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Schengen and COVID-19 Combined

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Introduction

The idea of freedom of movement of persons within the European continent rests at the heart of the European project and is embedded in the founding treaties of the European Union (EU). Political and economic unification of the European continent is directly related to the abolition of internal borders in a sustainable and manageable way. There is a track-record of significant benefits it brings for many years to the economies of the EU member states and to the European single market as a whole. Therefore, the free movement of persons

became one of the few fundamentals of the EU as we know it. The freedom to travel, regardless of the purpose, was perceived as something that is prescribed to all Europeans.

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In parallel with the institution-building and functional consolidation of the Schengen zone, the legitimacy of the project and the idea it advocated significantly increased, attracting the interest of other states in the European continent to join. This caused an enlargement process of the regime, spreading the area of freedom of movement across Europe and fortifying the success of EU enlargement process in the post-Cold War period.

However, on a practical level, as any other idea about sharing responsibilities in the field of security, it raised lots of concerns in the national capitals of the EU member states and made compromise-building that is necessary for the viable decision-making process a very difficult task. This logically affected the institutional development and accordingly complicated its structure and capacity to adequately respond to emerging challenges. It also increased a possibility for having the member states sliding back into their national brackets once the crisis erupts, which we witnessed during the big migrant wave in 2015. Difficulty to reach a consensus at the EU level, combined with the necessity to react swiftly to an immediate challenge, pushed the member states into reintroducing border checks and suspending freedom of movement institutionalised with the Schengen regime. The same happened with the recent COVID-19 crisis that dramatically affected everyday life of European citizens and forced them to adapt to unprecedented

restrictions in the field of home affairs. Not only have the member states been forced into reintroducing border controls, but almost entire continent was pushed into a lockdown. Freedom of movement was allowed only within local communities (municipalities), while travel beyond local margins was authorised only to those with special permits.

Spread of COVID-19 and its consequences

Hence, any European or global crisis that affects practicing of the European fundamental freedoms represents a significant challenge to the liberal-democratic construct of the EU. Therefore, the COVID-19 crisis and the restrictions designed to curb it, represented a serious shock to the common European way of life. Lack of immediate joint EU approach to the emerging epidemiological crisis resulted in particular national responses and reinstatement of border checks within the Schengen zone, as well as the above-mentioned lockdown. Initially, after the eruption of crisis in Italy forced the country to introduce travel restrictions, the European Commission (EC) rejected the idea of reintroduction of national borders and defended the principle of free movement of persons. However, the accelerated development of the pandemic and the way it affected public health in different corners of European continent have forced the Schengen member states to suspend the

freedoms granted by the regime in an attempt to control the spreading of the virus.

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It is noteworthy that these steps were taken due to at least two additional reasons that prevented synergy and unity in an attempt to acquire a joint EU approach to the emerging challenge. First, there was a clear lack of information and know-how on best ways to tackle the virus and lack of confidence in partners' health systems' capacity to evaluate the risk and define appropriate measures against its outspread. This is substantially problematic for the functioning of the Schengen regime due to the fact that it is based, as well as the EU, on the mutual confidence among member states and trust in each-other's and common European institutions. Namely, it became clear, from both 2015 migrant and 2020 COVID-19 crises, that lack of trust in capacities of other EU members to conduct their duties in the field of crisis-management resulted in unilateral introduction of measures that suspended consummation of rights granted by the Schengen regime. Additionally, both crises have shown that different geographic locations and political contexts produce persistent divergences in national measures designed to tackle the challenge in the most appropriate

way. Here the Swedish approach to curbing COVID-19 outbreak represents an interesting example that caused lots of controversies and complicated regional and European attempts to re-open societies after the decline of intensity of the first wave of infection in a sustainable way.

