

## Instrumentalization and Schengen Borders

By *Lehte Roots\**

*The Schengen regime is a cornerstone of European integration and is facilitating the free movement of persons. Its incorporation into the EU legal framework marked a shift toward supranational governance of borders. The work discusses the evolution of Schengen as a form of supranational governance, the role of national sovereignty, and the implications for EU citizenship and border control. The article examines the unique nature of Schengen borders as both a legal and geopolitical construct that blurs traditional distinctions between national and supranational governance. Furthermore, as the Schengen system has recently faced unprecedented pressure from hybrid threats, including the strategic manipulation of migratory flows by third countries. This article explores the legal, political and human rights challenges posed by the instrumentalization of migration at the external borders of the European Union (EU). Through legal analysis and case studies—including developments in Latvia, Lithuania, Poland, and Finland borders—the author highlights significant gaps in EU law that hinder effective responses to instrumentalized migration, and raises human rights concerns related to pushbacks and access to asylum. Concluding that while the Schengen regime has succeeded in promoting mobility and cooperation, its resilience is tested by security threats that exploit legal and normative asymmetries. The article calls for strengthened legal instruments and multidisciplinary approaches to preserve the integrity of EU borders while upholding fundamental rights.*

**Keywords:** *Instrumentalization of migration; Borders; Border control; Schengen borders; Human rights; Right to asylum; Access to asylum; Finland border; Latvian border, Lithuanian border.*

### Introduction

The ability to move freely within EU is one of the success stories of European integration and Schengen border system is playing a big role in it. But it has not been so always like that. The former Prime Minister of United Kingdom proclaimed in year 1988 the following: “Of course, we must make it easier for people to travel throughout the Community, but it is a matter of plain common sense that we cannot totally abolish frontier controls if we are also to protect our citizens from crime and stop the movement of drugs, of terrorists and of illegal immigrants”.<sup>1</sup> This fear is still maintained. The current situation is that, UK is not part of the EU anymore and it was also not part of Schengen before.

Recently, the national security of the member states was threatened by the hybrid warfare which has been recently directed towards northern countries of EU

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<sup>1</sup>Thatcher (1988).

like Latvia, Lithuania and Finland. Hybrid warfare can be defined as simultaneous practice of conventional military strategies and non-conventional tactics.

One of the recognised strategies to be included in the concept of hybrid warfare is the instrumentalization of migration. The issue of instrumentalised migration for the time being is problematic, because there is a lack of enabling tools in the EU legislation for the member states to preclude or at least inhibit foreign states influence of this nature to the internal affairs and to the national security of a sovereign EU member state.

There is a legal vacuum in EU law considering tools to efficiently prevent foreign influence of this kind which endangers the national security and sovereignty of Member States, especially Finland, Latvia, Lithuania, and Poland resulting from the recent targeted methods of this nature. As a result, in 2021 The European Commission proposed emergency measures for the benefit of Latvia, Lithuania and Poland. In the proposal the genuine threat towards overall EU's security and its Member States national security in the form of exploiting instrumentalised migration for political purposes was recognised.<sup>2</sup>

Schengen borders are not classical borders as we presume, therefore different questions arise. How are these borders different from the state borders? Why we still have state borders? What is a legal definition of a border and why we are protecting them? If EU is not a state how it can have borders? What issues the common borders have arisen? Are Schengen borders more vulnerable for instrumentalization?

Cambridge Dictionary gives a definition of a border as “the line that divides one country or place from another”<sup>3</sup>. Borders are usually defined as geographical boundaries which have features like oceans, terrain, rivers, mountains, or by political entities such as governments and states. Political borders can be established by warfare, colonization, agreements between political entities. In the process of European integration Schengen borders were created and it does not separate or divide the countries, but actually unites them. This makes the Schengen borders exceptional.

The establishment of Schengen area has enhanced the integration of European Union and European integration was justified by the need to keep peace at the European continent.<sup>4</sup> Some borders – internal administrative borders of the state or inter state borders as the Schengen area are open and unguarded. Common practice though is that borders are controlled, they may be crossed legally only at designated border checkpoints. Sometimes border buffer zones are created to lower the risk of escalation. While border refers to the boundary itself, the area around the border is named frontier.

According to international practice, each state is permitted to legislate the conditions that have to be met in order to cross the borders and to prevent people from crossing its borders if it violates the law. Some states require presentation of documents, passports, visas, ID documents or other permissions that allow to cross the borders. To stay in another country aliens may need a special immigration document or living permit. Possession of such documents nevertheless do not guarantee that

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<sup>2</sup>Proposal for a Council Decision on Provisional Emergency Measures for the Benefit of Latvia, Lithuania and Poland, COM (2021) 851 final, Brussels, 2021, p 1.

