

The Schengen Agreement and the Convention Implementing the Schengen Agreement

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History and development of the Schengen Agreement

On 14 June 1985 the Federal Republic of Germany, France, Belgium, Luxembourg and the Netherlands signed the Schengen Agreement (Schengen is a small town in Luxembourg on the border to France and the Netherlands) on the gradual abolition of checks at their common borders.

On 19 June 1990 the Convention Implementing the Schengen Agreement was signed. Its key points relate to measures designed to create, following the abolition of common border checks, a common area of security and justice. Specifically it is concerned with

- harmonizing provisions relating to entry into and short stays in the Schengen area by non-EU citizens (uniform Schengen visa),
- Asylum matters (determining in which Member State an application for asylum may be submitted),
- measures to combat cross-border drugs-related crime,
- Police cooperation, and
- Cooperation among Schengen states on judicial matters.

The Convention Implementing the Schengen Agreement entered into force on 1 September 1993. Its provisions could not take practical effect, however, until the necessary technical and legal prerequisites such as data banks and the relevant data protection authorities were in place. The Convention thus took practical effect on 26 March 1995.

With the entry into force on 1 May 1999 of the Schengen Protocol to the Treaty of Amsterdam of 2 October 1997, Schengen cooperation - initially based only on an international agreement - was incorporated into EU law.

The European Community thereby assumed responsibility for large parts of the Schengen acquis (the Schengen Agreement and associated body of regulations) and its further development.

For EU Member States there are considerable advantages in belonging to the Schengen area. For EU citizens the abolition of checks at the Schengen area's internal borders means not only greater freedom of movement but also greater security. To compensate for the absence of checks at the Schengen area's internal borders, other measures such as mobile border area patrols and improved police networking as well as better and more effective checks at its external borders have been introduced.

Since 1995 there have been several expansions of the Schengen area. Austria acceded to the Schengen Agreement in 1997 and the Nordic countries Denmark, Finland, Iceland, Norway and Sweden in 2000. In December 2007 the European Council decided to expand the Schengen area to include the new EU Member States of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

- Visa regulations

Key points of the Schengen acquis

1. Citizens of countries fully implementing the Schengen acquis (see below) may enter such countries anywhere without any checks.
2. Third-country nationals who have been granted a visa with no territorial restrictions (visitor's or business visa allowing the holder to stay up to 90 days per six-month period, transit or airport visa) by a country fully implementing the Schengen acquis (see below) may, for the duration of the visa's validity, enter any other fully implementing country for the same purpose and also without checks.
3. Third-country nationals with a residence permit valid in one fully implementing country may travel on a valid passport, without requiring a visa, for up to 90 days per six-month period to any other fully implementing country ; they are also not subject to border checks at the Schengen area's internal borders.
4. Harmonized visa policies of Schengen countries (common list of third countries whose nationals require visas).
5. External border checks according to a common Schengen standard.
6. Access by all Schengen countries to the Schengen Information System (SIS), which provides data on persons and objects throughout the Schengen area especially in connection with inquiries by police and judicial authorities.
7. Close police and judicial cooperation.
8. Joint efforts to combat drug-related crime.
9. Rules determining competence for asylum procedures, now replaced by Council Regulation (EC) No. 343/2003 of 18 February 2003 (so-called Dublin II Regulation).

Schengen countries

The following is a list of countries which fully implement the Schengen acquis (so-called fully implementing countries), along with details of when border checks were or are due to be abolished:

Country	Border checks abolished
Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain	26 March 1995
Austria	1 Dec. 1997

Denmark, Finland, Iceland, Norway, Sweden	1 Dec. 2000
Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia	21 Dec. 2007
Switzerland	12 Dec. 2008 (land borders), 29 March 2009 (airports)

Following the complete abolition of border controls anyone holding a uniform Schengen visa may enter any other fully implementing country for up to 90 days per six-month period for the duration of the visa's validity.

Switzerland

Following the vote by the Swiss in June 2005 approving the Agreement with the European Union and the European Community on their country's association with the Schengen acquis, Switzerland has been applying the provisions of the Schengen Agreement since 12 December 2008. Checks at airports were removed on 29 March 2009.

