

Special report

## Free movement in the EU during the COVID-19 pandemic

Limited scrutiny of internal border controls, and uncoordinated actions by Member States



EUROPEAN  
COURT  
OF AUDITORS

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**Acronyms and abbreviations**

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## Executive summary

I The right of EU citizens to move freely within the territory of the EU Member States is one of the four fundamental freedoms of the European Union. In addition, the abolition of internal border controls in the Schengen area has allowed a border-free travel area, which further facilitates the movement of persons.

II Since 2020, the Member States have introduced internal border controls mainly to enforce the free movement restrictions imposed due to the COVID-19 pandemic. The Schengen legislation stipulates that internal border controls should be proportionate and a measure of last resort. The Commission remains responsible for monitoring whether they comply with EU legislation.

III The objective of this audit was to ascertain whether the Commission had taken effective action to protect the right of free movement of persons during the COVID-19 pandemic. This included the internal Schengen border controls, related travel restrictions and coordination efforts at EU level. We covered the period until the end of June 2021 and expect this audit to feed into the ongoing debate on the review of the Schengen system, including the revision of the Schengen Borders Code.

IV We conclude that while the Commission monitored the free movement restrictions imposed by the Member States, the limitations of the legal framework hindered its supervisory role. Furthermore, the Commission did not exercise proper scrutiny to ensure that internal border controls complied with the Schengen legislation. We found that the Member States' notifications of internal border controls did not provide sufficient evidence that the controls were a measure of last resort, proportionate and of limited duration. The Member States did not always notify the Commission of new border controls, or submit the compulsory *ex post* reports assessing, among other aspects, the effectiveness and proportionality of their controls at internal borders. When they were submitted, the reports did not provide sufficient information on these important aspects.

V The lack of essential information from the Member States affected the Commission's ability to carry out a robust analysis of the extent to which the border control measures complied with the Schengen legislation. However, the Commission had neither requested additional information from the Member States, nor issued any opinion on the border controls since the COVID-19 pandemic began.

**VI** Internal border controls were often implemented to enforce a variety of COVID-19 travel restrictions. Although the Commission is responsible for monitoring whether these restrictions comply with the principle of free movement, the limitations of the legal framework hampered the Commission's work in this area. Contrary to the case of internal border controls, the Member States were not required to inform the Commission about travel restrictions. In addition, the infringement procedure, which is the only tool the Commission has to enforce the right of free movement, is unsuitable for situations like the COVID-19 pandemic.

**VII** The Commission and the European Centre for Disease Prevention and Control (ECDC) issued timely guidance to facilitate the coordination of internal border controls and travel restrictions. However, the guidance on internal border controls lacked practical details, for example about how Member States should demonstrate compliance with the principles of proportionality and non-discrimination, as well as good practices in the management of internal borders during the COVID-19 pandemic. The ECDC does not comprehensively assess the usefulness and impact of its guidance, as it is not legally obliged to do so.

**VIII** The Commission launched important initiatives to coordinate measures affecting freedom of movement. It also launched a 'Re-open EU' portal to consolidate essential information on travel restrictions for citizens. However, even one year after the pandemic began, Member States' practices show that, responses were still mostly uncoordinated and were not always consistent with Commission guidance and Council recommendations.

**IX** Based on these conclusions, we recommend that the Commission should:

- exercise close scrutiny of internal border controls;
- streamline data collection about travel restrictions;
- provide more actionable guidance on the implementation of internal border controls.

**X** In addition, the ECDC should improve the monitoring of the extent to which its guidance is implemented.

# Introduction

## Freedom of movement for persons: a major EU achievement

**01** Free movement of persons is the right of European Union (EU) citizens and legally resident third-country nationals to move and reside freely within the territory of the EU Member States. It is one of the four fundamental freedoms of the EU (together with the free movement of goods, services and capital), and has been at the heart of the European project since its inception. The Treaty on European Union<sup>1</sup> (TEU) stipulates that “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured (...)”. Freedom of movement is further enshrined in the Treaty on the Functioning of the EU<sup>2</sup> (TFEU) and in the Free Movement Directive<sup>3</sup> (FMD).

**02** EU citizens value freedom of movement as a particularly significant achievement of EU integration. “The freedom to travel, study and work anywhere in the EU” is the most frequently mentioned aspect associated with the European Union, and was ranked first in all the 27 EU Member States, ahead of the euro and peace<sup>4</sup>.

**03** Like other fundamental rights, EU citizens’ right to free movement is not absolute. EU legislation allows EU citizens’ freedom of movement to be restricted due to public policy, public security or public health considerations<sup>5</sup>. Such limitations must be applied in compliance with the general principles of EU law, especially proportionality and non-discrimination.

**04** Free movement of persons within the EU is different from the abolition of internal border controls in the Schengen area, which has allowed a border-free travel area. This means that citizens can move freely within the Schengen Area without being

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<sup>1</sup> Article 3(2) TEU.

<sup>2</sup> Article 20(2)(a) and Article 21(1) TFEU.

<sup>3</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Free Movement Directive).

<sup>4</sup> Eurobarometer 95 – Spring 2021.

<sup>5</sup> Articles 27 and 29 of Directive 2004/38/EC.

subject to internal border controls. EU citizens enjoy free movement throughout the EU, including to and from EU Member States that have not (yet) abolished internal border controls. While internal border controls *per se* do not limit freedom of movement, in practice their absence facilitates the movement of persons.

## The Schengen area

**05** Border-free travel is governed by the Schengen Agreement, its Implementing Convention<sup>6</sup> and the Schengen Borders Code (SBC)<sup>7</sup>, the aim being to eliminate physical border controls between Schengen countries (referred to hereafter as “internal borders”). At present, 22 EU Member States, as well as Iceland, Norway, Liechtenstein and Switzerland, participate in Schengen, while some EU Member States do not: Ireland opted not to participate, and Bulgaria, Croatia, Cyprus, and Romania are Schengen candidate countries.

**06** Although the main purpose of the Schengen legislation is to abolish internal borders, it allows internal border controls to be temporarily reintroduced in the following major cases and in full compliance with the general principles of EU law, especially proportionality and non-discrimination:

- a serious threat to public policy or internal security in a Member State<sup>8</sup>;
- a serious threat to public policy or internal security in a Member State due to unforeseen events requiring immediate action<sup>9</sup>.

**07** *Figure 1* describes the process of reintroducing internal border controls in the Schengen area. It highlights the role and mandate of the Commission, and the Member States’ obligations.

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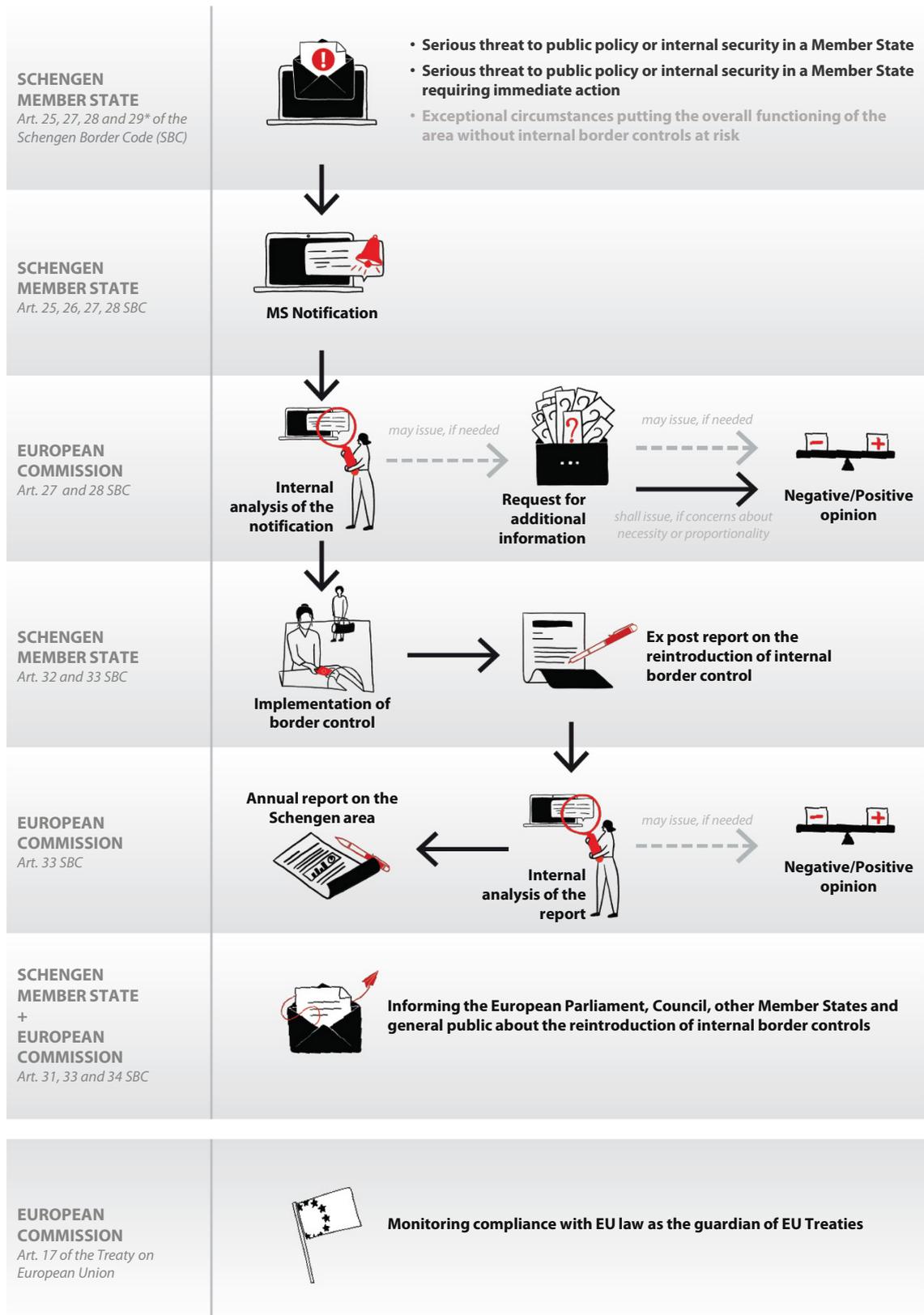
<sup>6</sup> Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; OJ L 239, 22.9.2000, pp. 13-18 and pp. 19-62.

<sup>7</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

<sup>8</sup> Articles 25 and 27 SBC.

<sup>9</sup> Article 28 SBC.

