Protecting Schengen

Why internal border controls in Europe should be lifted immediately

Border controls in the European Schengen area jeopardise one of the most tangible achievements of an integrated Europe: the possibility to travel and live together in a common area without internal border controls. Internal border controls divide families and friends, they re-establish boundaries between long integrated regions and neighbourhoods and undermine the process of developing new regional cooperation. They seriously restrict our freedom.

The Greens/EFA group in the European Parliament stands up for the achievements of the Schengen area. 35 years ago, on 14 June 1985, five European Member States in the small town of Schengen laid the foundation for the possibility for now 400 million people to travel and live together without restrictions in Europe. We must uphold this achievement. It is at the very heart of the European project.

Internal border controls against the pandemic are ineffective and unlawful. They do not help to prevent the spreading of the virus, harm the economic activity and family life of cross-border workers and have serious repercussions on the right of free movement of EU citizens. **Therefore, internal border controls must be lifted immediately and replaced by more appropriate and effective measures. The capacities for EU-wide manual contact tracing by health authorities need to be scaled up as a matter of urgency, an app is not needed for this purpose. In addition, Member States must provide up-to-date information to travellers. They should also coordinate their (de-)confinement measures cross-border and adhere to the guidance by the European Center for Disease Prevention and Control (ECDC) as outlined in the latter's publication "Considerations for travel-related measures to reduce spread of COVID-19 in the EU/EEA"[1].**

Our call for protecting border-free travel in the Schengen area is not a call for "getting back to normal". Confinement measures are still necessary where infection rates are high, and physical distancing, hygienic measures as well as quarantine requirements should remain in place as long as a reliable vaccine against COVID-19 is not available. But we argue that the current focus on border

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[1] https://www.ecdc.europa.eu/sites/default/files/documents/Considerations-related-to-measures-for-travellers-reduce-spread-COVID-19-in-EUEEA.pdf

controls distracts from real solutions. Alternatives to border controls are more effective in preventing the spreading of the virus. It is therefore all the more unjustified to jeopardize the achievements of the Schengen area.

Unfortunately, the Commission is for the time being not very helpful in finding an alternative to border checks in the Schengen area. In its Communication on lifting internal border controls, the Commission proposes lifting border controls only between regions with comparatively low infection levels and similar containment measures.[2] Thus, in case of a second wave, borders will likely be closed again. If we continue like this, we run the risk that Member States establish threats to public health as a legitimate reason for national border controls and for limiting the freedom of travel and movement in the EU and for discriminating between EU citizens.

1. Why border controls should be lifted immediately

Replacing border checks by measures that are more effective is important for two reasons: border controls do not effectively stop the virus, and they unlawfully damage the tangible and cherished achievement of the border-free Schengen area. They are particularly harmful for the provision of essential health care services and farm workers in cross-border regions.

- **Border controls do not stop the virus**
  Border controls and travel restrictions do not effectively stop the virus. Even the European Health Commissioner questions that border checks are effective against the spread of Covid-19. The World Health Organisation (WHO) explicitly advises against travel restrictions.[3]

  According to the WHO and ECDC, travel restrictions might be useful in the first few days of an outbreak as they may allow countries to gain time, even if only a few days, to rapidly implement effective preparedness measures. But they do not help against the spreading of the virus. Several countries have denied entry of travellers to and from China, Italy or other affected countries. But it did not save them from COVID-19 outbreaks. Most outbreaks actually occur within clusters of cases exposed through close-contacts such as special gathering events, particularly when physical distancing and hygienic rules are neglected, within families and in nursing homes. Recent studies suggest that most infections can be attributed to "superspreaders", people that for yet unknown reasons are much more efficient in spreading the virus to others, which makes large gatherings so dangerous. In many EU countries slaughterhouses are a hotspot, not because the workers come from Bulgaria or Romania, where infection rates are significantly lower than in Germany or the Netherlands, but because of the poor accommodation conditions for them.

  Local confinement measures and quarantine measures for persons who may have been exposed to COVID-19 early in an outbreak can delay the introduction

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[2] https://ec.europa.eu/info/sites/info/files/communication_freemovement.pdf
[3] https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak

of the disease to a country or area or may delay the peak of an epidemic in an area where local transmission is ongoing.[4] But such measures should be based on exposure to virus (individual or within clusters of cases) rather than on national boundaries, and they should be proportionate. In any event, Member States can take appropriate measures such as requiring persons entering their territory to undergo self-isolation upon return from an area affected by COVID-19 provided they impose the same requirements on their own nationals.[5]

- **Border controls in the Schengen area against COVID-19 are unlawful and harmful**

  The Schengen Borders Code, designed to protect the border-free Schengen area, is unequivocal: controls at internal borders are to be the exception, a measure of last resort, strictly necessary and proportionate, and only in case of a serious threat to public policy or internal security. The reintroduction of internal border controls for health reasons is not foreseen at all under the Schengen Borders Code. A threat to public health is mentioned only in relation to external borders. Here it can constitute a ground for refusal of entry into the EU. Within the Schengen area, however, border checks for health reasons are against the words and spirit of the Schengen rules. They are unlawful.