<sup>3</sup><https://dictionary.cambridge.org/dictionary/english/border> 12.05.2025

<sup>4</sup>Craig & Burca (2020).

the person is allowed to cross the border. Borders represent the very core of statehood which is delineating its authority in the international law and are one of its most visible incarnations. On the territories where smuggling, irregular migration is a problem, the states fortify borders with fences and barriers and impose formal border control procedures.<sup>5</sup>

As we can see from the current politics, border control or mismanagement of control, can be also used as an international force or weapon to make pressure for policy change.<sup>6</sup> Instrumentalization - a new phenomenon has appeared as a concern for EU border countries and the need has emerged to find proper reactions to the situation created by third countries. Therefor the topic needs further elaboration and study. There are many matters that can be covered by the border studies and this article attempts to give input to the legal aspects of Schengen and its role in EU internal movements and the change of concept of national border control and further challenges that it has created in the context of instrumentalization of migration.

### **What is a Schengen Border?**

The notion of Schengen area is quite unique in the whole world. Since middle of 1980-s some European countries e.g. France, Germany and Benelux countries took steps to abolish controls over their shared frontiers. This kind of border regime started as an intergovernmental initiative which was created outside of the institutional framework of the European Community, that we know now as European Union. It was used as an instrument of further integration and not as a division which has been for ages an approach to borders. With the Amsterdam Treaty that was enforced in 1999 the Schengen cooperation was incorporated to the EU legal framework and the number of states that started to apply the established rules was increased from five to thirteen states.

Today, the Schengen Area covers most of the countries that belong to the European Union, except for Bulgaria, Cyprus, Ireland and Romania. Croatia joined the area on 1<sup>st</sup> of January 2023.<sup>7</sup> Bulgaria and Romania are the latest to join the Schengen Area although they applied the Schengen acquis to a large extent already before the accession.

Additionally, some non-EU States like Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area. Furthermore, we have three states that are not part of the Schengen area but have open borders with Schengen states. These are Monaco, San Marino and Vatican City. There are territories of Schengen member states that are exempted from the Schengen Agreement. These are mostly the areas which do not situate in Europe. The variety of states territories and regions makes the understanding where Schengen rules apply complicated.

The intention of the European Community was to improve the free movement of persons, goods, services and capital because it was considered to be fundamental

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<sup>5</sup>See also Estonia building a fence between Russia and Estonia. <https://www.politsei.ee/en/instructions/border-construction>

<sup>6</sup>Tanner (2023).

<sup>7</sup><https://www.schengenvisainfo.com/schengen-agreement/>

for the further integration and federalization of the European area. In order to achieve these goals, the Schengen Agreement was agreed upon on 14<sup>th</sup> June 1985 between the Benelux countries, Germany and France. The aim was to gradually abolish border checks between the state parties.

Schengen borders are not managed in the same way as classical national borders. This kind of integration and principle of shared borders did not designate that the borders should disappear completely or they should lose their significance for the states and their governments. In order to compensate the loss of border control the established new border regime projected the controls to the external perimeter of Schengen area and possibility to reintroduce the internal border controls when there was a need for that. Recently, this opportunity to reintroduce internal national borders within Schengen area, was widely used when the COVID-19 pandemic exploded.<sup>8</sup> Borders have remained central feature of Europe's political landscape.

From legal perspective, borders have to be regulated by the law or norm which are controlled by the relevant authority. In case of national borders, it is usually the national authority like border police or guards, that have the right to conduct the controls. For example, Estonia is one of the EU member states and part of Schengen area that has external land border with Russia. It has EU internal border with Latvia from South and Finland from the north and it guards the external border of Schengen area. The State Borders Act (*Riigipiiri seadus*) of Estonian Republic, states clearly what is the function of the Border Act and what is the legal norm. This Act provides the definition of the Estonian state border, the determination and marking of the location of the state border, the organization of entry in land border crossing points, the border regime, and the liability for violation of the border regime and illegal crossing of the state border.<sup>9</sup> Furthermore, as Estonia is part of European Union, the EU regulation number 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders<sup>10</sup> has to be applied to crossing of the internal borders between the Member States of the European Union and the external borders of the European Union. The control of the Estonian border is limited with the application of EU rules -e.g. the Schengen Borders Code.<sup>11</sup>

According to the Estonian law “The Estonian state border (hereinafter state border) is an uninterrupted and closed imaginary line and the vertical area along the line which delimit the territory and the territorial sea of Estonia, the parts of transboundary water bodies that belong to Estonia, the earth's crust and airspace.”<sup>12</sup> So, in Estonia we have a specific definition for the border and moreover also internal border in relation to EU is defined as “a shared land border, including a river and

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<sup>8</sup>Read more at Roots (2022).

