

A Europe without internal borders?

Free movement of persons

- 3.5 million people travel across an internal EU border every day.
- The employment rate for EU foreigners living in another Member State is higher than for nationals.
- Closing EU internal borders again could lead to costs of between €100 and 230 billion over 10 years and impede cross-border commuting for 1.7 million people.

Who has which rights?

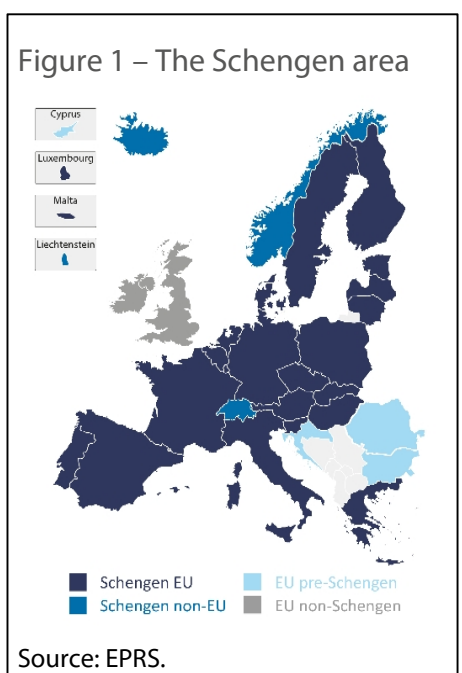
The free movement of persons is one of the four freedoms of the [EU single market](#), the other three being the free movement of [goods](#), services and [capital](#). Since the founding of the EU, internal borders have been progressively dismantled and these freedoms have expanded. Today the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States are for the most part based on [Directive 2004/38/EC](#). Free movement may [in practice](#) entail different rights for different categories of people.

Tourists: all EU citizens can stay in another Member State for up to three months with a valid passport or identity card.

Workers: workers were the first group of people to benefit from the free movement of persons, in 1957. Under Article 45 of the Treaty on the Functioning of the European Union (TFEU) they can live in another Member State for work, with the right to be treated in the same way as nationals of that country. After the end of an employment contract, they may remain and claim unemployment benefit, if the national social system offers it to nationals.¹ Thanks to EU social security legislation, under Article 48 TFEU, rights to [social security benefits](#) can be carried over when moving to another Member State.

Self-employed people: entrepreneurs benefit from [freedom of establishment](#) (Articles 49 to 55 TFEU). They can set up a business in another Member State, or exercise a liberal profession (law, architecture etc.). Businesses include for example shops or wholesale outlets. They can also offer services such as craft or transport services. The EU has made significant efforts to promote the [mutual recognition of professional qualifications](#) (Article 53 TFEU) in order to smooth the way for the freedom of establishment (and freedom to provide cross-border services).²

Non-economically active persons: [students](#) have the right to study in any Member State. They have to enrol officially at a university or similar, be covered by sickness insurance and have sufficient funds so as not to become a burden on the host Member State's social assistance system. Similarly, retirees or other people who do not work need to demonstrate that they can afford to live in the host Member State. Finally, EU citizens are allowed to move to another Member State for longer than three months for the purpose of seeking employment 'as long as there is a genuine chance of being engaged'. During the job search, the host Member State is not obliged to offer them social assistance.³



Family members: spouses, registered partners and dependents of both partners (children under 21 or other dependents in the ascending line) may follow an economically active or otherwise financially secure EU citizen to another Member State, even if they are not EU citizens. Indeed, cross-border aspects of family and succession law form part of EU judicial cooperation in civil matters and, in that context the EU supports [mobile and international families](#).

In most Member States, EU citizens have to register with the local authorities when exercising their freedom of movement for longer than three months.

What are these rights grounded in? Evolving foundations for free movement

The Treaty of Rome establishing the European Economic Community (EEC) in 1957 set out the free movement of persons as one of EEC's fundamental objectives. However, this covered only individuals as employees or service providers. At that time, free movement had a mainly economic rationale: workers, as a factor of production, could be more efficiently deployed by allowing them mobility.