However, it would be rather misleading to claim that there was no common ground whatsoever in EU member states' response to COVID-19. While being forced to introduce travel bans, they agreed to ensure cross-border commuting of workers and goods in critical sectors to maintain the functionality of common market and societal capacity to respond to the growing challenge to the extent possible in this specific moment. Under the leadership and guidance of the EC, the member states designed so-called green lines of transport in order to ensure timely supplies and sequential revitalisation of different segments of European common market. Member states also dedicated significant amount of efforts into coordination of measures in response to the growing epidemiologic challenge, regardless of the fact that they maintained divergences explained above. Perhaps, it would therefore be somewhat misleading to conclude that, by introducing unilateral security measures at their territory, EU members have actually abandoned the concept of free movement embedded in Schengen regime. The main intention was to limit the impact of the virus in a feasible and sustainable way. Namely, the EU does not have any legal authority in the field of

public health and accordingly cannot prescribe provisions for a uniform EU level response to the pandemic. Additionally, in practical terms, the process of following the contacts of infected, as a precondition for ability to trace the chains of COVID-19, is barely feasible at the European level. Hence, the estimation and management of risks, as well as justification of harsh security measures has to be based first and foremost on local and national structures. Additionally, as a consequence of a direct interpersonal transmission of the virus, significant restrictions of individual freedoms at the local level are difficult to justify if the regime of trans-border commuting within the EU does not follow the same pattern. The factual framework explained above has created a hybrid situation that the EU and its members states found difficult to manage. As in any other crisis, the EU took some time to find the lowest common denominator in order to undertake an endeavour of reconfiguring its approach to the pandemic. This significantly affected the perception of its legitimacy in and around the Union and called for more solidarity and joint action in this specific case.

Building a common approach mindful of significant national divergences

Rigorous measures during the spring have resulted in better epidemic circumstances in May, opening possibilities for gradual reopening

of national borders, in urge to revitalise the economy, especially in states that generate a significant amount of GDP from the service sector. Even the EC suggested member states to start lifting travel restrictions, with an emphasis on mutual respect of common criteria based on instructions of the European Centre for Disease Prevention and Control (ECDC), an agency of the EU tasked to set a knowledge-based framework for fighting the virus at the community level. Again, the reality on the ground was somewhat contesting the idea of a broader EU approach, due to the fact that the similar epidemic levels and political prioritising of certain member states actually created regional approaches to the matter, causing again regional loosening of travel regulations, which did not apply to all EU countries and citizens. It again revealed a lack of trust among some member states, as a fundamental obstacle to creating a joint approach to existing challenges.

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As it was previously underlined, border management and control of the spread of

pandemic is exclusively a prerogative of a member state, which leaves the EU with limited amount of tools to determine a common approach and ensure its implementation. For instance, the Baltic states started opening up by lifting travel restrictions only to citizens of the Baltic three, hence creating a regional zone of free travel. While Germany closed its borders to all neighbours, the one with the Netherlands remained open during the pandemic, as a result of close relations between the two governments and a harmonised approach to movement of residents during the crisis. Economic reasons were also important in reopening of borders. For example, Croatia opened borders to citizens of EU member states that traditionally represent an important market for its service industry – namely, Central European countries, Germany, Austria, along with Baltic three who at that time had relatively stable epidemic situation. This trend has driven the issue into the area of discretionary and subjective decision-making, forcing the EC to advocate the principle of non-discrimination and argue against the preferential treatment between certain member states.

Unfortunately, it seems that this practical aspect of enduring control of national borders is not ‘the only game in town’. Namely, the issue of security preconditions required to lift the internal border checks dates back to the initial period of development of the Schengen regime, when the basic principles and terms of

enactment were negotiated. Back then, as well as nowadays, the countries eager to maintain the border controls at the national level, or at least its hybrid model, complained about weaknesses of external EU border control and lack of capacity of EU partners to ensure sustainable and manageable contribution to the security of the Schengen zone. This represents a fundamental argument for maintaining border controls at the national level during the time that exceeds the period defined by the Schengen Treaty and Convention. Still, due to the fact that COVID-19 crisis almost entirely halted migratory movements and accordingly the pressure on EU’s external borders, justification of reinstatement of national borders as a consequence of potential security threats stemming from an uncontrolled immigrant flow seems to be losing ground. Regardless of the aforementioned, some member states still maintain border control within the Schengen zone.