<sup>9</sup>RT I, 08.07.2020, 1 – entry into force 01.08.2020.

<sup>10</sup>Schengen Borders Code, OJ L 77, 23.03.2016, pp 1–52

<sup>11</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>12</sup>Art 2 State Borders Act, [RT I 2007, 68, 420 – entry into force 21.12.2007 and in part 30.03.2008]

lake border, of Estonia and a Member State of the European Union”.<sup>13</sup> This is just one example of how borders are defined in legal norms.

By joining the Schengen area, the states give away their sovereignty to the EU level and the rules are further decided at the supranational level. It needs trust and cooperation to manage effectively a mutual border. Simultaneously, borders are a powerful symbol of identity and historical continuity which plays important role for the people and the state institutions. Therefore the protection of Schengen borders is a common goal. Furthermore, in the area without internal border control it is essential to respond to situations which are seriously affecting public policy or internal security of that area. Therefore it is allowed to reintroduce the internal border control in exceptional circumstances, without jeopardizing the principle of the free movement of persons. As these measures impact the rights of persons the conditions and procedures for reintroducing such measures have to be clear and enforceable and respecting the principle of proportionality. The scope and duration of temporary reintroduction of such measures should be restricted to the minimum that is needed to respond the serious threat to public policy or internal security.

### Schengen as a New Type of Governance

Schengen aquis did not just abolished internal borders, but it created common external borders and a need for closer cooperation. It is a special arrangement that influence not just EU citizens who got better access to other countries but also third country nationals. As from the moment Schengen visa was created also the third country nationals got automatically access to more than one country. The emergence of a regional approach to the border control in Europe was a result of a negotiated compromise of governments who were acting rationally considering their self-interest and political leverage, to address common problems which emerged in 1980 and 1990s. These challenges were the growing migratory pressure, international crime, terrorism and obstacles in transnational economic activities. These difficulties stemmed either from external or internal contextual factors like geopolitical position of Europe and the regionwide Common Market.<sup>14</sup>

Moravcsik<sup>15</sup> suggested that Schengen emerged because France and Germany, worried about each other's growing protectionist attitude and pushed for a bilateral agreement to simplify and eventually abolish border control. Afterwards the Benelux countries were included in the arrangement because of economic interest. The idea was to create super EEC that is promoting trade liberalization.<sup>16</sup> From the standpoint of Monar's "incrementalist" approach<sup>17</sup> or Guiraudon's "garbage can" model<sup>18</sup> the policy making process that led to the creation of Schengen was more complex and messier, than just bargaining at high political level. Schengen Code is part of the EU

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<sup>13</sup>Art 2 State Borders Act, [RT I 2007, 68, 420 – entry into force 21.12.2007 and in part 30.03.2008] [RT I 2009, 62, 405 – entry into force 01.01.2010]

<sup>14</sup>Zaiotti (2011) at 8.

<sup>15</sup>Moravcsik (1998) at 359–360.

<sup>16</sup>Moravcsik (1998) at 359.

<sup>17</sup>Monar (2001).

<sup>18</sup>Guiraudon (2003).

legislative package and is governed by EU rules in cooperation with other countries that are signatures of the Schengen Code. This gives it a supranational power and multinational control. It created a new model of supranational cooperation and governance. Whatever is the analysis, the reality is that most of the EU countries govern their borders by shared rules but the final control over the EU external borders lies still on the state which has the external Schengen border.

### **EU Citizens Free Movement and Borders**

In order to accomplish the EU citizen rights, the right to move freely is also facilitated by the Schengen border rules. Directive 2004/38/EC state that the EU citizens can stay in another member state for 3 months without registering their living place. As there is no internal border check the citizen can move freely from one state to another without registration. In case they want to stay longer, other rules apply. An example of widening competence is the Baumbast judgment, where the Court decided that ‘a citizen of the European Union, that no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, nevertheless enjoy a right of residence by direct application of Article 18(1) EC.’ The right of a European citizen to invoke her citizenship rights directly and regardless of her economic status and cross-border movement importantly altered the personal and the material scope of the Treaty.<sup>19</sup> Member States faced new constraints in regulating the residence of foreigners, the rights of migrants, and the terms of judicial review, extending beyond free movement rights and lawful residence. This potentially included the regulation of health, social assistance, and tax, all outside the competence of the European Union.