**Figure 1 – Standard workflow for internal border control reintroduction procedure**



\* specific procedure not depicted in this Figure

**08** In addition, under exceptional circumstances that put the overall functioning of the area without internal border controls at risk as a result of persistent serious deficiencies relating to external border control, the Commission may propose a recommendation<sup>10</sup>, to be adopted by the Council, to reintroduce internal border controls as a matter of last resort. Border controls may be introduced for a period of up to six months, and can be prolonged for additional six-month periods up to a maximum of two years. This mechanism was applied in 2016 when the Council recommended reintroducing internal borders in Denmark, Germany, Austria and Sweden due to the migration crisis and security threats<sup>11</sup>.

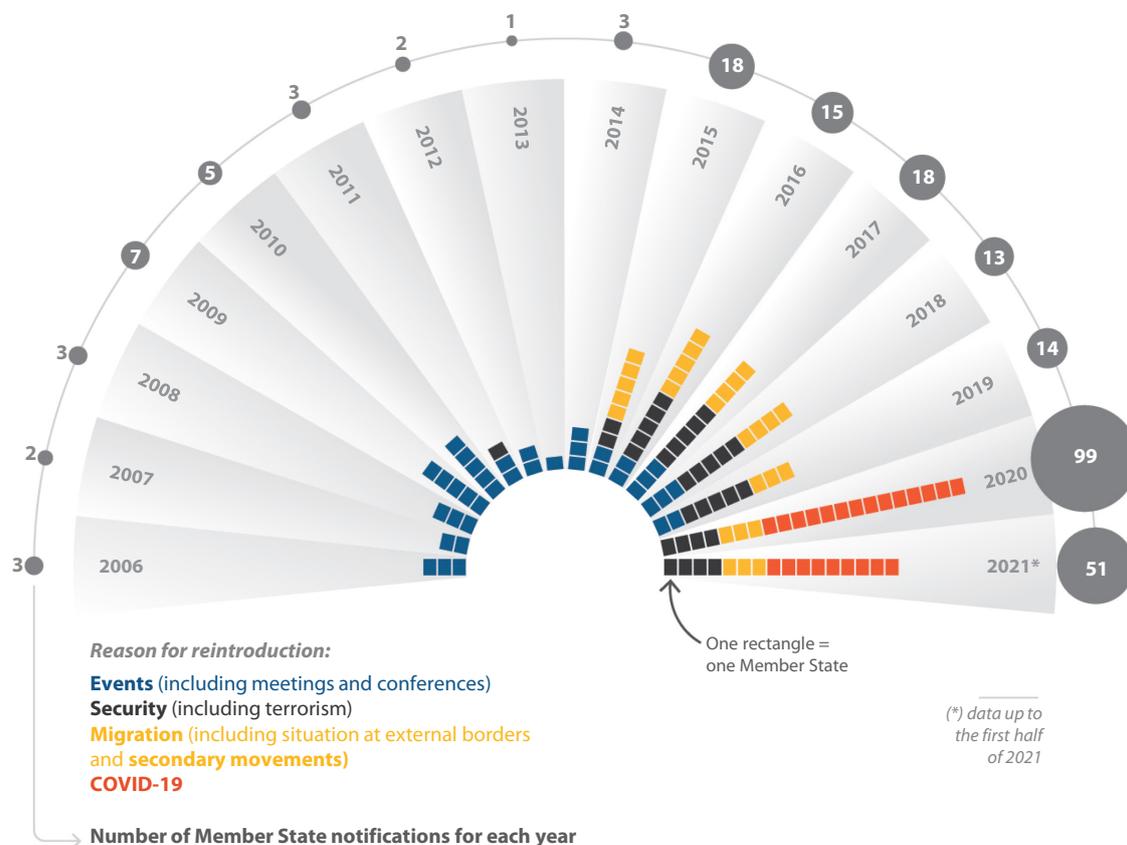
**09** The initial decisions to reintroduce internal border controls were made in response to clearly identifiable short events, in particular major sporting or political meetings (e.g. the European Football Championship in Austria in 2008 and the NATO Summit in France in 2009). Since 2015, several Member States have reintroduced internal border controls in response to perceived threats posed by migration (mainly due to weaknesses at the external Schengen borders and secondary movements of irregular migrants from the countries in which they first arrived to their countries of destination), or security threats (mainly terrorism). Since March 2020, most internal border controls have been introduced in response to COVID-19. [Figure 2](#) provides an overview.

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<sup>10</sup> Article 29 SBC.

<sup>11</sup> Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

**Figure 2 – EU Member States that reintroduced internal Schengen border controls between 2006 and 2021**



*N.B.:* Some Member States reintroduced border controls for several reasons in a given year.

*Source:* ECA, based on Member State notifications published on the [Commission's website](#).

## Internal border controls enforcing COVID-19 travel restrictions

**10** During the COVID-19 pandemic, Member States have taken measures to restrict freedom of movement within the EU in an attempt to limit the spread of the virus. Since March 2020, Member States' responses to the pandemic have taken different forms – often combined – including:

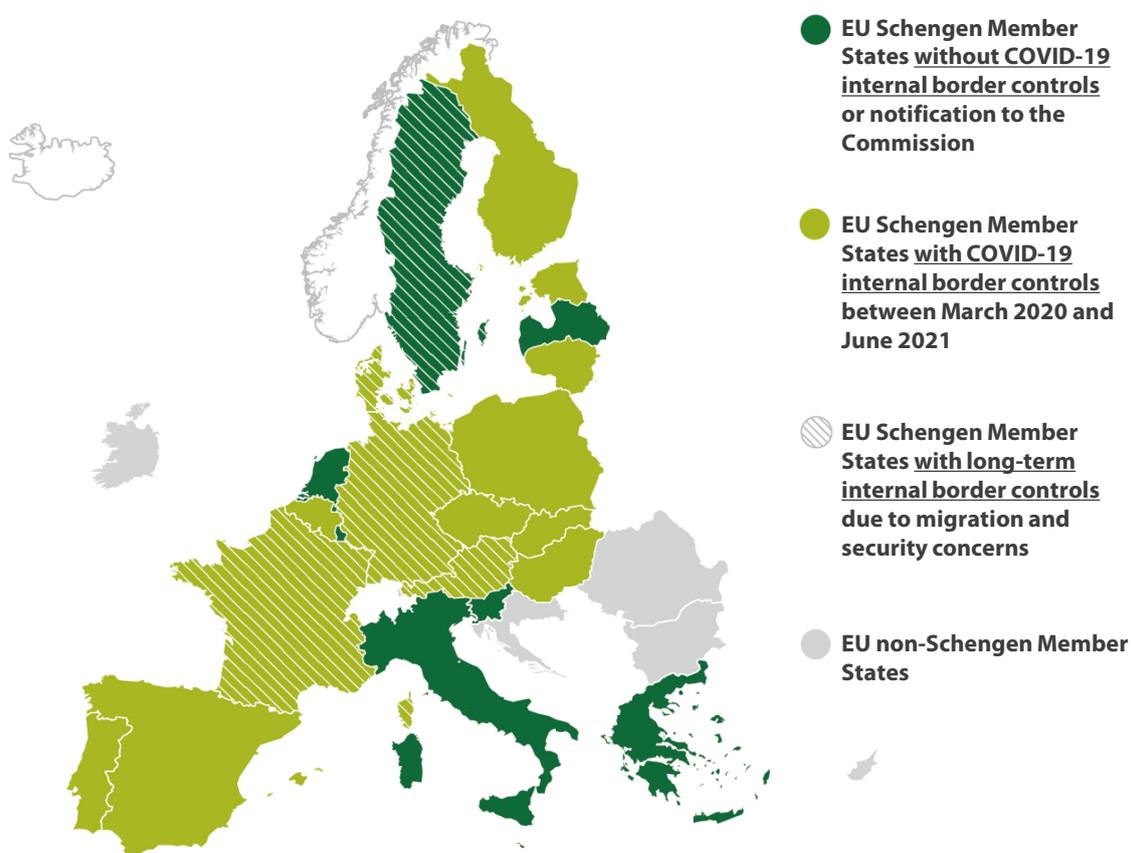
- cross-border travel restrictions, such as quarantine or a negative COVID-19 test requirement; and
- a ban on non-essential travel.

**11** In general, internal border controls can be used to check compliance with these restrictions, e.g. by checking justification for essential travel, possession of a valid COVID-19 certificate, completion of a passenger locator form, or registration for quarantine. They allow not only for a systematic compliance check when entering

national territory, but also for the possibility of refusing entry in the event of non-compliance. However, internal border controls in the Schengen area may be reintroduced only as a last resort, and the burden of proof to demonstrate their proportionality lies with the Member States.

**12** *Figure 3* provides an overview of internal border controls during the first waves of the pandemic, between March 2020 and June 2021.

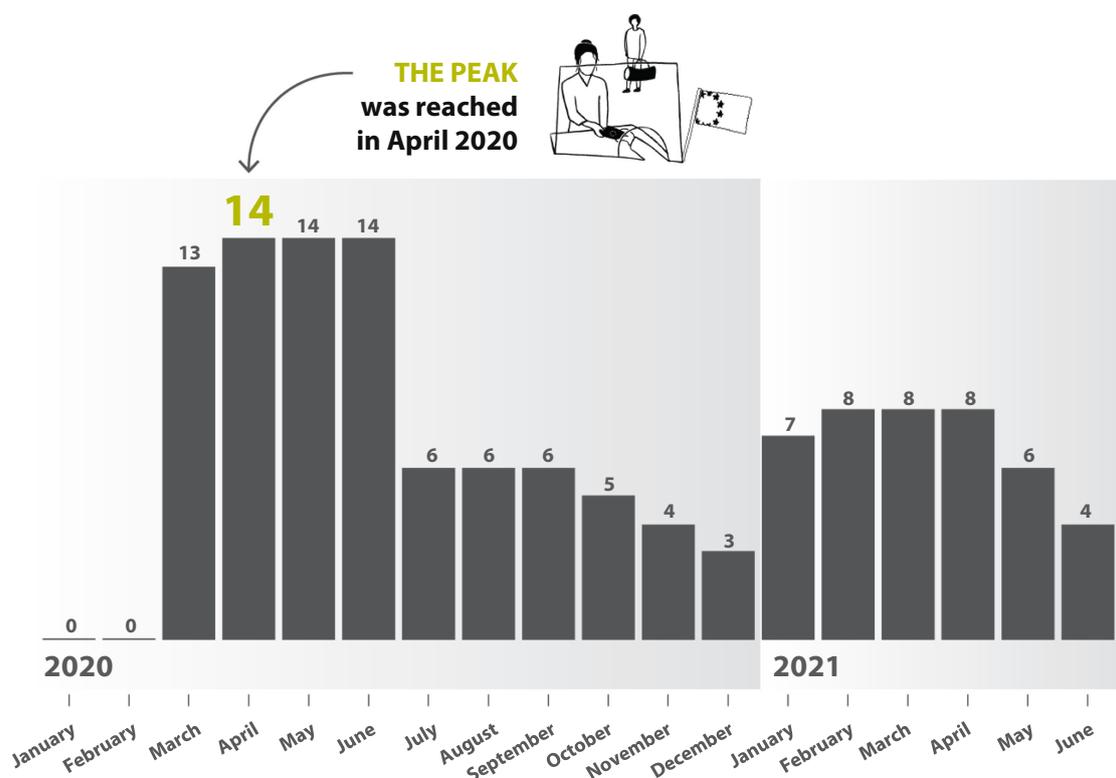
**Figure 3 – Overview of internal border controls between March 2020 and June 2021**



Source: ECA, based on Member State notifications published on the [Commission's website](#).

