**e-graine**

**Kit Schengen**

**Yves Pascouau**

**---**

**#1 - Schengen Area : what is it?**

Schengen. If you're from Luxembourg, you must know Schengen, this beautiful little village located on the edge of Moselle between Germany and France. For Europeans, Schengen isn't a village but an area : the Schengen Area. Does it ring a bell? No? Yet it is one of the most important achievements of the European construction/creation.

Indeed, the Schengen Area represents the freedom of movement and precisely it is a space in which border controls between European countries have been abolished. In other words, it is an area in which people can move without being controlled when they go from one country to another.

Essentially, it theoretically means that within the Schengen Area you can move from Faro, in the south of Portugal and go to Stockholm in Sweden, passing through Spain, France, Belgium, the Netherlands and Germany without ever being controlled at any frontier that separate these countries.

Normal, you might ask? Well, not really. It took political will, years of negotiation and many adjustments to build this area. So what seems normal to you today was not normal yesterday and may not be normal tomorrow... The Schengen area is a modern and exceptional story built on the trust that European states can place in each other and with the aim of strengthening the freedom of movement of European citizens.

The Schengen Area is a modern and exceptional story built on trust between European countries and with the aim of strengthening European citizens' freedom of movement.

Are you ready to embark on this exciting story full of twists? See how the project was born, learn how this area works, understand the main tools that ensure its operation, and get to know if and how it should adapt?

**#2 - The Schengen area: why such an adventure?**

The Schengen Agreement is an agreement signed in 1985 between France, Germany, Belgium, Luxembourg and the Netherlands. Its objective is the abolition of border controls between these 5 States. "Yes, but so what?" you may ask. Well, what is natural for you today was not natural in the 80s. At that time, my time, the borders between the European states were controlled by customs officers or police officers. For example, if a person wanted to go from Nancy to Stuttgart, they were checked when crossing the border between France and Germany.

However, these controls created problems. First of all, it wasn't practical, since the border areas were the scene of enormous traffic jams. On weekends, huge queues of trucks were waiting to be checked, especially at the Kehl bridge between France and Germany. Secondly, it was an economic problem, since the time lost at the border had a cost. The New York Times reported that it could take a truck driver up to 12 days to make the trip from Amsterdam to Milan, whereas such a trip would take only two days if the controls were eliminated. Finally, it brought political issues, because these controls were contrary to Europe's guarantee of freedom of movement.

It is in this context that France and Germany decided to forge a revolutionary solution: abolish controls at their shared borders. Why?

Because the trust that existed between France and Germany allowed it. Why control French citizens going to Germany and German citizens going to France when these two countries are friends? Moreover, and for foreign citizens, both States considered that the controls exercised by the other were sufficiently serious not to be repeated.

In practical terms, once the French authorities have checked a Spanish driver upon entry, meaning they have checked all the required documents, the German authorities no longer need to check the same driver when he enters Germany. What is true for the Spanish driver is also valid for the Austrian driver who has been checked upon entry into Germany and continues his journey to France.

This Franco-German initiative created a lot of interest from the 3 Benelux countries (Belgium, the Netherlands and Luxembourg) who immediately wanted to join this project.

Thus, on June 14, 1985, Germany, France, Belgium, Luxembourg and the Netherlands signed the Schengen Agreement on the gradual abolition of controls at their common borders. Initially, controls were to be reduced before being abolished altogether.

The Schengen cooperation started with 5 countries and has been a success, since today the Schengen Area includes 28 countries. To the first 5 (Germany, France, Belgium, Luxembourg and the Netherlands) has been added to all the countries that appear on this map.

So, if Schengen's theory is simple, its execution isn't.

**#3 – Schengen : how does it work?**

On paper Schengen's operation is simple, border controls between countries must be abolished/removed.

OK, but in reality it was a little more complicated than expected. If the Schengen agreement with its 33 articles set out a general framework, it was up to the Convention implementing the Schengen agreements, signed in 1990, to detail in 142 articles, all the rules that effectively allowed the abolition of internal border controls within the Schengen Area.

