

Special report 13/2022: Free movement in the EU during the COVID-19 pandemic – Limited scrutiny of internal border controls, and uncoordinated actions by member states

Performance audit

Published: 13.6.2022



FULL REPORT (OFFICIAL EU LANGUAGES)



What we assessed and why

The right of EU citizens to move freely within EU territory is a fundamental freedom, and has been at the heart of the European project since its inception¹.

In accordance with the Free Movement Directive², this right can be restricted for public-policy, security or health reasons. Since 2015, several EU countries have reintroduced internal border controls in response to the migration crisis or security threats (mainly terrorism). More recently, during the COVID-19 pandemic, many member states took measures to restrict freedom of movement within the EU to limit the spread of the virus. In such cases, member states are required to notify the European Commission, which remains responsible for assessing whether the proposed restrictions comply with EU legislation.

We assessed whether the Commission had taken effective action to protect the right of free movement of people during the COVID-19 pandemic, i.e. supervised internal Schengen border controls and travel restrictions properly, and how such restrictions were coordinated. We examined a sample of internal border notifications issued between 2015 and 2019, and March 2020 and June 2021, in order to compare the Commission's scrutiny before and after the pandemic. We also did so to contribute to the ongoing debate on the review of the Schengen system, including the Schengen Borders Code.

What we found

We found that national notifications of internal border controls did not provide sufficient evidence that they were a last resort, proportionate and of limited duration. The member states did not always notify the Commission of new border controls, submit the compulsory ex post reports with an assessment of the controls' effectiveness and proportionality, or provide sufficient information on these aspects in their reports.

Furthermore, we found that the Commission does not have a robust monitoring system to identify cases where member states have not provided proper notification.

¹ Article 20(2)(a) and Article 21(1) of the Treaty on the Functioning of the EU.

² Directive 2004/38/EC.





We believe that this lack of essential information affected the Commission's ability to carry out a robust analysis of the extent to which border control measures complied with Schengen legislation. The Commission did not request additional information or issue any opinion on the border controls that were imposed either before the pandemic or after it began.

We also found that the limitations of the legal framework hampered the Commission's responsibility to comprehensively monitor whether border controls and restrictions complied with the principle of free movement and Schengen legislation, and hindered the existing infringement procedure.

In fulfilling its mandate to facilitate a concerted approach so as to minimise the impact on cross-border travel within the EU, the Commission, together with the European Centre for Disease Prevention and Control (ECDC), issued timely guidance on internal border controls. However, this guidance lacked practical details and good practices regarding the management of internal borders during the COVID-19 pandemic. The usefulness and impact of this guidance are not comprehensively assessed by the ECDC.

One of the Commission's initiatives to coordinate measures affecting freedom of movement is the "Re-open EU" platform launched on 1 June 2020 to support the safe reopening of travel and tourism across Europe. However, nine member states had still not provided updated information more than a year later.

Similarly, the Commission's efforts to compensate for the lack of a crisis governance structure by setting up the Corona Information Group did not result in a consistent approach.

The travel restrictions imposed during the COVID-19 pandemic remained largely uncoordinated, and the Commission was unable to prevent a patchwork of individual measures from taking shape, varying widely from one member state to another.

What we concluded

We concluded that the Commission did not properly scrutinise whether the reintroduction of internal border controls complied with Schengen legislation. Moreover, the limitations of the legal framework hindered not only the supervision of free movement restrictions imposed by the member states, but also the assessment of compliance with EU law.

Despite the Commission's initiatives, travel restrictions were mostly uncoordinated.

We therefore recommended that the Commission should:

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

We also recommended that the ECDC should improve the way it monitors the extent to which its guidance is implemented.