**13** According to the Commission, 14 EU Member States reintroduced internal Schengen borders to enforce COVID-19 travel restrictions. As the timeline in *Figure 4* shows, the peak was reached in April 2020.

**Figure 4 – Number of EU Member States with COVID-19-related internal Schengen border controls between March 2020 and June 2021**



Source: ECA, based on Member State notifications published on the [Commission's website](#).

## EU action during the COVID-19 pandemic

**14** Protecting public health is a national competence. This means that any decision to implement travel restrictions and to enforce them through border controls lies with national governments. However, the Commission remains responsible for monitoring whether these restrictions comply with EU legislation related to freedom of movement.

**15** Furthermore, the Commission – while promoting the general interest of the Union – should encourage cooperation between Member States. Member States should liaise with the Commission, and adopt coordinated health policies and programmes<sup>12</sup>. To this end, the Commission has taken various initiatives, consisting of guidance, communications and proposals for EU Council recommendations, with the aim of supporting coordination between the different Member States' practices.

<sup>12</sup> Articles 17 TEU and 168 TFEU.

**16** The Commission has also developed tools to facilitate the safe and free movement of persons, and to make COVID-19 travel restrictions more transparent and predictable for citizens. For instance, Re-open EU<sup>13</sup>, which is implemented by the Joint Research Centre, is a tool that aims to consolidate essential information on borders, available means of transport, travel restrictions, and public health and safety measures within the EU. The Commission has proposed and – together with Member States – developed the EU Digital COVID Certificate<sup>14</sup> to support a more coordinated approach to travel restrictions between Member States. The EU Digital COVID Certificate is a framework for issuing, verifying and accepting interoperable COVID-19 vaccination, test and recovery certificates to facilitate free movement during the pandemic. The Commission has also set up interoperability platforms to facilitate EU-wide contact-tracing through passenger locator forms and smartphone applications.

**17** In addition to the Commission, the European Centre for Disease Prevention and Control (ECDC) is an independent EU agency (i.e. not under the Commission’s direct control) whose mission is to strengthen Europe’s defences against infectious diseases. It covers a wide spectrum of activities, including surveillance, epidemic intelligence and scientific advice.

## Challenges to and future of the Schengen mechanism

**18** Although the Schengen area has never experienced a situation like the COVID-19 pandemic, the border-free travel zone has been challenged by the reintroduction of internal borders since 2015. The pandemic has come on top of pre-existing tensions caused by the migration crisis and terrorist threats, with the attendant risk of “temporary internal border controls becoming semi-permanent in the medium term”<sup>15</sup>.

**19** To address this situation, the Commission published a Schengen Strategy in June 2021<sup>16</sup>. Among the key actions in the Schengen area without internal border

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<sup>13</sup> <https://reopen.europa.eu/en>

<sup>14</sup> Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic.

<sup>15</sup> European Parliament resolution of 19.6.2020 on the situation in the Schengen area following the COVID-19 outbreak (2020/2640(RSP)), paragraph 12.

<sup>16</sup> A strategy towards a fully functioning and resilient Schengen area, COM(2021) 277 final.

controls, the Strategy presents: (i) political and technical dialogues with Member States that have reintroduced long-lasting controls at internal borders; (ii) a proposal for a Regulation amending the SBC; and (iii) codification of the guidelines and recommendations developed in relation to COVID-19. In December 2021, the Commission published its proposal for the amended SBC<sup>17</sup>.

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<sup>17</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, COM(2021) 891 final.

## Audit scope and approach

**20** The objective of this audit was to ascertain whether the Commission has taken effective action to protect the right of free movement of persons during the COVID-19 pandemic. To answer this main audit question, we asked two sub-questions:

- (1) Has the Commission effectively scrutinised internal Schengen border controls and travel restrictions?
- (2) Has the Commission facilitated coordinated action by Member States to mitigate the impact of internal Schengen border controls and travel restrictions?

**21** In recent years, our audit reports have covered the external border element of the Schengen Strategy: hotspots in Greece and Italy<sup>18</sup>, migration management (including asylum and relocation procedures)<sup>19</sup>, IT systems<sup>20</sup>, Frontex operations<sup>21</sup>, returns and readmission policy<sup>22</sup>, and Europol's support to fight migrant smuggling<sup>23</sup>.

**22** This audit looks into the internal border element of the Schengen Strategy. In particular, we examined the Commission's scrutiny of the internal border controls and travel restrictions introduced by the Member States, as well as the actions taken by the Commission at the start of the pandemic to facilitate coordinated action. We expect this audit to feed into the ongoing debate on the review of the Schengen system, including the revision of the Schengen Borders Code. The audit covers the period from March 2020 to June 2021 (see [Figure 5](#)).

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<sup>18</sup> Special report 06/2017: EU response to the refugee crisis: the 'hotspot' approach.

<sup>19</sup> Special report 24/2019: Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results.

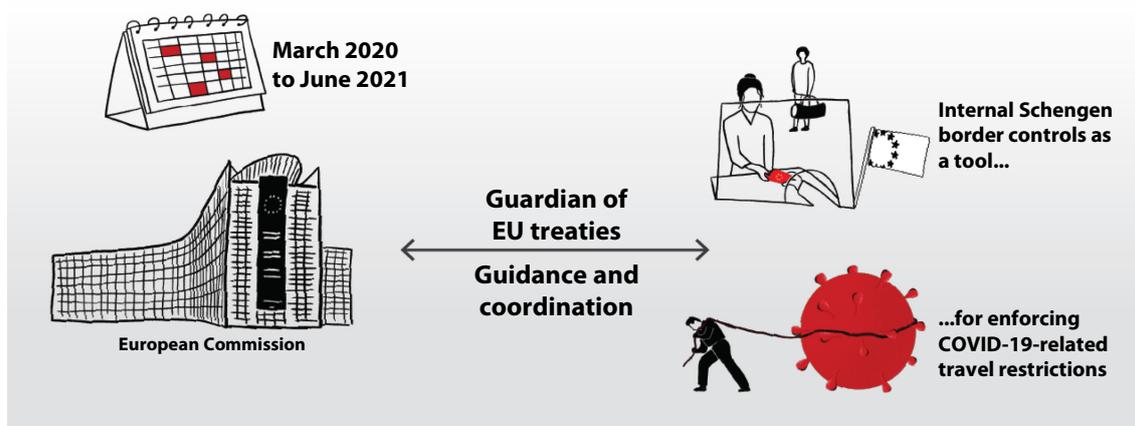
<sup>20</sup> Special report 20/2019: EU information systems supporting border control – a strong tool, but more focus needed on timely and complete data.

<sup>21</sup> Special report 08/2021: Frontex's support to external border management: not sufficiently effective to date.

<sup>22</sup> Special report 17/2021: EU readmission cooperation with third countries: relevant actions yielded limited results.

<sup>23</sup> Special report 19/2021: Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result measurement.

**Figure 5 – Focus of the audit**



Source: ECA.

**23** We carried out the audit via desk review, written questionnaires and interviews with relevant stakeholders, such as the Commission, the ECDC and the Joint Research Centre. We performed a documentary review and analysis of:

- relevant EU legislation, including the FMD and the SBC, to identify the key regulatory requirements and the responsibilities of the different stakeholders;
- all 150 notifications by EU Member States of the temporary reintroduction of internal border controls between March 2020 and June 2021, and all available *ex post* reports by Member States related to these notifications;
- a sample of 10 Member States' notifications and the Commission's related internal documentation for internal border controls reintroduced between 2015 and 2019. We examined these notifications to compare the Commission's scrutiny of internal border notifications before and after the COVID-19 pandemic;
- the Commission's internal documents, including a review of 33 meeting reports of the Corona Information Group (see paragraph 69), and monitoring of the temporary reintroduction of internal border controls and travel restrictions.

In addition, we met representatives of six national representations to the EU, selected to obtain balanced geographical coverage (Belgium, Denmark, Germany, Lithuania, Portugal and Slovenia).

**24** The audit scope focuses on the EU citizen's perspective when travelling within the EU. Specific rights for third-country nationals, including rights to ask for international protection and to seek asylum in the EU, are not included. Also, the audit did not cover non-EU Schengen countries (Iceland, Liechtenstein, Norway and Switzerland).

# Observations

## The Commission's supervision of Member States' actions was limited, and hampered by the legal framework

**25** In the paragraphs below, we examine whether:

- (a) the Commission properly scrutinised the Member States' temporary reintroduction of internal border controls during the COVID-19 pandemic. This included not only the border controls triggered by the pandemic, but also those triggered by the preceding migration crisis and security threats, and which were still in place during the pandemic. Furthermore, we examined whether the Commission made full use of the possibilities offered by the legal framework to enforce Member States' compliance with EU legislation;
- (b) the Commission assessed in a systematic and timely manner whether the travel restrictions imposed by the Member States complied with the applicable EU legislation. Furthermore, we examined whether the Commission took action when it identified potential issues of non-compliance during the period covered by the audit.

### The Commission did not properly scrutinise the reintroduction of internal border controls

**26** The Schengen legal provisions lay down strict reasons, maximum durations and procedural requirements for reintroducing internal border controls. The burden of proof lies with the Member States to demonstrate that there are no (better) alternatives to border controls, and that the use of border controls is justified as a last resort. When reintroducing internal borders, the Member States are required to notify the Commission. The notifications need to be timely, and contain all the information necessary for the Commission's assessments.

**27** When a Member State notification does not contain sufficient information, the Commission should request additional details. If the Commission has concerns about compliance with EU law, it may issue an opinion to publicly express its position on the internal border control in question. Furthermore, if the Commission has concerns about the proportionality of and need for the measure, "it shall issue an opinion to that effect" (see paragraphs [06-08](#) and [Figure 1](#)).