Article 2 of the convention sets out two rules that organize the operation of the Schengen Area. First, it defines the principle: “Internal borders, meaning between states, may be crossed anywhere without any checks being carried out.” Article 2 then defines conditions under which border controls may be re-established. Hence, when public order or public security requires, states can decide to reintroduce controls for a limited period.

For instance, controls have been reintroduced during soccer championships to prevent hooligans from entering the host country.

Controls have also been implemented for major political events, such as the G20, to ensure the participant’s safety.

Moreover, they have been reinstated following attacks, such as in 2011 after the Utoya massacre in Norway.

While Article 2 defines the principle and its exceptions, the rest of the convention sets out the rules that must be implemented to ensure the absence of internal border controls.

These rules are numerous and cover very broad fields, which invites us to discover an area that is much more complicated than simply saying that controls are abolished.

In fact, to achieve the creation of this Schengen Area, the convention establishes rules that cover, among other things, the crossing of the external borders of the area, the issuing of visas to enter the area, the movement of foreigners within the Schengen Area, but also police cooperation and judicial cooperation in criminal matters, the fight against drug trafficking, firearms and explosives, etc.

In fact, in addition to the rules that organize the entry, movement and residence of people, the states have also included in the Schengen Convention rules that must prevent this Area from also being a place of free movement for offenders and criminals.

For example, the Schengen Convention established what is known as the right of observation and the right of pursuit. The right of observation is the possibility, for example, for Belgian police officers to continue to observe in France a person presumed to have participated in acts punishable in Belgium. On the other hand, the right of pursuit is the possibility, for example, for French police officers who have chased a person to continue this pursuit on German territory, meaning across the national border. These examples show that the Schengen cooperation establishes a balance between freedom of movement and security for the citizens who live within the Area.

In practice, Schengen is a political and legal hurdle that the European states have managed to overcome. Thus, in terms of migration, Schengen is a revolution, since the Member States accept that a decision taken by one State to allow entry to its territory can have effects in all the others because of the absence of controls at common borders. But this agreement is conditional on the adoption of common rules in the area of security, i.e. police and judicial cooperation in criminal proceedings. This balance between freedom and security is both a feat and a success. Since its creation, Schengen has always been adapted and strengthened.

**#4 – Schengen : what tools ?**

From 1985 to the present day, Schengen has evolved considerably. Numerous rules have been adopted to develop, clarify and strengthen the area.

These evolutions first concerned Schengen’s operation, which has been modified according to needs or events. From the Arab Spring to the migration crisis of 2015, including the terrorist attacks, there have been many changes, notably concerning the conditions of access to the territory, the conditions for re-establishing border controls, and the control and evaluation of procedures.

The changes linked to the operational dimension of Schengen have been remarkable. By operational, we mean all the systems and mechanisms put in place to reinforce the controls carried out on the ground by the competent authorities.

It all started with the creation of the Schengen Information System, otherwise known as the SIS. The SIS is a mega-database that is fed and consulted by the police, customs, border control authorities, visa-issuing authorities, vehicle registration authorities and judicial authorities, in other words, judges.

The data in the SIS is entered and consulted by the member states. They can, for example, enter data on wanted persons, persons who are not authorized to enter the Schengen area, missing persons, and data on stolen vehicles or certain wanted objects.

These data can be consulted by the competent authorities of all States when necessary for the performance of their tasks. What does this mean in practice? Let's take the example of a flight from Caracas to Paris. When the plane lands, French authorities, during border control, consult the SIS to find out if one or more people on the flight have been reported. If a passenger has been reported by the German authorities because they have committed a serious offense in Germany that justifies a refusal of entry, then the French authorities must in theory deny that passenger entry to the territory.

The SIS was the forerunner of an unprecedented deployment of computerized systems related to the entry and movement of people in the Schengen Area. The Eurodac system, for asylum applications, the visa information system, the entry and exit system to know when people have entered and when they have to leave, and the European Travel Information and Authorization System, known as ETIAS, were all created.