  In addition, reintroducing border restrictions has a negative impact on the provision of essential health care services and farm workers in cross-border regions. And they are harmful for the economic activity of cross-border workers and employers. Many families depend on income from commuting to the other side of the border. It is therefore essential to set up a system that allows continued travelling, while protecting the health of the people on both sides.

2. Measures to replace border controls

The EU has effective instruments against cross-border health threats already at hand. In 2013, the European Parliament and the Council approved a Decision on serious cross-border threats to health[6]. It provides for a coordinated European approach to health threats, without threatening the achievements of the Schengen area. Internal border controls to prevent the spreading of human diseases are not even mentioned in the Decision. Instead, the Decision obliges Member States to exchange information, also for contact tracing, and to coordinate their response to serious cross-border health threats.

- **EU-wide contact tracing**

  When border controls are lifted and people travel again in the Schengen area, the tracing of possibly infected persons must be organized in a cross-border manner. This already exists in the EU. A tracing app is not needed for this purpose. The abovementioned EU Decision on serious cross-border threats

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[4] https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

[5] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200316_covid-19-guidelines-for-border-management.pdf

[6] https://ec.europa.eu/health/sites/health/files/preparedness_response/docs/decision_serious_crossborder_threats_22102013_en.pdf

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established a mechanism for manual cross-border tracing by health authorities. Cross-border tracing is arranged via the Early Warning and Response System (ERWS) of the European Centre for Disease Prevention and Control (ECDC) and the International Health Regulations (from the WHO). The Early Warning and Response System generates close cooperation between national health authorities also for the purpose of contact tracing. National health authorities share information necessary for cross-border tracing via a selective, data protection friendly messaging functionality which allows personal data to be communicated only to national authorities involved in contact tracing measures.[7] Member States have an obligation to promptly communicate personal data necessary for the purpose of contact tracing.

While the tools and legal regulations already exist for cross-border contract tracing, they need to be adapted to the dimension of the COVID-19 pandemic. **We Greens/EFA call on the Commission and the European Centre for Disease Prevention to swiftly scale up EU-wide tracing capacities via the Early Warning and Response System.**

Tracing apps can alert persons if they were in contact with an infected person but their actual effectiveness is still to be proven. Thus, the lifting of border controls should not be made conditional on the availability of apps. Nor should travellers be obliged to install and use tracing apps. Tracing apps must remain voluntary. If Member States nevertheless use apps, they should coordinate their approach and ensure that the apps will be data protection friendly and interoperable as well as define clear rules about all necessary procedures to be taken after a traveller gets notified by the app about having contact to an infected person. They also should consider making their app and all connected information available for travellers in other EU languages.

- **Information for travellers**
  The European Commission rightly states "citizens must be empowered to protect themselves and others".[8] Travellers must have the possibility to inform themselves about regional infection rates prior to their travel. To this end, the European Center for Disease Prevention and Control (ECDC) has sought to provide a map to inform travel decisions.[9] The map is supposed to inform about regional infection rates. But it is in large parts blank because Member States do not provide the information. **The Commission should make sure that Member States fulfil their obligations under the Decision on serious cross-border health threats and regularly share and update information on regional infection rates.**

  Member States should also inform travellers on special measures and rules related to COVID-19 and whom to contact in case of an infection, preferably in a language the traveller understands. Discrimination must be avoided. The rules for travellers should therefore be the same as for own citizens. Information for travellers can be provided via a website or directly

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[7] The protection of personal data is regulated in Article 16 of the Decision.
[8] https://ec.europa.eu/info/sites/info/files/communication_freemovement.pdf
[9] https://qap.ecdc.europa.eu/public/extensions/COVID-19/COVID-19.html

handed out to people coming via pubic transport. Member States should also follow the recommendation of the Commission to ensure that travellers receive an automatic SMS when they enter the country.