## Border controls introduced before the pandemic

**28** The Council recommended<sup>24</sup> to Denmark, Germany, Austria and Sweden, which had been severely affected by the migration crisis and security threats, that they should retain proportionate temporary border controls for a maximum period of six months. This recommendation was made three more times (in November 2016, and in February and May 2017<sup>25</sup>) until November 2017.

**29** We examined a sample of internal border notifications issued between 2015 and 2019 to compare the Commission's scrutiny before and after the COVID-19 pandemic (see *Annex I*). We found that four of the 10 notifications examined (those issued since November 2017) did not contain sufficient information to allow the Commission to assess the proportionality of the respective border control measures. In particular, they lacked justification that they were indeed a last resort in the absence of any alternative. Although the Commission requested additional information from the Member States in all four cases, the replies it received were still insufficient to allow a robust assessment.

**30** Since 2020, the content of Member States' notifications relating to migration or security threats has continued to be insufficient for the Commission to assess the proportionality of border controls (see paragraphs **37** and **38**). However, due to a significant increase in COVID-19-related notifications, the Commission has stopped requesting additional information.

**31** According to the Schengen Borders Code, internal border controls can be reintroduced for a maximum of two years. Five Member States (Denmark, Germany, France, Austria and Sweden) exceeded this period by changing the legal grounds every two years, or by claiming that a new notification represents a new border control (rather than an existing control being prolonged). Despite this, the Commission issued only one joint favourable opinion on the proportionality and necessity of internal border controls for Austria and Germany in October 2015<sup>26</sup>.

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<sup>24</sup> Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

<sup>25</sup> Council Implementing Decision (EU) 2016/1989 of 11 November 2016, Council Implementing Decision (EU) 2017/246 of 7 February 2017 and Council Implementing decision 2017/818 of 11 May 2017.

<sup>26</sup> The Commission's opinion of 23.10.2015, C(2015) 7100 final.

**32** All Member States are required to report to the European Parliament, the Council and the Commission on the implementation of border controls within four weeks of their being lifted<sup>27</sup>. However, the five Member States with long-term border controls mentioned in paragraph **31** have still not submitted an *ex post* report six years after they were reintroduced. The Commission took no action to acquire information on the implementation of these controls.

**33** For the Commission, the extent and duration of long-term internal border controls is neither proportionate nor necessary<sup>28</sup>. The Commission has the mandate and obligation to monitor compliance with EU law, and to act in cases of potential non-compliance (see paragraph **14**). It can launch infringement procedures, but has not yet done so despite its concerns that internal border controls do not comply with EU law.

**34** The Commission has instead opted for soft measures, i.e. dialogue with Member States and coordination, but with no apparent results, as the internal border controls reintroduced more than six years ago are still in place. In the June 2021 Schengen Strategy, the Commission expressed its intention to make use of the legal means at its disposal in cases where Member States disproportionately prolong controls at internal borders.

#### **Border controls related to the COVID-19 pandemic**

**35** Although the Schengen Borders Code does not specifically mention a threat to public health as a reason for introducing controls at internal borders, in view of the COVID-19 pandemic the Commission accepted that a public health threat could constitute a threat to public policy, thus allowing a Member State to reintroduce controls of this kind. In such a case, though, the Member State needs to satisfy a strict requirement that internal border controls are not only a measure of last resort, but are also proportionate and limited in duration.

**36** While border controls can be used to check the essential nature of travel, together with testing and registration for quarantine (but not quarantine itself), other

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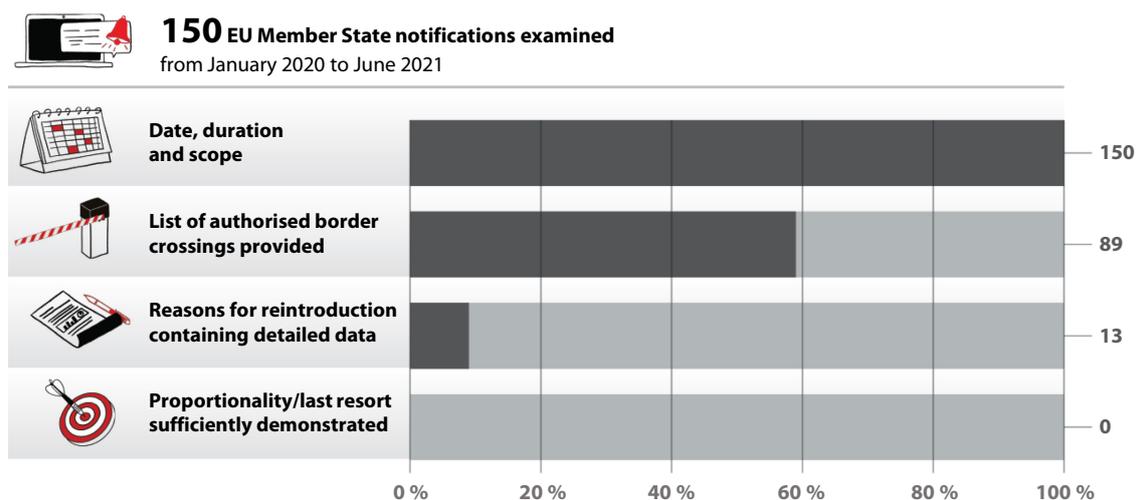
<sup>27</sup> Article 33 SBC.

<sup>28</sup> Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, SWD(2021) 462 final.

checks could be made by police<sup>29</sup> or health officials<sup>30</sup> (e.g. temperature screening) instead of border controls to limit the spread of the virus.

**37** We have reviewed all 150 Member State notifications of internal border controls that were submitted to the Commission between March 2020 and June 2021, of which 135 related exclusively to COVID-19, six to COVID-19 and migration or security; and the remaining nine to migration and/or security (see paragraph 30). Our review shows that all notifications indicated the dates, duration and scope of border controls. However, they did not provide sufficient evidence (backed by comprehensive statistical data and comparative analysis of various alternatives to border controls) to demonstrate that the border controls were indeed a last resort. Furthermore, they often failed to list the authorised border crossings to which the controls would apply. For more details, see [Figure 6](#).

**Figure 6 – Review of EU Member State notifications**



Source: ECA.

**38** Our review shows the same issues as for the notifications relating to the migration crisis and security threats before the COVID-19 pandemic (see paragraph 29). Although the information the Member States provided was insufficient, the Commission has neither requested additional information, nor issued any opinion since the COVID-19 pandemic began as required by Article 27 of the SBC. We conclude that this lack of essential information from the Member States has

<sup>29</sup> Commission Recommendation (EU) 2017/820 of 12 May 2017 on proportionate use of police checks and police cooperation in the Schengen area, C(2017) 3349 final.

<sup>30</sup> Paragraph 20 of the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, 16.3.2020 C(2020) 1753 final.

affected the Commission's ability to carry out a robust legal analysis of individual border control measures.

**39** In addition, the Commission has no robust monitoring system in place to identify cases of border controls of which the Member States have not provided notification. During the audit, the Commission stated that it was not aware of any such cases, but **Box 1** below shows two examples we were able to identify.

### Box 1

#### Examples of COVID-19-related border controls of which the Commission was not notified

In summer 2020 and spring 2021, Slovenia reintroduced COVID-19-related border controls at all its borders. The controls carried out by border police were mainly used to ensure registration for mandatory quarantine or verification of a negative COVID-19 test. The Commission was not notified of these controls.

In spring and summer 2021, Slovakia reintroduced border controls. They were used to verify registration first for mandatory quarantine and later for the COVID-19 certificate. Although Slovakia notified the Commission of border controls in 2020, they did not do so in 2021.

In both cases, in the absence of formal notification, the Member States did not report on the implementation of their border controls, and did not demonstrate that they were proportionate or necessary.

**40** The Commission did not obtain all the *ex post* reports it was supposed to receive within four weeks of the end of internal border controls (see also paragraph **32**). **Table 1** lists the Member States that did not submit *ex post* reports on COVID-19-related internal border controls. The Commission did not provide evidence that it had asked these Member States to send the missing notifications or *ex post* reports.

**Table 1 – List of Member States that had not submitted *ex post* reports on COVID-19 internal border controls by September 2021**

Member State	Situation
Belgium	<i>Ex post</i> reports submitted for border controls in 2020, but not (yet) for border controls in 2021.
Portugal	
Denmark	No <i>ex post</i> reports submitted for COVID-19 border controls, either in 2020 or 2021.
Germany	
France	
Austria	
Poland	No notifications of border controls in 2021. We therefore assume that no <i>ex post</i> reports will be submitted.
Slovakia	
Slovenia	No notification of border controls sent to the Commission, either in 2020 or 2021. We therefore assume that no <i>ex post</i> reports will be submitted.

Source: ECA, based on the review of *ex post* reports obtained from the Commission.

**41** Our review of all the 12 *ex post* reports received by the Commission for the March 2020 – June 2021 period shows that the reports vary greatly from general statements to detailed statistics, but most of them did not fully comply with legal requirements regarding the assessment of proportionality<sup>31</sup>. Ten of the 12 reports did not cover this aspect sufficiently, but only very briefly and in general terms (see **Box 2**). Only three reports mentioned the possible use of alternative measures, but again only very briefly.

## Box 2

### Example of insufficient justification of proportionality in *ex post* reports

Report 1 covering March – June 2020 in Hungary: “The measures introduced were effective, proportionate and crucial in limiting the spread of the epidemic, given that the number of cases in Hungary was kept low.”

<sup>31</sup> Article 33 SBC.

Report 2 covering March – June 2020 in Portugal: “Considering the global epidemiological situation, the main purpose and the objectives of the temporary reintroduction was the safeguard of public health and the containment of contagion of the COVID-19 virus. In this context, the reintroduction of internal border controls was limited in operational and geographic standards to the needs of guaranteeing the protection of public health and internal security.”

Report 3 covering March – June 2020 in Spain: “As expected, due to the very objectives pursued with the reintroduction of controls, the free movement of persons has been seriously affected. However, if the measures adopted within Spanish territory, in the other Member States and Schengen associated States, and at the other internal borders of the Schengen area are taken into account, the measure can be considered to have been proportionate.”

**42** None of the reports described the measures put in place to ensure compliance with the principle of non-discrimination, especially as regards the equal treatment of EU citizens, irrespective of nationality. Although not explicitly required by the Schengen Borders Code, this information is relevant for assessing the legality of border controls put in place to enforce restrictions in the form of travel bans based on nationality or residence (see [Box 3](#)).

### Box 3

#### **Example of a border control used to enforce a travel ban, and its potential impact on the principle of non-discrimination**

In autumn 2020, Hungary used its internal border controls to enforce travel restrictions by applying different rules for Hungarian citizens than for other EU citizens, irrespective of the pandemic situation prevailing in EU Member States at the time.