Namely, the provisions of Schengen regime foresee the possibility for member states to reinstate border controls for the period of six months in the case of special security circumstances, which corresponds with the environment in the period of migrant crisis in 2015 and current COVID-19 pandemic. However, a possibility of indefinite extension of that period, as it is happening nowadays, while not forbidden, certainly is not in the spirit of free movement of people in the Old Continent and

represents a recognisable threat to legitimacy and sustainability of Schengen regime, as we know it. Representatives of some of these countries even argue in favour of idea to reconceptualise and renegotiate Schengen, taking back some prerogatives to the national states at the expense of established freedoms of citizens of European states. This discourse affects also the very idea and the pace of further enlargement of the Schengen Area, that so far proved to be an excellent tool for its growing legitimacy in and around the EU.

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However, one should not omit noticing that, while recognisable differences in national approach to COVID-19 crisis-management still exist, the EU has managed to make important steps ahead in its attempt to provide guidance and synergy for member states, if not an implementable framework for a joint approach. The initiative came from the EC in early September, with an attempt to coordinate measures related to travel restrictions during the COVID-19 crisis in the EU, which was

endorsed by the EU Council within few weeks. It resulted in an agreement reached by ministers of foreign affairs of EU member states in mid-October on common criteria for travelling within the Union during the pandemic. The abovementioned ECDC, as an EU agency, was tasked to create a compilation of COVID-19 data in order to map the developments related to the pandemic from different corners of the EU/EEA and the UK and accordingly provide an opportunity for member states to adopt a common set of criteria for intra-EU travel during the pandemic. A practical solution that was adopted is a colour-coded map that is updated every two weeks, containing common criteria for the assessment of the risk of infection in all countries and regions of the EU/EEA and the UK. There are three of them: testing rate (number of testing per 100,000 inhabitants during the week before the assessment date), test positivity rate (the percentage of positive tests in the same period), 14-day notification rate (the number of positive cases per 100,000 inhabitants in 14 days). Compilation of these three parameters divides regions and countries of the EU in four groups: green (safe to travel to), orange (risk), red (high risk) and grey (insufficient information), and joint restriction measures are applied accordingly.

Way ahead

Two unprecedented crises have obviously had a significant impact on different aspects of the European life. While societal, political and security consequences are yet to be calculated, the economic loss is somewhat easier to measure. According to the latest analysis of the EC, the consequence of the COVID-19 crisis would be a 7,4% decline of the EU's GDP in 2020, with a possibility for this decline to rise if the travel restrictions are maintained. On the other hand, this again underlines the importance of functionality of the Schengen regime for the EU economy as a whole, as well as for the economy of each member state.

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Therefore, bringing back the full spectrum of Schengen functionality, as an obvious priority for the EU, requires dealing with its loopholes and inconsistencies and consequently providing viable responses to reservations of countries that are still maintaining some form of border controls within the European zone of free movement of persons. Namely, both

crises (2015 migrant wave and 2020 COVID-19 pandemic) have revealed the fact that the club designed to coexist in peaceful times with relatively high living standards finds it difficult to generate a common response once the crises emerge. Solidarity, as a fundamental precondition for functionality of the EU as a construct *sui generis*, was clearly absent in both cases and backsliding into national brackets significantly complicated attempts to find at least a lowest common denominator as a base for joint response. In a more technocratic sense, both crises have caught the EU off-guard and incapacitated to adequately utilise already existing means at its disposal. While civil-protection tools were almost entirely undeployed in 2015, the aforementioned ECDC responsible for early detection of emerging epidemic threats to the EU was not timely used and adequately supplied with necessary data from member states. It resulted in an uncoordinated and unconsolidated response to crises, generating multidimensional negative impact on different spheres of life of EU citizens.

Recent developments are leaving a more optimistic tone. For example, utilisation of EU funds in the field of crisis-management or creation of the EU Civil Protection Mechanism should provide necessary support to any member state in need and ensure that 'early spring Italy scenario' does not happen again. For

that end, it seems necessary also to consolidate the preconditions for mutual confidence and trust among member states. It should start from a more intense and coherent data and information sharing among EU members. That should ease the tension that still exists in the frameworks of cooperation in the field of home affairs, especially in the period of crisis, and furthermore lead to an intensified transnational cooperation and fortification of existing communication and coordination structures designed to foster interactions within the EU. It is a precondition for an increased level of synergy in crisis-management policy developments at the EU level. Despite the fact that national divergences and particular interests in the field of crisis-management are unlikely to evaporate,

a consistent track-record of capacity-building development at the community level hardly has an alternative in an increasingly unpredictable international arena.

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