

POLICY MEMO

COVID-19, international travel restrictions and the future of Schengen visa policy.

Juliette Dupont, PhD Candidate
Centre for International Studies
Université de Montréal (CÉRIUM)

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Led by Frédéric Mérand, director of the Montreal Centre for International Studies (CÉRIUM), Université de Montréal

Executive Summary

European integration led to the suppression of internal border controls and the adoption of common external borders. Designed as a compensatory measure to free movement, the common short-stay visa policy, also known as Schengen visa policy, is a tool to prevent unwanted migration to Europe. Although the Schengen framework is supposedly uniform, Schengen visa policy is characterized by many ambiguities and disparities, making it extremely difficult to apprehend for third-country nationals.

The COVID-19 pandemic swept the routine of travel restrictions to Europe. Since March 2020, almost all non-EU citizens are subject to international travel bans. The dilemma between openness and control has rarely been so salient. However, I argue in this memo that EU external border control in times of COVID-19 reproduces the same inconsistencies of Schengen visa policy: EU management of travel restrictions lacks from transparency and enforcement. I prescribe four recommendations to redefine a more cohesive Schengen visa policy and to build a more clarified and more unified external border management framework.

Background and Research Question

Since the implementation of the Schengen area in the 1990s, European countries have adopted a common visa policy to regulate entry to the EU's territory. Also known as Schengen visa policy, EU visa policy consists in a uniform visa granting access to all Schengen States, harmonized procedures of issuance and a frequently updated 'white' list as well as a 'black' list of third-country nationals (TCN) falling under visa obligations. To travel to Schengen countries for business, tourism or family visit, TCN must apply for a short-stay visa to Member States' consular bureaus in their country of departure, which hold the discretionary competence to issue – or deny – the visa.

The COVID-19 pandemic led to an unprecedented shutdown of Schengen visa issuance by Member States' consulates abroad. In response to the global outbreak of the coronavirus disease, the EU suspended all non-essential travel to the bloc for non-EU citizens on 16th of March 2020. Exceptionally, freedom of movement across internal borders was also temporarily restricted. Since early summer 2020, the EU has lifted internal border control and has gradually reopened its external borders to a limited number of third countries. The lifting of travel restrictions is based on the epidemiological situation of each third country and is re-evaluated every two weeks by the EU Council. However, the EU is struggling to implement cohesive and coordinated measures of external border management, especially international travel restrictions.

In this memo, I argue that the EU management of travel restrictions during the COVID-19 pandemic highlights two fundamental issues of Schengen visa policy. The first problem is the lack of clear and transparent criteria used to restrict or entitle entry to the EU to TCN. The second issue is the lack of harmonized implementation of EU regulations of external border control. In the following, I will develop these two issues and discuss how current COVID-19 developments tend to stress them. How does the COVID-19 pandemic call for a renewed EU approach of travel and visa restrictions? I conclude with a series of recommendations for a redefinition of Schengen visa policy, to be better prepared to a similar crisis in the future.

¹ 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, 16.3.2020.

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Key findings

Enforced by twenty-six States in more than one hundred third countries, Schengen visa policy is supposed to be uniform - but only in theory. In practice, it often looks inconsistent. Two major issues arise from this initial paradox: a definition problem and an implementation problem. Border management in times of COVID-19 pandemic reveals them both.

The first issue of Schengen visa policy has to do with the opacity of the “blacklist”. There is a critical lack of transparency regarding the criteria used to determine which TCN are entitled to move freely – or not – to the EU’s territory. Nationals of 102 third countries are subject to Schengen visa obligation to travel to the EU. Schengen visa requirements mostly apply to poor countries, usually in Africa and in Asia, including former colonies and/or countries with political instability. To justify the distinction between Schengen visa “white” and “black” lists, the European Commission advocates a case-by-case approach and puts forward three criteria: the quality of the bilateral relation, the risk to public order and the risk of illegal immigration. Particularly vague and ambiguous, these criteria cover a wide range of interests, including for instance the support of the European tourism sector, by facilitating visa issuance to international clientele in emerging countries. Moreover, the blacklist comprises stricter restrictions that apply to some nationalities only, such as the airport transit visa. As a result, **it is difficult to understand on which criteria Schengen visa exemptions and restrictions are decided**, though migration and security risks seem to prevail.

The impression that visa obligations are defined arbitrarily has been strengthened by the COVID-19 crisis. After three months of international travel bans, the EU came up in early summer with an initial list of fifteen third-countries deemed as epidemiologically “safe”, which nationals should be allowed entry on Member States’ territory². This measure initially intended to support EU tourism sector, which accounts for 12% of all employment in the Union and for 10% of EU economic output. The list introduced a criterion based on public health risk, which was almost absent from the Schengen visa policy before the pandemic. The mix between these two priorities has resulted into an unusual situation where travel restrictions did not match with visa restrictions. For instance, the US nationals were not entitled to travel to the EU, despite usually benefiting from visa exemption. Conversely,

Algerian citizens could initially enter the EU, as long as they had a valid Schengen visa, although more than 45% of short-stay visa applications from Algeria were denied in 2019. This mismatch affects the intelligibility of the blacklist. In this context, the distinction on which the white list and the blacklist is based seems no longer relevant and should be reassessed.