The 2020 COVID-19 crisis that prompted the majority of Schengen states to reintroduce internal border controls as part of their efforts to prevent the spread of the virus. So Covid-19 pandemic lead also to the limitation of free movement of persons within the EU and outside of the EU.<sup>20</sup> These rules that were established during the pandemic times have been criticised by some scholars as violation of fundamental rights.<sup>21</sup> People with Covid-19 positive infection were not allowed to move inside EU and access of third country nationals to EU was also limited. It is not novel nor exceptional that internal border controls in the Schengen area are reintroduced, but the context of Corona pandemic was definitely a new experience, because the public health reasoning was used to close the border. According to the European Parliamentary Research Service briefing on Schengen Code the internal border controls during the period of 2006-2014 were reintroduced 35 times. But next in 2015-2020 the numbers were much higher – internal checks were reintroduced 205 times.<sup>22</sup>

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<sup>19</sup>R. & Secretary of State for the Home Department. ECJ Decision C-413/99 – Judgment of 17 September 2002.

<sup>20</sup>Roots (2022).

<sup>21</sup><https://www.europeanpapers.eu/en/e-journal/schengen-free-movement-law-during-first-phase-covid19>

<sup>22</sup>Madatali (2021) at 2.

## Refugees and Schengen Borders

The current legal basis and competence of the EU to make decisions and legislate in the field of asylum can be found in Articles 67(2), 78, and 80 of the Treaty on the Functioning of the European Union (TFEU) as well as in Article 18 of the EU Charter of Fundamental Rights that became a binding document after the changes brought by the Lisbon Treaty.

The aim of the original Schengen Agreement and followed by the implementation is the commitment to remove barriers to the free movement of persons across the internal borders of the contracting states, ‘irrespective of their nationality’<sup>23</sup> The Schengen agreements are based on the principle that there should be no discrepancy between EU nationals and third country nationals. Everyone should have a right to cross internal borders and nonetheless spot checks are allowed, no category of persons should be subject to systematic border controls at internal borders. To accomplish this goal the Schengen agreements, highlight the importance to maintain strong external borders and apply common procedures in order to ensure that only those who have a right are permitted to cross the borders. Therefore, the Schengen rules place limits on who can enter, while the Schengen Borders Code states that ‘third-country nationals shall be subject to thorough checks’ at external borders.<sup>24</sup> This led to the creation of the Schengen Information System, to have a database of individuals who should be prevented to enter to Schengen area. Furthermore, the Schengen agreements emphasised the importance of developing a common approach to the treatment of asylum seekers – a commitment that turned out to be a central to the Area of Freedom, Security and Justice.<sup>25</sup> Because of this development, Schengen visa and larger territory has made EU also an attractive place for irregular migrants and asylum seekers.

According to Article 3 of the SBC shall apply to any person crossing the internal or external borders of Member States, without prejudice to: (a) the rights of persons enjoying the right of free movement under Union law and (b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.<sup>26</sup> The Schengen system does not ban people from seeking asylum at EU borders, although it makes it harder for them to reach the territory and more likely to risk their lives trying and we have plenty of examples from the southern sea borders.

The SBC art 4 imposes the obligation to the Member States that when they apply the Code they should act in full compliance with relevant Union law, Charter of Fundamental Rights, and Geneva Refugee Convention from 1951. The principle of non-refoulement and fundamental rights should be applied in decision making and should be taken on an individual basis. So, the Schengen Borders Code contains general exceptions related to refugees and human rights, as well as specific asylum exceptions from the normal rules on the grounds for admission, and from the

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<sup>23</sup>Article 20, Schengen Borders Code; European Parliament and the Council of the European Union 2006.

<sup>24</sup>Article 7.3 Schengen Borders Code; European Parliament and the Council of the European Union 2006.

<sup>25</sup>Monar (2001); Geddes (2008).

<sup>26</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).

requirement to penalise those who cross the external border without authorisation. The latter exception obviously reflects Article 31 of the Geneva Convention, discussed above.