From 1 September 2020, Hungary decided not to allow foreign nationals, including EU citizens, to travel to the country. The only exemption granted was for ‘Visegrad Four’ (i.e. Czech, Polish and Slovak) citizens who could provide evidence of a negative COVID-19 test.

On 1 October 2020, mandatory quarantine upon entry was introduced, but Hungarian citizens and family members returning to Hungary from Czechia, Poland and Slovakia were exempt from quarantine if they presented a negative test result.

Also, citizens of Czechia, Poland and Slovakia who booked accommodation in Hungary during October were excluded from quarantine rules if they presented a negative PCR test result upon arrival in Hungary.

**43** Lastly, as regards comprehensive annual reporting on the overall implementation of Schengen (including the implementation of internal border controls and the Commission's views on the justification for them), the Commission has not issued an annual report on the functioning of the area without internal borders since 2015<sup>32</sup>.

**44** The European Parliament called on the Commission to exercise appropriate scrutiny over the application of the Schengen *acquis*, to make use of its prerogatives to request additional information from Member States, and to enhance its reporting to the European Parliament on how it exercises its prerogatives under the Treaties<sup>33</sup>.

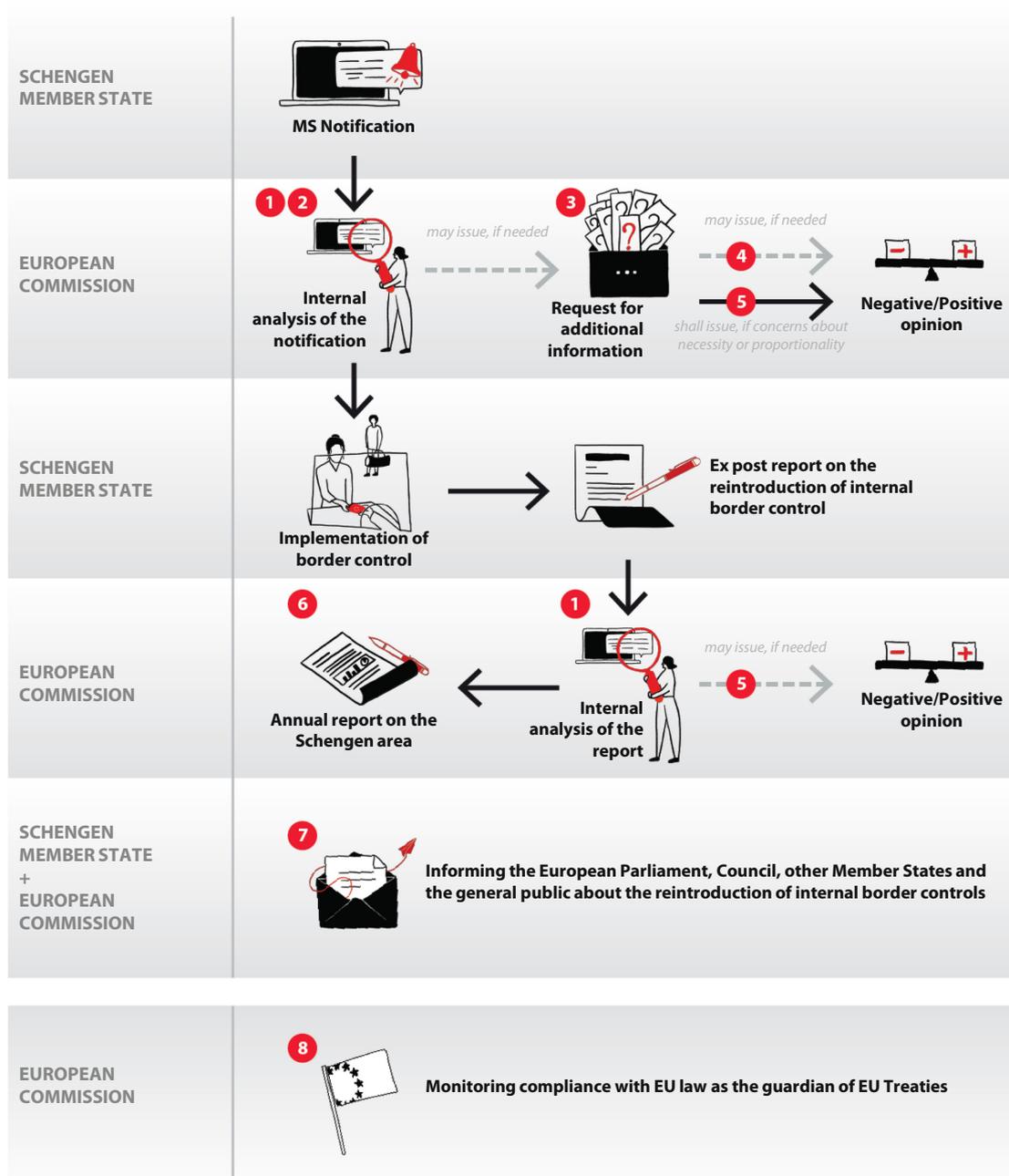
**45** *Figure 7* shows the weaknesses we found in the Commission's scrutiny of the internal Schengen borders.

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<sup>32</sup> As required by [Article 33 SBC](#).

<sup>33</sup> For example, [European Parliament resolution of 19.6.2020 on the situation in the Schengen area following the COVID-19 outbreak \(2020/2640\(RSP\)\)](#).

Figure 7 – Weaknesses found in internal border control reintroduction



- 1 Insufficient information for a robust internal analysis (paragraphs 30, 32, 37-38 and 40-42)
- 2 No monitoring of border controls not notified to the Commission (39)
- 3 No request for additional information since 2020 (30, 32, 38 and 40)
- 4 No opinion issued since 2015 (31 and 38)

- 5 No opinion issued in the event of concerns about proportionality (31 and 33)
- 6 No annual report on the Schengen area since 2015 (43)
- 7 Calls from EU Parliament to improve reporting (44)
- 8 Lack of enforcement action/infringement (33-34)

Source: ECA.

## The Commission supervises travel restrictions, but its work is hampered by limitations in the legal framework

**46** Member States reacted to the pandemic by imposing travel restrictions on the grounds of protecting public health (see paragraph [10](#)). We found that, overall, the Commission does not have a robust legal framework to assess whether the Member States' travel restrictions complied with EU law. The main reasons are the following:

- the substantial powers and prerogatives of Member States in terms of public health under EU law, an area which does not fall within the EU's exclusive or shared competence<sup>34</sup> and Member States determining their own health policies<sup>35</sup>;
- the FMD<sup>36</sup> does not require Member States to notify the Commission of, or report on, the measures they adopt under this directive. This is due to the functioning of the FMD in general, where restrictions on free movement apply on the basis of an individual assessment and are subject to judicial control. As there is no obligation, Member States are free to decide whether or not they will report on the measures adopted, including travel restrictions, and what form that reporting will take. This increases the risk that the information the Commission receives about travel restrictions is not complete;
- the non-binding nature of the Council Recommendations<sup>37</sup>, which is the main policy document for a coordinated approach to restrictions on free movement in response to the COVID-19 pandemic, and thus includes common principles agreed by the Member States when implementing travel restrictions;
- the unprecedented nature of the COVID-19 pandemic and its rapid evolution.

**47** In addition, the only tool the Commission has to ensure that travel restrictions comply with the right of free movement is the infringement procedure, which is not suitable in the context of a pandemic. This is due to the length of legal proceedings (which often take several years at the European Court of Justice), combined with the short-term and variable nature of the measures taken by the Member States during

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<sup>34</sup> See [Article 3 TFEU](#), [Article 45\(3\) TFEU](#), and [Articles 27 and 29 FMD](#).

<sup>35</sup> See [Articles 4\(2\)\(k\) and 6\(a\) TFEU](#).

<sup>36</sup> [Directive 2004/38/EC](#).

<sup>37</sup> [Council Recommendations \(EU\) 2020/1475 of 13.10.2020](#), [\(EU\) 2021/119 of 1.2.2021](#), [EU 2021/961 of 14.6.2021](#) and [\(EU\) 2022/107 of 25.1.2022](#).

the pandemic. Previous Court rulings<sup>38</sup> have determined that the infringement procedure becomes inadmissible when the breach disappears. As it is very unlikely that the measures that the Commission currently considers to be non-compliant will still be in force several years from now, this means that a non-compliant Member State will not be sanctioned).

**48** When monitoring the travel restrictions imposed by the Member States, the Commission used several sources of information, such as national legislation posted on government websites, direct contact with the Member States, information available in the media, or complaints about specific problems from other Member States, citizens or organisations.

**49** Within the limitations of the legal framework, the evidence we obtained shows that the Commission assessed the travel restrictions in a systematic and timely manner when it received notification of them. However, we found that the data reported by the Member States were often not comparable, and contained information gaps. This made it more difficult for the Commission to obtain a timely and accurate picture of the travel restrictions the Member States had imposed, and thus to fulfil its compliance monitoring duties (see example in [Box 4](#)).

#### **Box 4**

##### **Examples of problems with the data reported by the Member States**

The Commission's monitoring in June 2021 was based on the information received from national authorities. It included the question "Do you already apply the mechanism established by the Council Recommendations (common map, thresholds, etc.)?" Eight Member States did not reply to this question (Bulgaria, Croatia, Italy, Hungary, Netherlands, Austria, Poland and Slovakia).

In June 2021, the Commission also mentioned difficulties with collecting complete and comparable data at EU level in its communication on the lessons learned from the COVID-19 pandemic<sup>39</sup>.

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<sup>38</sup> See Case C 288/12 (paragraph 30), Case C 221/04 (paragraphs 25 and 26), and Case C-20/09 (paragraph 33).

<sup>39</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Drawing the early lessons from the COVID-19 pandemic, COM(2021)-380 final.

**50** Difficulties were encountered not only by the Commission, but also by the ECDC. The Council Recommendation on a coordinated approach to restricting free movement in response to the COVID-19 pandemic<sup>40</sup> requires the ECDC to publish weekly maps of risk areas. These maps<sup>41</sup> disseminate data on COVID-19 transmission in the different areas, and aim to support the Member States in their decision-making on free movement. The Council Recommendation required Member States to report data at regional level on a weekly basis. After six months (in May 2021), 12 Member States had still not complied with this requirement.

### **Despite Commission and ECDC efforts, Member States' actions were mostly uncoordinated**

**51** As the EU had no health emergency framework in place, the Member States had to respond quickly to a constantly evolving health situation. Although responsibility for implementing COVID-19 travel restrictions lies solely with the Member States, the Commission's mandate is to liaise with the Member States to facilitate a coordinated approach to these restrictions so as to minimise the impact on cross-border travel within the EU (see paragraph 15).