Then, the **Schengen visa policy is dealing with an implementation problem**. The Visa Code is considered as EU hard law, however, it leaves important margins of discretion to Member States’ consulates. At the street-level, the prevalence of national styles and national interests leads to a lack of harmonization in Schengen visa issuance. In the same third country, European consulates often have different practices in terms of denial rates, list of supporting documents, processing times etc. Although rarely punishable, they increase the risk of “visa-shopping”, i.e. the introduction of an application to the State’s consulate that the applicant perceives as most likely to issue the visa, instead of the State of destination. This practice is often penalised by visa rejections or entry denials at EU borders³: TCN are accused of circumventing Schengen rules as they present themselves at one Member states’ airport with a visa issued by another Member State. Therefore, the lack of harmonization contributes to the precariousness of Schengen visa applicants and undermines the visibility and the credibility of common external borders.

The COVID-19 pandemic is far from improving enforcement of EU measures by Member States. Despite the EU Council releases every two weeks a list of third countries that should be exempted from travel restrictions, Member States have shown poor compliance. For instance, Greece reopened its borders to twenty-nine nationalities two weeks before the EU Council agrees on a list. Hungary has remained completely closed to non-EU citizens. Mid-August, the Commission encouraged Member States to lift travel bans for unmarried partners of European citizens and residents⁴. Less than ten Member States have announced they will enforce this recommendation. The lack of harmonization and enforcement measures make EU travel requirements extremely difficult to navigate for international travellers and deprive common external borders of their very meaning.

² COM(2020) 287 Final 2020/0134 (NLE) Proposal For A Council Recommendation On The Temporary Restriction On Non-Essential Travel Into The EU, 25.6.2020.

³ In 2019, 11.915 travellers have been denied entry at external airport borders because they did not have the right visa. Source: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eirfs&lang=en (last seen: 24.8.2020).

⁴ ‘Love is not tourism’: EU bids to reunite couples split by coronavirus restrictions, 7.8.2020 <https://www.euronews.com/2020/08/07/love-is-not-tourism-eu-bids-to-reunite-couples-split-by-coronavirus-restrictions> (last seen: 24.8.2020).

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Recommendations

The following recommendations can contribute to redefining a more consistent Schengen visa policy.

- The EU needs **to redefine the criteria of white and blacklist of Schengen visa requirements**, as they are currently presented in Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The criteria should be clearly defined. They should include a reference to public health risk, to reflect contemporary challenges and to balance the priority given to migration and terrorism risks. Moreover, the EU should adopt a transparent decision-making procedure, explaining the reasons why a third country has been moved to a list from another, or why it is subject to new restrictions.
- **The EU should revise the white and blacklist included in Regulation (EU) 2018/1806.** The current visa regime should anticipate the entry into force of ETIAS (European Travel Information and Authorization System), which will be compulsory for all visa-exempt visitors by 2022. As ETIAS will enable a pre-screening of all non-EU visitors, it should be considered to extend visa exemption to “low-risk” blacklisted third-countries.
- The EU has to ensure better harmonization of Schengen visa Code implementation by Member States abroad. At the local level, the lack of coordination between consular practices exacerbates the issue of “visa-shopping” or “destination-shopping”, misleading visa applicants. To avoid “visa-shopping” and its consequences, the **European External Action Service (EEAS) should affect more resources to local consular cooperation**, for instance by appointing migration and visa policy officer in the 25 top third-countries where Schengen visa demand exceeds 100,000 applications a year.

- To provide clear, transparent information regarding **Schengen visa rules, a common Schengen visa Internet site should be set up.** This recommendation was initially suggested in 2008 but was never implemented. It would improve the visibility of the Schengen area as a unified bloc. Based on the model of “Re-open EU” website, which provides information on travel conditions within the EU, the Schengen visa website would also contain updates on travel restrictions related to the COVID-19 situation.

These recommendations should enable to improve the cohesiveness of Schengen visa policy. They are user-oriented, as they ultimately contribute to ensuring more transparency and equity between visa applicants all over the world. In fine, they should help to constitute a more consolidated and harmonized framework of cross-border mobility management, making the EU more prepared to face the puzzle of travel restrictions caused by the pandemic.

Key References

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Author

Juliette Dupont is PhD candidate in political science at Université de Montréal. She holds a master's degree in International and European affairs from Sciences Po Lille and worked for a year in French parliament (Senate). Her thesis, supervised by Frédéric Mérand and Sabine Saurugger (Sciences Po Grenoble), is provisionally entitled "The politics of (un)desirability: contrasted uses of Schengen visa policy". It compares the differences in the implementation of Schengen visa policy by European actors in China and Algeria, where there are considerable differences in refusal rates. Involving several fields abroad, notably in Algiers, Beijing and Brussels, Juliette's research is funded by a FRQSC scholarship. Since 2017, she has also been coordinator of the Erasmus+ RESTEP research project (Transatlantic Network on Political Europe).