The common external border leads to the need to agree upon how asylum seekers and refugees are treated. As there is no internal border control also the irregular migrants and asylum seekers move easily from one state to another. This was emerging platform for Dublin regulations, that are heavily criticised. Dublin regulation gives instructions which country is responsible for processing the asylum application and how the applicants are shared. There might be a reason why another country should be responsible for the application review. These reasons are related to family members who reside already in another Dublin country or the visa, residence permit is issued by another country than the one which the applicant entered, the fingerprints are taken by another Dublin country, there is other evidence that the applicant has been in another country.

The application of Dublin rules nevertheless has not been always bright.<sup>27</sup> In the case of *MSS v Belgium and Greece*<sup>28</sup> the European Court of Human Rights ruled that Dublin principles should not be applied automatically but sending country should check if the human rights of the applicant will be respected in the receiving country. The problem there was that the asylum applicant was fingerprinted in Greece and applied asylum in Belgium. Following the rules of Dublin, the applicant was sent back to Greece. The applicant appealed to European Court of Human Rights and the court sentenced that there was a breach of art 3 (prohibition of torture) and art 13 (the right to an effective remedy) of the Convention. This shows that the mutual trust that applicants are treated in the same way in all EU member states might lead to the breach of international law and even within EU the standards which are respected are diverse.

Another interesting recent case, *WS and Others v Frontex*, is about competence of Frontex. The fact that Frontex itself lacks competence to examine the merits of asylum applications or return decisions, does not exempt the Agency from respecting human rights of migrants. The General Court noted that, “Regulation 2016/1624, in particular Article 6(3) thereof, provides that [Frontex] shall contribute to the consistent and uniform application of Union law, including the Union acquis concerning fundamental rights, at all external borders”<sup>29</sup>. Furthermore the Court pointed out that, “Article 34(1) of that regulation states that the European Border and Coast Guard shall ensure the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the [Charter of Fundamental Rights], relevant international law – including the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto and obligations on access to international protection, in particular the principle of non-refoulement”<sup>30</sup>.

Nevertheless, when the states see the increase of applicants at the external borders of EU, the practice of blocking asylum seekers external borders is emerging. The Schengen Borders Code allow temporary reintroduction of internal border

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<sup>27</sup>Roots (2017).

<sup>28</sup>Roots (2014).

<sup>29</sup>Para 63

<sup>30</sup>Para 63



the first instance of ECHR ruling on human rights implications in the circumstances of instrumentalized migration and the outcomes will have a fundamental implication on enforcement of human rights and non-refoulement principle in circumstances of combating instrumentalized migration.<sup>41</sup>

Finnish Border Guards Act section 15 (749/2014) allows temporary reintroduction of border control at internal borders.<sup>42</sup> Section 16 of the same act gives a permission to close also external borders: “Where it is deemed necessary to prevent a serious threat to public order, national security or public health, the Government may decide to close border crossing points for a fixed period or until further notice. Any immediate actions necessary are decided by the Ministry of the Interior until the matter is decided by the Government. The closing of border crossing points may not prevent the right of Finnish citizens to arrive in the country or the right of anyone to leave the country, or violate the rights of those covered by European Union law on free movement or anyone right to international protection. Further provisions on the prompt handling among the police, Customs and Border Guard of matters concerning the closing of border crossing points, and on the submission of relevant notifications to competent European Union institutions and to other states are issued by government decree”.<sup>43</sup>

The delicate issue here is that the rights of persons who might need international protection must be assured. The reality is that often we do not know which persons, who are standing at the border, are refugees in need of international protection? For many people who apply asylum at the Finnish Russian border, Russia can be a third safe country. But if Russian border guards do not allow the persons who have been at the Finnish border to re-enter it is not possible to send them back and Finland is forced to accept them to their territory.

Poland at the same time also continues to block the asylum applicants.<sup>44</sup> This shows clearly that the common rules established in 1980-1990s are not any more relevant to the current situation where third country nationals and their family members desire to enter to Schengen area is used as a weapon. Countries with geographical external borders face more immigration pressure and are vulnerable to the actions of their neighbours. Actions taken by Belorussia and Russia where they

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<sup>41</sup>EUROPE: EUROPEAN COURT OF HUMAN RIGHTS TO HEAR LANDMARK ‘PUSHBACK’ CASES. Amnesty International. 2025. <https://www.amnesty.org/en/latest/news/2025/02/europe-european-court-of-human-rights-to-hear-landmark-pushback-cases/#:~:text=On%2012%20February%20C%20the%20Grand%20Chamber%20of%20the,border%20%E2%80%94%20from%20these%20EU%20states%20to%20Belarus.>

<sup>42</sup>Decisions on the temporary reintroduction of border control at internal borders referred to in Chapter II of Title III of the Schengen Borders Code are made by the Government. However, where immediate action is required because of a threat to public order, internal security or public health, the Ministry of the Interior decides on necessary actions until the matter is decided by the Government. Further provisions on the prompt handling among the police, Customs and Border Guard of matters concerning the reintroduction of border control at internal borders, and on the submission of notifications and information and on consultation are issued by government decree.