- **Decreasing the risk of transmission**
  All Member States should keep targeted measures in place to decrease the risk of transmission of the virus. Key are physical distancing and hygienic measures as well as testing and the ramping up of testing capacity, contact tracing, and the use of isolation and quarantine in case suspected cases of COVID-19 are detected. Member States should also cooperate closely and make free testing capacities available to Member States in need of them. In public transport such as airplanes, trains and ferries, as well as in tourist accommodations, Member States should follow the recommendations of the Commission on ensuring the safety of travellers and personnel.[10]

3. Inappropriate measures to replace border controls

- **Health checks**
  Some EU countries such as Italy, France and Spain have started to screen the temperature of travellers at airports with thermal imaging cameras. However, health organizations such as the WHO[11], the European Centre for Disease Prevention and Control [12] and the EU expert group Joint Action Healthy Gateways[13] as well as the German Robert-Koch-Institute[14] all advise against such screenings. They argue that it is not effective in preventing the international spreading of COVID-19. Replacing border checks by health checks feigns a false sense of security because infected persons may not show symptoms (false-negative) whereas there are multiple reasons for an elevated body temperature that are not associated with COVID-19 (false-positive). About half of the infected persons in Germany so far did not get fever at all.[15]

  Health checks are not only ineffective, they are also expensive. The German Robert-Koch-Institute and EU Healthy Gateways both warn that a lot more trained staff, testing capacities and suitable facilities for people with fever as well as protective equipment would be needed. Canada spent 7.5 Million Canadian Dollars in less than three months for screening measures during the SARS epidemic in 2003 and stated afterwards that it should have better invested the money into the public health system. Likewise, in Australia, Singapore and Taiwan, the screening was useless. Although hundreds of

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[10] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_854
[11] https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak
[12] https://www.ecdc.europa.eu/sites/default/files/documents/novel-coronavirus-risk-assessment-china-31-january-2020_0.pdf
[13] https://www.healthygateways.eu/Portals/0/plcdocs/EU_HEALTHY_GATEWAYS_2019_nCoV_EUMS_E-E_screening_6_2_2020_V1b.pdf?ver=2020-02-11-094124-737
[14] https://www.rki.de/DE/Content/Infekt/EpidBull/Archiv/2020/Ausgaben/20_20.pdf?__blob=publicationFile
[15] Ibid

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people were put into quarantine, not a single case of SARS-1 was discovered and the virus still spread in those countries.[16]

It is more effective to provide information to travellers on measures preventing the spreading of the virus and to collect contact details where people stay longer in closed rooms, also within a Member State, on a voluntary basis, in a transparent manner and in line with European data protection rules to allow for a possible contact tracing. Only the contact data necessary for tracing should be collected. The data should be stored only locally, only for the time necessary to trace infection chains, and only be transferred to health authorities in the case of an identified contact.

- **Corona passport**
  The WHO[17] as well as the European Commission[18] advise against immunity passports – for good reasons. They are unreliable, unfeasible and unethical.

  Immunity passports are unreliable because antibody tests still produce too many false results. According to WHO, they may falsely label people who have been infected as negative, and people who have not been infected may falsely be labelled as positive. Both errors have serious consequences. If somebody assumes that she or he is immune because of a falsely positive test result, the person may ignore public health rules and risk further spreading the virus. And as our experience with the virus is still very limited, no one can make a valid prediction on the permanency of immunity. It might well be that through mutation of the virus or limited stability of the antibodies, immunity may only hold for one to three years, as is the case with other Coronavirus species.

  Corona passports are unfeasible because millions of tests would be needed. One test per person is not enough since anyone who tested negative might later become infected and would need to be retested to be immune certified. For example, Germany with a population of nearly 84 million people would need at least 168 million serological tests to validate every resident's COVID-19 immune status at least twice. For the time being (as of June), it has the capacity to test maximum 6% of the population each month.[19]

  Corona passports are unethical because they segregate societies based on biological data and likely increase inequalities and discrimination. If Corona passports were made conditional for crossing borders, only the lucky few who managed to get tested would be allowed to travel. Testing will likely not be equally available for everybody Minorities such as Sinti and Roma will likely be completely excluded from testing since they often do not have access to the public health system.

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[16] Ibid
[17] https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19
[18] https://www.politico.com/news/2020/05/25/european-union-commissioner-coronavirus-immunity-certificates-arent-reliable-279994
[19] https://www.nature.com/articles/d41586-020-01451-0

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A Corona passport is particularly concerning in the absence of a free, universally available vaccine. If a vaccine becomes available, then people could choose to opt in and gain immune certification. It would not depend any more on luck, power and personal circumstances. However, immunisation certificates should under no circumstances lead to the reintroduction of border controls for checking them.