The Treaty of Maastricht of 1992 embedded the freedom of movement in the wider concept of EU [citizenship](#), and the focus of EU Treaties and legislation widened from addressing working (economically active) people to other categories of people, including those not working. This shift was part of a more general change: the EEC was renamed first the European Community (EC) and then the European Union (EU) illustrating a wider political as well as economic focus. The Treaties and the case law of the Court of Justice of the EU (CJEU) gradually have extended freedom of movement to the other categories of people mentioned above, including students, jobseekers and retirees. Today's Treaty on European Union (TEU) mentions the 'area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured ...' (Article 3(2)), *before* the internal market (Article 3(3)).

EU citizenship is additional to citizenship of a Member State and does not replace it (Article 9 TEU and Article 20(1) TFEU). It gives EU citizens the right to move and reside freely within the territory of the Member States (Article 21 TFEU), as well as [other rights](#), for instance the right to vote and stand as candidates in elections to the European Parliament (EP) and in municipal elections in their Member State of residence, and the right to petition the EP. Discrimination against migrant EU citizens on the grounds of nationality is in principle prohibited (Article 18 TFEU), notwithstanding the conditions and limitations laid down in Directive 2004/38/EC. Furthermore, Member States are allowed to restrict access to some public service jobs (Article 45(4) TFEU) to their own nationals. The CJEU has stressed⁴ that such derogations must be interpreted narrowly. The [European Commission](#) also explains that Member States can give preference to nationals for posts that require 'a special relationship of allegiance', like the diplomatic service or the judiciary. Although even within these categories not all posts seem to justify restrictions. Overall, for professions such as gardeners, plumbers or even teachers, Member States' public institutions must not discriminate against EU citizens for nationals.

An instrument for freedom of movement: the Schengen area

The free movement of persons (as well as [goods](#)) is being facilitated every day with the aid of the Schengen area (Article 67 TFEU). All EU Member States except Ireland and the UK either belong to the Schengen area or have applied to join (see Figure 1). The Schengen rules abolish internal border controls, while harmonising and reinforcing protection of the area's external borders. Once inside the Schengen area, people can travel from one Member State to another without being subjected to border checks (as a general rule). Competent national authorities may however [check](#) individuals at or close to internal borders if police information and experience warrant stepping up surveillance temporarily. Schengen also includes a [common visa policy](#) for short stays by non-EU citizens and helps participating states join forces in the fight against crime with the aid of police and judicial cooperation. Denmark is a member, but has chosen to opt out of certain new justice and home affairs measures. The non-EU countries Iceland, Liechtenstein, Norway and Switzerland are also part of Schengen. Since 2004, all new EU Member States are obliged to work towards fulfilling the conditions necessary for joining Schengen. The area first worked as an international agreement: the Schengen Treaty of 1985 was

implemented from 1995 by the Schengen Convention and was included in the EU Treaties in 1997. According to recent European Commission statistics more than [16.1 million applications for short-stay visas](#) were lodged at the consulates of the Schengen States in 2017 (6.3 % more than in 2016).

Benefits for people and the economy

Across the EU, approximately [3.1 % of residents](#) live outside the Member State in which they were born. More than four-fifths ([81 %](#)) of Europeans appreciate being able to live, work, study and do business anywhere in the EU. Although some other benefits of free movement and open borders are difficult to quantify, including the possibility to cross borders easily to attend cultural events or go shopping, some data are available.