**52** In this section, we examine whether:

- (a) the Commission and the ECDC issued relevant guidance, opinions and recommendations on a timely basis to facilitate coordination of the Member States' actions, and adapted them to take account of new developments; and
- (b) the Commission's and the ECDC's efforts resulted in a more consistent and better coordinated application of travel restrictions and internal border management by the Member States.

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<sup>40</sup> Council Recommendation (EU) 2020/1475.

<sup>41</sup> <https://www.ecdc.europa.eu/en/covid-19/situation-updates/weekly-maps-coordinated-restriction-free-movement>

## The Commission and the ECDC issued relevant guidance on a timely basis to facilitate coordination at EU level

### The Commission

**53** Since the start of the pandemic, the Commission has issued extensive guidance documents for the Member States in the form of communications, guidelines and proposals for Council recommendations. These have covered various aspects of freedom of movement and COVID-19 measures (see [Annex II](#)).

**54** As regards EU guidance on border controls, the two main areas covered by the Commission were the ban on non-essential travel to the EU (external borders) and guidelines on border management (internal borders), and its subsequent communication on the gradual lifting of border controls. Guidance on the ban on non-essential travel to the EU lies outside the scope of this audit (see paragraph [22](#)).

**55** The guidelines on border management were published on 16 March 2020<sup>42</sup> in the early days of the pandemic, and covered the main aspects of border management (i.e. border control measures at internal and external borders, health-related measures, and the transport of goods). These guidelines reminded the Member States of basic legal principles, including proportionality and non-discrimination, and contained a dedicated section on internal border controls which acknowledged that such controls could be reintroduced, “in an extremely critical situation”<sup>43</sup>, as a reaction to COVID-19. We consider this guidance to be timely and relevant.

**56** However, we identified the following weaknesses in the Commission’s guidance:

- the March 2020 guidelines did not provide detailed advice on how the Member States could ensure (and demonstrate) that their border controls complied with the general principle of proportionality in the specific context of the pandemic;
- there was no practical guidance, including examples of good practice in border management throughout the pandemic. For example, the Practical Handbook for Border Guards, which serves as a user guide for border guards when conducting

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<sup>42</sup> Covid-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services, 16.3.2020 C(2020) 1753 final.

<sup>43</sup> Paragraph 18 of the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, 16.3.2020 C(2020) 1753 final.

their border control activities<sup>44</sup>, has not been updated to take account of the pandemic (except for incorporating the certificate for international transport workers);

- o certain terms used in the guidance were not well defined in the context of a pandemic. The March 2020 *Guidelines for border management* mention health checks, of which the Commission does not need to be notified, as a potential alternative to border controls<sup>45</sup>. However, the difference between border controls and health checks at the borders in a COVID-19 context has not been clearly defined. There is therefore a risk that Member States may implement health checks which are de facto border controls, but which are not reported to the Commission; and
- o the term ‘border closure’ was also frequently used in the Commission and ECDC guidance and in the Council recommendations. The term is not actually defined in the Schengen Borders Code, and is potentially misleading for the general public travelling within the Schengen area, because intra-EU borders have not been fully closed. Only entry (and occasionally exit) was restricted, or certain border crossings were temporarily closed.

**57** In addition to the guidance on border management, the Commission issued extensive guidance on various aspects relating to freedom of movement (see [Annex II](#)). This included specific issues affecting workers and seasonal workers, ‘Green Lanes’ (the availability of goods and essential services), transport services and connectivity, air cargo operations, repatriation and travel arrangements for seafarers, passengers and other persons on board ships, tourism, serious cross-border threats to health, and the use of rapid antigen tests.

**58** Of particular importance were the Commission’s proposals for the Council Recommendations for a coordinated approach to restrictions on free movement in response to the COVID-19 pandemic<sup>46</sup>. In these documents, the Member States agreed on common criteria for assessing regional epidemiological conditions. They also agreed

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<sup>44</sup> Annex to the Commission Recommendation C(2019) 7131 final of 8.10.2019 establishing a common “Practical Handbook for Border Guards” to be used by Member States’ competent authorities when carrying out the border control of persons and replacing Commission Recommendation C(2006) 5186 of 6 November 2006.

<sup>45</sup> Paragraph 20, C(2020) 1753 final, 16.3.2020.

<sup>46</sup> COM(2020) 499 final, 4.9.2020; COM(2020) 849 final, 18.12.2020 and COM(2021) 232 final, 3.5.2021.

to use a common colour map of the regions and countries within the European Economic Area: from green to yellow and red according to their rates of COVID-19 notifications and testing, and the percentage of positive tests. The need to adapt to the evolving situation was reflected in the two updates adopted in February and in June 2021<sup>47</sup>.

**59** The Commission also acted swiftly to provide support for tackling issues relating to freedom of movement for specific categories of persons, in particular transport personnel and seasonal workers. As early as March 2020, it issued practical guidelines supporting the principle that all EU internal borders should stay open to freight, and that supply chains for essential products must be guaranteed<sup>48</sup>. In July 2020, the Commission issued similar guidelines to support seasonal workers<sup>49</sup>.

**60** One major achievement by the Commission in this area was establishing the ‘Green Lanes’ concept in March 2020<sup>50</sup>, thereby ensuring the continuous flow of goods across the EU and the free movement of transport personnel which were affected by the reintroduction of internal border controls, particularly in the early days of the pandemic. The Commission, in cooperation with the Member States, set up a National Transport Contact Points Network that proved to be an effective tool for triggering quick, coordinated action between transport ministries and the Commission (see [Box 5](#)).

## Box 5

### Green Lanes: an example of good practice

To support the free movement of transport workers and the flow of goods across the EU, the Commission worked with the EU Agency for the Space Programme on developing a “green lane” mobile app (see images below). As well as allowing lorry drivers and authorities to track border crossing times at the EU’s internal borders,

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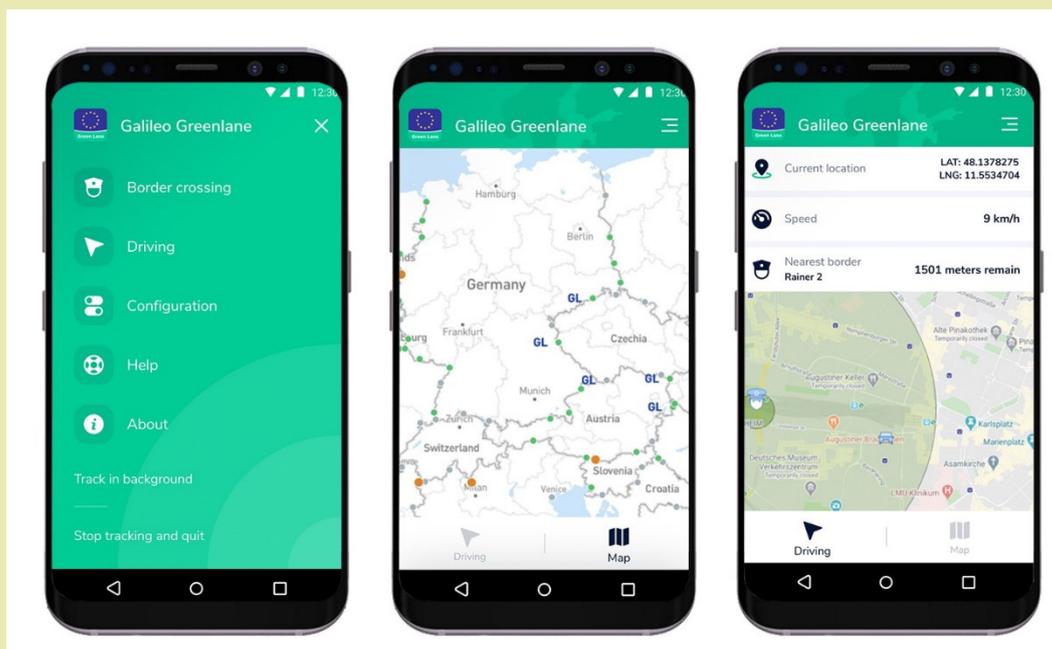
<sup>47</sup> Council Recommendations (EU) 2021/961 of 14.6.2021 and (EU) 2021/119 of 1.2.2021.

<sup>48</sup> Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, C(2020) 1897 final.

<sup>49</sup> Communication from the Commission Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak, C(2020) 4813 final.

<sup>50</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_510](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_510)

the app also tracks average border crossing times each day covering all the 178 border crossing points along the internal TEN-T network and several border crossing points at the external border of the EU. By checking real-time traffic, drivers can take informed decisions about when and where to cross each border, and authorities are able to plan ahead to minimise the impact of congestion or traffic disruption.



Source: EU Agency for the Space Programme.

**61** On 15 June 2020, the Commission launched a web platform to support the safe re-opening of travel and tourism across Europe ('Re-open EU'<sup>51</sup>). The platform is based on the voluntary information that EU countries provide about travel restrictions, and public health and safety measures, and aims to rebuild confidence in travel in the EU by informing citizens about the restrictions that apply in each Member State, the aim being to facilitate their travel plans<sup>52</sup>.

**62** Although this is a very positive initiative by the EU, its success depends on cooperation by the Member States. In particular, Member States should regularly

<sup>51</sup> <https://reopen.europa.eu/en>

<sup>52</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1045](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1045)

provide official information that is complete and up to date. We also raised this issue in our special report on air passenger rights during the COVID-19 pandemic<sup>53</sup>.

**63** As at 5 July 2021 (i.e. more than one year after Re-open EU was launched), nine Member States (Bulgaria, Denmark, Germany, Estonia, France, Romania, Slovenia, Finland and Sweden) were still not providing updated information. The risk here is that EU citizens may question the usefulness of the tool when they encounter problems at the borders, because the information they have used to plan their journey is incorrect or outdated.

### **The European Centre for Disease Prevention and Control**

**64** During the audited period, the ECDC published 27 risk/threat assessments and more than 70 guidance and technical reports on the pandemic. Its first travel guidance dates back to May 2020. The ECDC also provided input for the Commission's guidance on border controls and travel restrictions.

**65** In May 2020, the ECDC issued guidance stating that border closures could delay the introduction of the virus into a country. However, such closures would have to be almost total and be implemented rapidly during the early phases of an epidemic, something which the ECDC believed would only be feasible in specific contexts (e.g. for small, isolated island nations)<sup>54</sup>. In practice, however, Member States did not always follow this guidance, and border controls were reintroduced between interconnected countries in the Schengen area. **Box 6** provides an example of the challenges to the effectiveness of land border controls in such cases.

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<sup>53</sup> Special report 15/2021: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts, paragraphs 68-70 and recommendation 3(a).