In addition to the computerized systems used on a daily basis by the national authorities, the States decided to create a European agency for the management of operational cooperation at the external borders, the FRONTEX Agency.

Created in 2004, the main mission of this agency is to help the Schengen States to manage their external borders efficiently. Its powers, means and missions have been continuously developed, so that Frontex now performs a large number of tasks, including monitoring migratory flows, carrying out risk analysis, assisting in the return of illegal immigrants, evaluating the capacity of Member States to deal with threats and problems at external borders, organizing joint operations or rapid interventions, assisting in search and rescue operations for people at sea, purchasing and managing technical equipments, monitoring respect for fundamental rights in all its activities, etc.

By 2027, Frontex should have a permanent contingent of 10,000 agents who can be mobilized to assist States. However, this increase in powers implies an increased responsibility for the Agency, particularly in the area of respect for human rights. This is a major issue that recent events have highlighted in the cases of illegal repression of migrants carried out in operations coordinated by Frontex. As we can see, Schengen has been constantly evolving, not only in legal terms but also in operational terms.

However, and despite these fundamental changes, the Schengen area is now weakened.

**#5 - Schengen: what’s next ?**

The Schengen Area is not an island isolated from the world. But it is a barometer of events shaking the planet in general and Europe in particular.

The Arab Spring, the migration crises, the terrorist attacks, the organized migrant intrusion (into Spain from Morocco or into Poland from Belarus), COVID and the war in Ukraine are all events that have had an impact on the functioning of Schengen.

The first reaction of the Schengen States to deal with the world's disorders/events? was and continues to be control intensification at Schengen’s external borders.

Thus, from amendments to an increase in the resources deployed by the States or by FRONTEX, the reinforcement of these controls is a common choice of action taken by States and European institutions alike.

To such an extent that one may wonder about the current nature of the Schengen project. Initially designed to establish an area of protection for those living within it as well as for those wishing to find refuge in it, the Schengen Area has gradually turned into a space sheltered from the world by an increasing number of walls, making access to the territory more and more complicated, especially for refugees.

In October 2022, a document of the European Parliament revealed that in the last few years more than 1500 km of walls and fences have been built on the external borders of the Schengen Area.

In the north between Estonia and Russia or Lithuania and Belarus, in the south between Hungary and Serbia, but also in France in Calais.

The second reaction concerns the reintroduction of internal border controls.

Some States (Austria, Germany, Denmark, Sweden, Norway) have re-established these controls to limit the movement of migrants within the Schengen Area. Others, such as France, have done so to combat terrorism.

Although States may re-establish these controls, particularly for reasons of public order, they may only do it temporarily.

However, since 2015 these controls have been carried out over a long period of time, or even almost continuously in the case of France, which is not authorized by the Schengen rules. However, by not respecting the rules, these States undermine Schengen from within. Indeed, if some States decide not to apply the common rules, why should the others apply them? In short, this opens the door to a fragmentation of Schengen.

In addition to this internal weakening, two external phenomena have continued to disrupt the functioning of Schengen. The first is obviously the COVID-19 pandemic, which demonstrated that rules had to be adopted to coordinate actions between States in the advent of a crisis. In other words, how to organize border crossings between States and from outside the Schengen Area in the occurrence of a virus.

The second phenomenon emerged at the border between the European Union and Belarus. At the end of 2021, several thousand peoples, in particular nationals from the Middle East, were taken by the Belarusian authorities to the border in order to get them into Poland and Lithuania. This instrumentalisation of people for political destabilization purposes has provoked reactions from European countries, leading to the proposal of new rules to combat this phenomenon.

As mentioned, Schengen is not an island isolated from the world and must adapt to the events that take place on its territory but also those that arise beyond the boundaries of the area.

Although the Member States are currently discussing the changes that need to be made to ensure that Schengen operates smoothly, for health reasons or in view of new threats to the area, these changes must not affect the rights and freedoms guaranteed to individuals.

Essentially, the challenge for the future of Schengen is to continue to maintain the difficult balance between freedom, security and respect for human rights. Stay tuned !