiatives.
 - At the same time, we need to commonly address **challenges** in **recruiting sufficient qualified staff** in order to execute border control tasks and other compensatory duties within MS and within relevant EU agencies and bodies.
- 3. Strengthen the governance of the Schengen Area**
 - The Netherlands has warmly welcomed the establishment of the Schengen Council and its policy cycle. The Netherlands is convinced of its role and added value, but sees room for further improvement. Inspiration could be taken from **the set-up of the Eurogroup**: closer coordination is needed, in the same way as the eurozone-countries deliberate each month.



- **Institutionally**, this could mean a more permanent presidency (supported by the GSC and working closely with the Commission's Schengen Coordinator) and the adoption of a longer term working programme. This can be achieved by establishing updated working methods of the Schengen Council.
 - Furthermore, focus should be on **more strategic discussions**, including operational follow-up. For example, on the future of the Schengen area (including how to manage enlargement in the coming years), implementation of the acquis and thematic discussions that address challenges related to migration or internal security, such as organised crime and terrorism. These discussions need to be prepared in the relevant Council bodies. Relevant instruments such as reports from agencies, the annual State of Schengen report, the Barometer+ and findings of Schengen evaluations contribute to strengthened situational awareness.
 - When having a direct impact on the functioning of the Schengen area, **serious deficiencies** identified should be discussed at the political level. This will enhance the link between the technical, operational and political level.
 - To foster trust in the Schengen area and facilitate open discussions, the Schengen Council should explore how the findings of the **Schengen Scoreboard could be shared and discussed between ministers in a transparent way**. Now, the scoreboard is for the relevant MS only; this is in contrast with the practice of the annual Rule of Law report, or the ECOFIN financial stability reports – which are shared with all MS. A document containing a joint scoreboard with a clear overview of shortcomings per Member State, could serve as a basis for (confidential) political discussions.
4. **Towards the full potential of Frontex's mandate**
- There is still work to be done to fully implement the current legal framework of Frontex: a lot is possible within the current mandate. At the same time, our strategic thinking should not stop, and a **targeted review** is welcome.
 - Fully use Frontex' potential on **return, also in third countries**. We need to adjust the EBCG mandate to make it possible that Frontex can assist third countries with their return processes, when they desire Frontex to provide assistance.
 - The **selection of third countries** Frontex cooperates with – preferably as part of a broader mutually beneficial partnership - should be in line with **the political guidance** as formulated by the Council. A prioritization is necessary.
 - The roles and responsibilities of both Member States and the Agency in **safeguarding fundamental rights** should be clarified in the Regulation.
 - Deploy **the permanent corps** in a more **strategic and efficient** way, information-driven: by thoroughly considering its effectiveness prior to deployment.
 - We need to have **a long-term vision** on Frontex. Different scenarios supported by impact assessments should be developed and discussed at the Schengen Council.
5. **Boost our fight against migrant smuggling**
- Priority should be given to strengthening the operational tools to disrupt migrant smuggling networks, such as through enhancing efforts within the EMPACT cycle, other joint operations, financial investigative activities, as well as partnerships with third countries.
 - The co-legislators should finalize the pending **legislative files** in relation to migrant smuggling and trafficking in human beings, as soon as possible.
 - It is desirable that the **extraterritorial jurisdiction** for the migrant smuggling offense is further broadened in order to enhance the available means in the collective fight against migrant smuggling networks outside of the EU.
 - EU efforts to counter migrant smuggling should be intensified by supporting (existing) initiatives to set up and operate working with **a (regional) network of prosecutors** to enhance information exchange, as well as by supporting the use of **magistrate liaison officers or law enforcement liaison officers in third countries**.
 - To support international investigations and ensure prosecution, we need to **strengthen Eurojust and Europol cooperation with third countries**. The conclusion of **working arrangements** in this regard is key. Furthermore, **progress on adequacy decisions** is imperative to enhance the exchange of information between third countries and MS, as only one adequacy decision on the basis of Directive 2016/680 has been taken until now.
 - Obstacles to the most comprehensive **sharing of relevant data** between Frontex and Europol must be removed and **consistency** of the **information** products produced by these agencies must be ensured.
 - The possible **use of the EU's sanction regime** to effectively disrupt and counter the most relentless migrant smuggling networks, their kingpins and its beneficiaries should be further explored.