<sup>54</sup> Considerations for travel-related measures to reduce spread of COVID-19 in the EU/EEA, 26.5.2020.

**Box 6****Example of challenges to the effectiveness of Schengen land border controls**

On 16 March 2020, Germany reintroduced temporary border checks at its land borders with Austria, Denmark, France, Luxembourg and Switzerland the aim being to enforce a non-essential travel ban. The checks at the border with Luxembourg were carried out for two months (until 15 May 2020), and led to the closure of several smaller border-crossing points. In April 2020, the COVID-19 virus was already widespread in Germany. Furthermore, as the Luxembourg/Belgium and Belgium/Germany borders remained open in the first three weeks, it was possible for Luxembourg residents to bypass these checks by passing through Belgium.

On 14 February 2021, Germany reintroduced internal border controls with Czechia and the Tyrol region in Austria to prevent the spread of virus mutations. It applied a stricter non-essential travel ban than before, not even allowing transit through Germany to the country of residence. However, it kept its borders with Poland open. As there were no border controls between Poland and Czechia, it was possible to bypass border controls there as well.

**66** In November 2020, the ECDC prepared a ‘Strategic and performance analysis of ECDC response to the COVID-19 pandemic’<sup>55</sup>, which looked at the usability of the Centre’s COVID-19 outputs through surveys and focus groups. The document concludes that the Centre’s guidance could be more practical and actionable.

**67** The ECDC does not collect detailed information to verify how countries have implemented its guidance, as it is under no obligation to do so.

**68** ECDC guidance is not binding on Member States, as the Centre does not have regulatory powers<sup>56</sup>. It relies mainly on data provided by national authorities, as it has no powers of its own to inspect or gather information at source. The fact that Member States have different surveillance and testing strategies made it difficult for the ECDC to compare the epidemiological situation across the EU, an impediment which can compromise the usefulness of its guidance.

<sup>55</sup> [Strategic and performance analysis of ECDC response to the COVID-19 pandemic.](#)

<sup>56</sup> [Preamble \(6\) of Regulation \(EC\) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control.](#)

## Member States applied uncoordinated approaches to COVID-19-related internal border and travel restrictions

**69** The national authorities' implementation of the Commission's guidance was monitored in the ad hoc working group set up and led by the Commission: the Corona Information Group (CIG). The Group aimed to identify problems and discuss them at a technical level. The group met 33 times between February and September 2020.

**70** All of the 33 meeting reports we reviewed clearly show that the Commission made a significant effort to coordinate Member States' actions. National implementation of EU guidance was discussed at every meeting, with Member States reporting on the measures they had taken. The Commission reiterated the overarching principles of EU law, and emphasised the need for better coordination.

**71** The CIG meeting reports and the public consultations for the Schengen Strategy also show that the CIG was well regarded by the Member States. However, despite this positive assessment, the CIG served mainly as a platform for exchanging information. The Commission's efforts to compensate for the lack of any crisis governance structure by setting up the Group have not resulted in a consistent and coordinated approach to internal border management by the Member States. This is evidenced by the different approaches to COVID-19 internal border controls within the Schengen countries (see [Figure 3](#)).

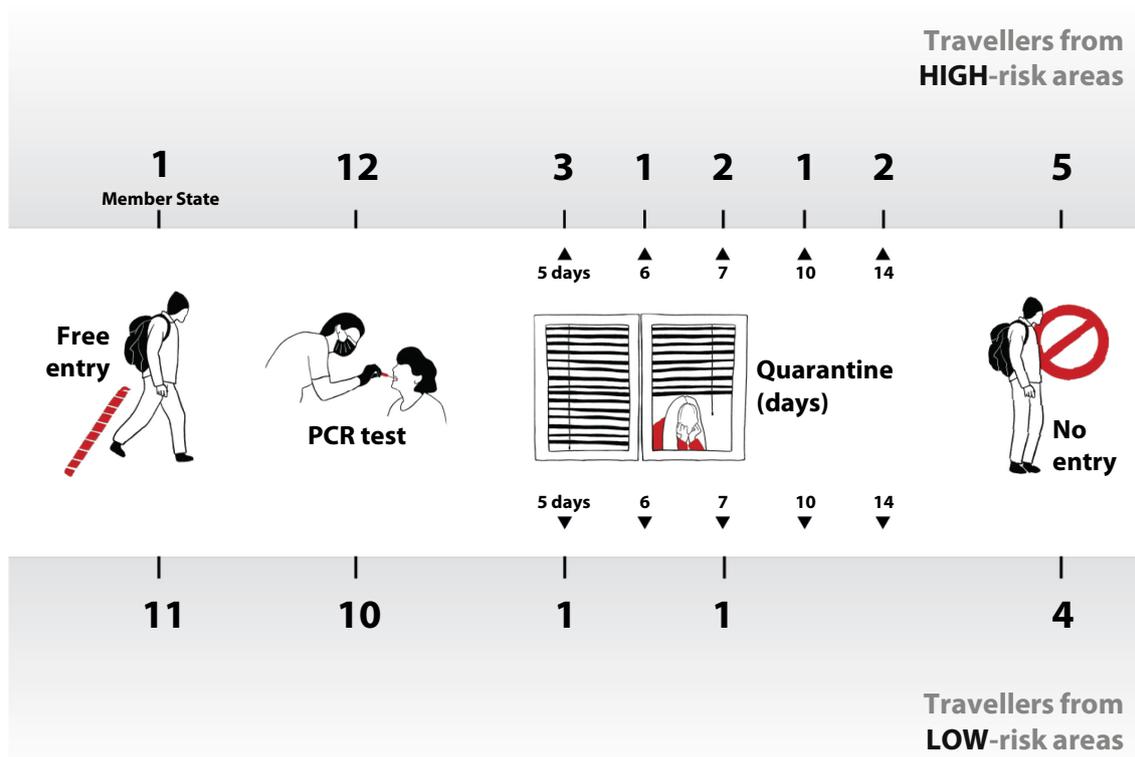
**72** The meeting minutes we reviewed show that the Group also faced communication challenges. Several Member States introduced new border controls and travel restrictions without informing the other participants in the Group, even though they had previously agreed to keep the other parties informed before implementing any new measures.

**73** We also analysed the documents mapping the situation at the internal borders which the Commission produced in February, March and May (and partially updated in June) 2021. Our analysis focused on the following four aspects: mandatory quarantine, mandatory testing, entry and/or exit bans, and the use of ECDC maps for decision-making. This served as a basis for a simplified overview, showing Member States' measures over time (see [Figure 8](#)).



**74** In order to illustrate the challenges faced by EU citizens when travelling within the EU, our analysis of minimum entry conditions on 21 June 2021 shows a wide variety of practices put in place by Member States, ranging from quite open access to quite restrictive measures (see [Figure 9](#)).

**Figure 9 – Simplified overview of minimum entry conditions on 21.6.2021**



*Note:* The figure shows minimum entry conditions for an EU citizen who was neither vaccinated nor previously contaminated.

*Source:* ECA, based on the Commission's internal monitoring of travel restrictions.

**75** [Figure 8](#) and [Figure 9](#) show that despite the Commission's efforts to facilitate coordinated action, the travel restrictions imposed by Member States remained uncoordinated, and formed a patchwork of individual measures that varied widely from one Member State to another.

## Conclusions and recommendations

**76** We conclude that while the Commission has monitored the free movement restrictions imposed by the Member States during the COVID-19 pandemic, the limitations of the legal framework hindered its supervisory role. Furthermore, the Commission has not exercised proper scrutiny to ensure that internal border controls complied with the Schengen legislation. Despite several relevant EU initiatives, the Member States' actions to fight COVID-19 remained mostly uncoordinated.

**77** We found that the Member States' notifications of internal border controls did not provide sufficient evidence that the controls were a measure of last resort, proportionate and of limited duration. However, the Commission has neither requested additional information from the Member States, nor issued any opinion on their notifications since the COVID-19 pandemic began. Furthermore, we identified cases of border controls which had not been notified to the Commission. We believe that this lack of essential information from the Member States has affected the Commission's ability to carry out a robust analysis of the extent to which the border control measures complied with the Schengen legislation (see paragraphs [26-31](#) and [35-39](#)).

**78** Member States are required to submit an *ex post* report on the implementation of temporary border controls, and to assess, among other aspects, how effective and proportionate the reintroduction of border controls at internal borders has been. Although nine Member States did not comply with the obligation to submit *ex post* reports, we have not seen any evidence that the Commission asked the Member States to provide the missing reports (see paragraphs [32](#) and [40-42](#)).

**79** Our review of all the *ex post* reports the Commission has received since 2020 shows that they vary greatly from general statements to detailed statistics. Ten out of the 12 available reports did not cover the proportionality of applied measures in sufficient detail. Only three reports briefly mentioned the possible use of alternative measures (see paragraphs [41-42](#)).

**80** The Commission has the mandate and obligation to act in cases of potential non-compliance. It can launch infringement procedures, but has not yet done so despite its concerns that long-term internal border controls related to migration and security threats do not comply with EU law. The Commission has instead opted for soft measures and coordination with no apparent results, as the internal border controls

reintroduced more than six years ago are still in place. (see paragraphs [33-34](#) and [43-45](#)).

## Recommendation 1 – Exercise close scrutiny of internal border controls

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Taking account of the proposal to amend the Schengen Borders Code, and the Commission's scope for discretion, its assessment of internal border controls should make proper use of the compliance monitoring tools by:

- (a) asking the Member States for additional information when their notifications and/or *ex post* reports do not provide sufficient evidence of the proportionality of border controls;
- (b) issuing opinions on proportionality when there are concerns that the border controls do not observe this principle;
- (c) systematically monitoring that all Schengen countries provide internal border notifications and implementation reports within legal deadlines;
- (d) asking Member States to report annually on the implementation of ongoing long-term border controls; and
- (e) launching enforcement action in the event of long-term non-compliance with the Schengen legislation.

### Target implementation date: end of 2023

**81** The Member States implemented internal border controls to enforce a variety of COVID-19 travel restrictions. Although the Commission is responsible for monitoring whether these restrictions comply with the principle of free movement, we found that the limitations of the legal framework hampered the Commission's work in this area. In addition, the length of legal proceedings, and the short-term and variable nature of the measures which the Member States took during the pandemic, mean that the infringement procedure, which is the only tool the Commission has to enforce the right of free movement during the COVID-19 pandemic, is unsuitable (see paragraphs [46-47](#)).

**82** Contrary to the case of internal border controls, the Member States were not required to inform the Commission about travel restrictions. The Commission obtained

information from Member States, but it was not always complete or comparable. (see paragraphs [48-49](#)).