Denmark, Ireland and the United Kingdom

For the EU Member States Denmark, Ireland and the United Kingdom special arrangements have been made.

While Denmark fully implements the Schengen acquis, it made a reservation on signing the Schengen Agreement regarding the implementation and application of future decisions taken under the Agreement. It will decide on a case-by-case basis whether to participate, under international law, in the further development of the acquis and to incorporate into its national law also Community law developed without its participation. Denmark is, however, bound to implement certain measures relating to the common visa policy.

While Ireland and the United Kingdom are not parties to the Schengen Agreement, they can, with the approval of the EU Council, apply the Schengen acquis in whole or in part and participate in its further development. They do not issue Schengen visas and apply the Schengen Agreement only in part. The EU Council has approved an application by both countries to participate in the enhanced cooperation between police and judicial authorities in criminal justice matters, the fight against drug-related crime and the Schengen Information System (SIS). Neither country, however, has abolished border checks.

Iceland and Norway

Although neither Iceland nor Norway are EU Member States, both countries fully implement the Schengen acquis on the basis of the Association Agreements they concluded with the EU on 18 May 1999.

They both belong (together with Denmark, Finland and Sweden) to the Nordic Passport Union, which has abolished checks on its members' common borders. On 1 December 2000 the EU Council decided that the Schengen acquis should take effect in all five countries

belonging to the Nordic Passport Union. Since then Iceland and Norway have been fully implementing countries. The regulations relating to the Schengen Information System (SIS) have been in force since 1 January 2000.

As regards those areas of the Schengen acquis that apply to Iceland and Norway, relations between these two countries on the one hand and Ireland and the United Kingdom on the other are governed by an agreement approved by the EU Council on 28 June 1999.

In practice the non-EU members Iceland and Norway participate in Schengen-related work through mixed committees that meet parallel to EU Council working parties. Their meetings are attended by representatives of the governments of EU Member States, the Commission and third-country governments. Iceland and Norway thus take part in discussions on the further development of the Schengen acquis but not in any votes taken in this connection.

Andorra, Liechtenstein and San Marino

While Andorra has not actually signed the Convention Implementing the Schengen Agreement, it has no checks at its borders with neighbouring countries Spain and France. Liechtenstein, too, has not signed the Convention Implementing the Schengen Agreement, as it has a monetary and customs union with Switzerland and the Swiss border police have been responsible to date for checks at the customs houses in Liechtenstein at the border with Austria. It has no checks at its border with Switzerland and now that Switzerland, too, is a Schengen country, all border checks have been removed. San Marino has not signed the Convention Implementing the Schengen Agreement either, but has no checks at the border with its only neighbour, Italy.

Bulgaria, Romania and Cyprus

Although they are EU Member States, Bulgaria and Romania (accession on 1 January 2007) and Cyprus (accession on 1 May 2004) implement the Schengen acquis only in part and consequently do not issue Schengen visas.

For the full implementation of the Schengen acquis certain requirements must be met. These include the introduction of the second-generation Schengen Information System (SIS II) and the successful conclusion of evaluations to determine whether the requirements for full implementation have in fact been met. Only then can border checks be abolished.

Selected legal provisions relating to the Schengen Agreement (excerpts)

1. 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: Joint Ministerial Gazette 1986, p. 79 ff.

2. Convention of 19 June 1990 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 (Convention Implementing the Schengen Agreement): Federal Law Gazette 111993, p. 1013 ff.

3. Act of 15 July 1993 on the Schengen Agreement of 19 June 1990 on the Gradual Abolition of Checks at the Common Borders: Federal Law Gazette 111993, p.1010 ff.

4. Notification of 14 June 1985 of the Entry into Force of the Convention of 19 June 1990 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 (Convention Implementing the Schengen Agreement): Federal Law Gazette 111994, p. 631 ff.
5. Treaty of Amsterdam of 2 October 1997: Federal Law Gazette 111998, p.386.
6. Schengen Borders Code (Regulation (EC) No. 562/2006 of 15 March 2006), in effect since 13 October 2006.