[https://www.finlex.fi/en/laki/kaannokset/2005/en20050578\\_20191350.pdf](https://www.finlex.fi/en/laki/kaannokset/2005/en20050578_20191350.pdf)

<sup>43</sup>Section 16 (749/2014)[https://www.finlex.fi/en/laki/kaannokset/2005/en20050578\\_20191350.pdf](https://www.finlex.fi/en/laki/kaannokset/2005/en20050578_20191350.pdf)

<sup>44</sup>ECRE (2023). <https://ecre.org/eastern-borders-poland-continues-restricting-access-to-asylum-hungarys-inhumane-policies-increase-smuggling-crimes-and-deny-people-protection-austrian-minister-calls-for-urgent-reform-of/>

encourage third country nationals to cross illegally the EU borders is not in line with international law or border agreements. One of the solutions can be political dialog with the neighbouring countries. The current problem with Russia and Belorussia is the ongoing war between Russia and Ukraine that limit also the possibilities to cooperate in other fields. This situation is also named as “migration attack” which aim is to create chaos and additional burden to neighbouring state.

EU law including Schengen rules emphasise that states should demonstrate solidarity in dealing with migratory flows into Schengen area, a notion that has not been always observed.<sup>45</sup> Rejecting asylum seekers might lead to the violation of human rights as it was indicated in the case *Sharifi v. Italy and Greece*<sup>46</sup>. There was stated that failure to access the asylum procedure or any other legal remedy within the port of disembarkation constitutes a violation of Article 4 of Protocol no.4 (enshrining the prohibition of collective rejections). In that judgement, the Court highlighted the link between the collective expulsions of the applicants and the fact that they had been prevented from applying for international protection.

## Conclusion

Schengen border is a special arrangement that influence EU citizens but also third country nationals and the whole understanding of border control. Schengen borders are regulated collectively which needs trust and capacity from all contracting members. It has effectively achieved the goal of free movement, but it seems to be not so efficient to control the unwanted immigration. Member states are allowed in special circumstances close their external and internal borders and therefor without a consent of other member states change the usual arrangement of free movement. The grey areas and member state measures that are not in the competence of EU make turbulence to the common goals of unified border control. Although we have state borders they are not controlled in the same way as it was before Schengen agreement, it introduced us new mode of governance and understanding of border control.

We still keep national borders although there is a perception of common external borders. The number on times when the internal Schengen borders were reintroduced show the need for the state borders. States are responsible for their internal security and order. Common borders have raised some issues that were discussed in this chapter but in general we can conclude that the Schengen is a successful collaboration and gives additional protection to states as they can invite additional forces if needed to protect the common external border. It ensures the free movement of persons that was one of the fundamental aims of the European Union integration plan.

Member states have their own definitions of borders and they have the control over their national borders although these might coincide with common Schengen or EU borders. The burden of border control is mainly on individual states but

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<sup>45</sup>Roots (2020); Roots (2012).

<sup>46</sup>Appeal no. 16643/09, EctHE (Section II), 21.10.2014. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-10215%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-10215%22]})

creation of Frontex has enhanced the cooperation between the states. Furthermore, as it was shortly discussed above Frontex RAPID forces can be invited to specific borders in case of need, as it was done in December 2023 in Finland.<sup>47</sup> Although EU is not a state it has created common borders where common rules are applied. It has been a great achievement at the EU level to improve the free movement of persons, goods and services.

Another problematic aspect of preventing instrumentalized migration is the lack of international law providing sufficient tools to prevent such malicious activity, since international treaties do not include such elements because they originate from a different time where states did not pursue their interest by exploiting the human right to seek international protection that is granted to individuals under international agreements.

Although lot has been achieved since the first agreement was drafted, there is still way to go. Together with the change of society, external and internal political challenges the EU wide cooperation on border controls must go on. The new borders are controlled more and more by technology or artificial intelligence and this brings us new challenges how to protect fundamental rights of persons, machines and AI. Development is an ongoing process and needs in future holistic integrated approach of different disciplines like law, political science, computer science, robotics, psychology and many more.

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