## **Recommendation 2 – Streamline data collection about travel restrictions**

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The Commission should streamline information collection from Member States on the justification for the proportionality and non-discrimination of their travel restrictions, and provide guidance when this information is not sufficient.

**Target implementation date: end of 2022**

**83** The Commission issued timely and relevant guidance to facilitate the coordination of internal border controls. However, the guidance lacked practical details about how Member States should demonstrate compliance with the principles of proportionality and non-discrimination, as well as examples of good practice in the way internal borders were managed during the pandemic. The Practical Handbook for Border Guards, which serves as a user guide for border guards when carrying out their border controls, has not been updated to take account of the pandemic (see paragraphs [53-56](#)).

## **Recommendation 3 – Provide more actionable guidance on the implementation of internal border controls**

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The Commission should provide more detailed and actionable guidance on the implementation of internal borders during the pandemic by:

- (a) updating the Practical Border Handbook with examples of good practice of the way internal borders are managed;
- (b) explaining the difference between border controls and health checks in the context of COVID-19.

**Target implementation date: end of 2022**

**84** The Commission also launched important initiatives to coordinate measures affecting freedom of movement. However, Member States' practices show that, even one year after the pandemic began, responses were still mostly uncoordinated and were not always consistent with Commission guidance and Council recommendations (see paragraphs [57-60](#) and [69-75](#)).

**85** The Commission set up a web platform to support the safe re-opening of travel and tourism across Europe ('Re-open EU'). However, as at July 2021 (i.e. more than one year after Re-open EU was launched), nine Member States had still not provided updated information. The risk here is that EU citizens may question the usefulness of the tool when they encounter problems at the borders, because the information they have used to plan their journey is incorrect or outdated. In our special report on air passenger rights during the COVID-19 pandemic, we recommended that the Commission should take action by the end of 2022 to ensure that Member States provide timely and reliable information on the Re-open EU platform (see paragraphs [61-62](#)).

**86** Since the beginning of the pandemic, the European Centre for Disease Prevention and Control (ECDC) has published a large number of guidance documents and technical reports, and has also provided input for the Commission's guidance documents. However, the ECDC's own internal analysis concluded that its guidance could be more practical and actionable. The ECDC does not comprehensively assess the usefulness and impact of its guidance (see paragraphs [64-68](#)).

## **Recommendation 4 – Improve the monitoring of ECDC guidance implementation**

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The ECDC should obtain regular feedback from its stakeholders to assess the usefulness and impact of its guidance.

**Target implementation date: end of 2022**

This Report was adopted by Chamber III, headed by Mrs Bettina Jakobsen, Member of the Court of Auditors, in Luxembourg on 26 April 2022.

*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

## Annexes

### Annex I – Sample of 10 Member State notifications of internal border controls between 2015 and 2019

No	Country	Start	End	Reason
40	Germany	13.9.2015	22.9.2015	Big influx of persons seeking international protection, all borders with focus on Austrian land borders
46	Slovenia	17.9.2015	26.9.2015	Big influx of persons seeking international protection, land borders with Hungary
54	France	14.12.2015	26.5.2016	In relation to the emergency state introduced following the Paris attacks, all internal borders
62	Austria	16.5.2016	12.11.2016	In line with the Council Recommendation of 12 May 2016 under Art. 29 of the SBC, land border with Slovenia and Hungary
70	Denmark	12.11.2016	12.2.2017	In line with the Council Recommendation of 11 November 2016, Danish ports with ferry connections to Germany and at the Danish-German land border
78	Sweden	11.2.2017	10.5.2017	In line with the Council Recommendation of 7 February 2017, Swedish harbours in the Police Region South and West and at the Öresund bridge
88	Austria	12.11.2017	12.5.2018	Security situation in Europe and threats resulting from continuous significant secondary movements; land borders with Hungary and with Slovenia
96	Germany	12.5.2018	11.11.2018	Security situation in Europe and threats resulting from the continuous significant secondary movements; land border with Austria
105	Sweden	12.11.2018	11.2.2019	Serious threat to public policy and internal security; all internal borders
114	Denmark	12.5.2019	12.11.2019	Severe threat to public order and internal security; internal border with Germany (land and ports with ferry connections)

## Annex II – Relevant guidance documents issued by the Commission up to June 2021

Date	Reference	Title
16.3.2020	C(2020) 1753 final	COVID-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services
16.3.2020	COM(2020) 115 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL COVID-19: Temporary Restriction on Non-Essential Travel to the EU
23.3.2020	C(2020) 1897 final	COMMUNICATION FROM THE COMMISSION on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services
27.3.2020	C(2020) 2010	COMMUNICATION FROM THE COMMISSION Commission Guidelines: Facilitating Air Cargo Operations during COVID-19 outbreak
30.3.2020	C(2020) 2050 final	COMMUNICATION FROM THE COMMISSION COVID-19 Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy
30.3.2020	C(2020) 2051	COMMUNICATION FROM THE COMMISSION Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak
8.4.2020	COM(2020) 148 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL on the assessment of the application of the temporary restriction on non-essential travel to the EU
8.4.2020	C(2020) 3100	COMMUNICATION FROM THE COMMISSION Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships

Date	Reference	Title
16.4.2020	C(2020) 2516 final	COMMUNICATION FROM THE COMMISSION COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement
17.4.2020	2020/C 126/01	EUROPEAN COMMISSION Joint European Roadmap towards lifting COVID-19 containment measures
8.5.2020	COM(2020) 222 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL on the second assessment of the application of the temporary restriction on non-essential travel to the EU
13.5.2020	C(2020) 3250 final	COMMUNICATION FROM THE COMMISSION COVID-19 Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls
13.5.2020	C(2020) 3251 final	COMMUNICATION FROM THE COMMISSION COVID-19: EU Guidance for the progressive resumption of tourism services and for health protocols in hospitality establishments
13.5.2020	COM(2020) 550 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Tourism and transport in 2020 and beyond
15.5.2020	C(2020) 3139 final	COMMUNICATION FROM THE COMMISSION Guidelines on the progressive restoration of transport services and connectivity – COVID-19
11.6.2020	C(2020)3999 final	Guidance for a phased and coordinated resumption of visa operations
11.6.2020	COM(2020) 399 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL On the third assessment of the application of the temporary restriction on non-essential travel to the EU
25.6.2020	COM(2020) 287 final	Commission Proposal for a Council Recommendation on the restriction on non-essential travel into the EU

Date	Reference	Title
15.7.2020	COM(2020) 318 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Short-term EU health preparedness for COVID-19 outbreaks
16.7.2020	C(2020) 4813 final	COMMUNICATION FROM THE COMMISSION Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak Follow-up to C/2020/2051
4.9.2020	COM(2020) 499 final	Proposal for a COUNCIL RECOMMENDATION on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic
28.10.2020	COM(2020) 685 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL upgrading the transport Green Lanes to keep the economy going during the COVID-19 pandemic resurgence
28.10.2020	COM(2020) 686 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL COVID-19 Guidance on persons exempted from the temporary restriction on non-essential travel to the EU as regards the implementation of Council Recommendation 2020/912 of 30 June 2020
28.10.2020	COM(2020) 687 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL on additional COVID-19 response measures
11.11.2020	COM(2020) 724 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats
11.11.2020	COM(2020) 727 final	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on serious cross-border threats to health and repealing Decision No 1082/2013/EU
18.11.2020	C(2020) 8037 final	COMMISSION RECOMMENDATION of 18.11.2020 on the use of rapid antigen tests for the diagnosis of SARS-CoV-2 infection

Date	Reference	Title
2.12.2020	COM(2020) 786 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Staying safe from COVID-19 during winter
18.12.2020	COM(2020) 849 final	Proposal for a COUNCIL RECOMMENDATION on a common framework for the use, validation and mutual recognition of COVID-19 rapid antigen tests in the EU
22.12.2020	C/2020/9607	COMMISSION RECOMMENDATION (EU) 2020/2243 on a coordinated approach to travel and transport in response to the SARS-COV-2 variant observed in the United Kingdom
19.1.2021	COM(2021) 35 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL A united front to beat COVID-19
25.1.2021	COM(2021) 38 final	Proposal for a COUNCIL RECOMMENDATION amending Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic
17.2.2021	COM(2021) 78 final	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL HERA Incubator: Anticipating together the threat of COVID-19 variants
3.5.2021	COM(2021) 232 final	Proposal for a COUNCIL RECOMMENDATION amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

# Acronyms and abbreviations

**CIG:** Corona Information Group

**FMD:** Free Movement Directive

**ECDC:** European Centre for Disease Prevention and Control

**EEA:** European Economic Area

**SBC:** Schengen Borders Code

**TEU:** Treaty on European Union

**TFEU:** Treaty on the Functioning of the European Union

# Glossary

**Border control:** Checks and surveillance carried out at a border on those crossing or intending to cross.

**Passenger locator form:** Form that passengers must complete before entering the country to facilitate contact tracing and quarantine monitoring.

**Principle of non-discrimination:** Principle of EU law prohibiting discrimination between EU citizens from different countries based on nationality.

**Principle of proportionality:** Principle of EU law according to which the exercise of power by the EU or a Member State must not exceed what is necessary to achieve its intended objective.

**Schengen area:** Group of 26 European countries that have abolished passport and immigration controls at their common borders.

## Replies of the Commission

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61240>

## Replies of the European Centre for Disease Prevention and Control (ECDC)

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61240>

## Timeline

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61240>

## Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber III External action, security and justice, headed by ECA Member Bettina Jakobsen. The audit was led by ECA Member Baudilio Tomé Muguruza, supported by Daniel Costa de Magalhães, Head of Private Office and Ignacio García de Parada, Private Office Attaché; Alejandro Ballester Gallardo, Principal Manager; Andrej Minarovic, Head of Task and João Coelho, Auditor. Mark Smith provided linguistic support.



*From left to right: João Coelho, Daniel Costa de Magalhães, Baudilio Tomé Muguruza, Andrej Minarovic, Alejandro Ballester Gallardo, Ignacio García de Parada.*

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The right of EU citizens to move freely within the territory of the EU Member States is a fundamental freedom of the European Union. We examined the Commission's supervision of the internal Schengen border controls and travel restrictions imposed by the Member States during the COVID-19 pandemic, as well as the efforts undertaken at EU level to coordinate these restrictions until the end of June 2021. We conclude that the limitations of the legal framework hindered the Commission's supervision of free movement restrictions imposed by the Member States. Furthermore, the Commission did not exercise proper scrutiny to ensure that internal border controls complied with the Schengen legislation. Despite Commission's initiatives, the Member States' travel restrictions were mostly uncoordinated.

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