

What are the Legalities and Broader Implications of Germany's Reintroduction of Border Controls for Schengen's Future?

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Abstract:

The Schengen Agreement, often heralded as a cornerstone of European integration, has been integral to fostering free movement within the EU. However, recent challenges have placed this fundamental principle under strain. Germany's reintroduction of border controls under Article 25 of the Schengen Borders Code (SBC) reflects growing tensions between national security priorities and EU commitments to open borders. It is not the first infringement on Schengen rules but just the latest. This decision coincides with heightened political pressures ahead of Germany's snap elections in February 2024, amplifying its significance within both national and EU-wide debates. This blogpost examines the legal framework governing such border measures, analyzes the implications for Schengen's future, and explores potential policy shifts following the elections. Relevant case studies illustrate how Germany's actions fit into broader European trends, highlighting the precarious balance between national sovereignty and collective EU principles.

Keywords: Schengen Agreement; Germany; Border controls

Introduction

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Legal Framework and Justification

The Schengen Borders Code (SBC) provides a legal basis for temporary border controls in exceptional circumstances, allowing member states to address public policy or national security threats (European Union, 2016, p. 12). These measures must adhere to strict conditions: they must be proportionate, time-limited (typically no longer than six months), and justified by specific, demonstrable threats. The European Commission and Court of Justice of the European Union (CJEU) have emphasized that such controls are intended as a last resort to safeguard the integrity of the Schengen area (Guild, Costello & Moreno-Lax, 2020, p. 56).

The German Case

Germany's recent reintroduction of border controls primarily aims to manage illegal migration and perceived security risks. Interior Minister Nancy Faeser has argued that increased asylum applications and human smuggling networks necessitate such measures. This decision aligns with similar actions taken by other Schengen members during periods of heightened migration or crises, albeit sparking concerns over the normalization of these practices.

Several cases illustrate how Germany's actions fit within a broader European pattern:

Italy and Austria (2018): During rising political tensions over migration, Austria reintroduced border checks with Italy, citing the need to combat illegal crossings. These controls created friction between the two countries, particularly as they coincided with a broader EU debate on migration responsibility sharing (Carrera et al., 2019, p. 203).

France and Italy (2021): France implemented temporary controls on its border with Italy during a period of increased migrant arrivals in southern Italy. These controls were controversial, with Italy criticizing France's unilateral actions as undermining EU solidarity (European Commission, 2021, p. 18).

Poland and the Baltics (2022): Poland reinforced border controls with Lithuania and Latvia in response to increased migration from Belarus. This move was justified under Article 25 but raised questions about the proportionality and effectiveness of such measures (Brekke & Staver, 2018, p. 2170). Poland's vulnerable position due to proximity to the Suvlaki gap and general closeness to Belarus and the weaponization of migrants by the Lukashenko government.

Implications for Schengen and the EU

Erosion of Free Movement: Repeated and prolonged border controls threaten to undermine the Schengen foundational principle of free movement. Scholars argue that such measures risk fragmenting the EU's internal market and diminishing trust among member states (Guild et al., 2020, p. 67).

Economic Disruption: Border controls disrupt cross-border logistics and industries reliant on just-in-time supply chains, creating economic ripple effects. For instance, trade disruptions between France and Italy during pandemic-related restrictions highlighted the economic vulnerabilities tied to internal border checks (European Commission, 2021, p. 14).

Political Ramifications: The rise of nationalist and Eurosceptic parties has fueled support for border controls as a tool to assert national sovereignty, challenging deeper EU integration. This dynamic is evident in countries like Poland and Hungary, where migration policies diverge from broader EU norms but resonate with domestic audiences (Brekke & Staver, 2018, p. 2165).

Looking Ahead: Germany's Snap Elections

The outcome of Germany's snap elections in February 2024 could profoundly influence the future of its border policies. A conservative-led coalition government might maintain or even intensify stricter border controls, reflecting public concerns about migration and security. If the CDU secures victory, it will be particularly noteworthy to observe how closely they align with the AfD's positions not only in rhetoric, a trend already evident in recent years, but also in the policies they choose to implement.

A progressive-led coalition is unlikely to win but would on paper be more likely to advocate for collaborative European Union solutions, emphasizing reforms to asylum systems and external border management rather than focusing on internal controls. However, this assumption is not without contention, particularly given the current discourse surrounding immigration. Notably, the existing border controls were implemented by the incumbent now collapsed center-left government, illustrating the complexities and nuances of the debate.

Germany could explore alternative models to balance security and free movement, such as:

Enhanced Frontex Funding: Strengthening the EU's external border agency could reduce reliance on internal controls. Recent proposals to expand Frontex's operational scope highlight its potential as a central pillar in EU border management (Council of the European Union, 2024, p. 3).

Reforms to EU Asylum Policy: Streamlined and equitable asylum procedures across the EU could address systemic pressures driving internal border measures. A key aspect would

involve updating the Dublin Regulation to ensure fairer distribution of asylum seekers (Guild et al., 2020, p. 87).

Case Study — Denmark's Flexible Borders (2020): Denmark's use of mobile border controls, combining targeted checks with technological solutions, provides a model that aligns better with Schengen principles while addressing security concerns (Manners et al., 2022, p. 460).

Conclusion

Germany's approach to border controls reflects broader challenges facing the Schengen area, where national security concerns increasingly compete with EU integration goals. As Europe's largest economy, Germany's decisions will have far-reaching implications for the Schengen system and its role within the EU. Policymakers face a critical balancing act: addressing legitimate security concerns while avoiding the erosion of free movement, economic disruption, and political fragmentation. The outcome of Germany's snap elections could serve as a bellwether for the EU's ability to reconcile these competing priorities. Regardless of who will rule Germany, migration will continue to be a galvanizing and polarizing issue used as a distraction from actually solving the problems that face Germany and Europe as a whole.

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