Work: the free movement of persons, enhanced by the Schengen area, currently enables [1.7 million workers](#) in the EU to commute across a border daily to work in another Member State. [Statistics](#) show that the employment status of EU foreigners living in another EU Member State closely resembles that of native workers. A [study](#) for the Commission explains that mobility benefits job-seekers and companies: a better match between skills supply and demand is achieved by allowing companies to access a larger pool of potential employees. It also argues that, contrary to popular belief, there is no evidence suggesting that the arrival of EU migrants is responsible for unemployment or lower wages for the native population. The study includes an econometric analysis concluding that overall, internal EU mobility does not have any negative economic impact on the host communities, in this case urban areas. It also argues that EU migrants are often in a position to create jobs, since they are more likely to become entrepreneurs than natives. All in all, the study shows that mobile EU citizens are net contributors to public finances, which includes welfare systems. This result and the fact that EU migrants represent a [very low share of welfare beneficiaries](#) indicate that fears of EU foreigners abusing social systems are unfounded. The [Open Society Foundations](#) claim that free movement has reduced unemployment across the EU by 6 %.

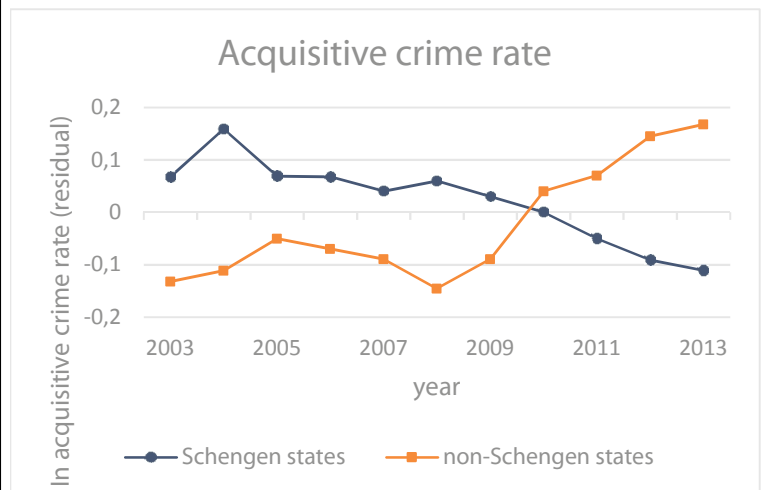
The [Commission](#) also explains the advantages for businesses: companies have access to a larger number of suitable candidates for jobs, and jobs can be better matched with people's skills. Low-skilled immigrants, for example, often take jobs that the local population rejects, such as cleaning or hard farm labour. On the opposite side of the spectrum, immigrants who bring a specific skill that is rare in the receiving country satisfy a business need without taking jobs away from the local population.⁵

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Travel: [3.5 million people](#) cross an internal Schengen border every day. EU residents made [225.4 million trips](#) to another EU Member State in 2015.

Added value of the Schengen area: mechanisms introduced with the Schengen area, in particular data-sharing and cross-border police cooperation, help to fight cross-border crime. These measures were necessary to compensate for the absence of border controls. However, as an EPRS study on the [Cost of Non-Schengen](#) explains, abolishing border controls has also freed up police and other government resources that were tied up in controlling mainly commuters and tourists to fight crime in a more targeted way. After the 2007 **Schengen enlargement, rates of acquisitive crime** (including theft, burglary, car theft and robbery) **decreased**, both in countries that had newly joined Schengen near the end of 2007 (see Figure 2) and in the adjacent original Schengen countries, especially their border regions (Figure 3). While the author also concedes that the research results do not prove that the Schengen enlargement brought border region crime down, at least the findings do not suggest that abolishing internal border controls has increased crime. In addition, EU citizens do not feel any less

Figure 2 – Schengen and non-Schengen crime statistics



Source: [RAND](#), based on UNODC crime statistics.

secure since the Schengen enlargement (p.31). For example, in the fight against drug trafficking, police use the [Schengen Information System](#) (SIS), a tool that alerts law enforcement agencies about wanted or missing persons or objects. Border guards also use the SIS to exchange information about people who may not have the right to enter or stay in the EU.

The cost of closing borders

Since the [Arab Spring upheavals of 2011](#), which brought large number of refugees to Europe, Member States have increasingly called into question the principle of open borders between Schengen countries. This tendency was compounded by fear of 'secondary movements' (from one Member State to another) of people in the wake of the migration and refugee crisis that culminated in 2015. Some Member States did not [trust](#) each other to police external borders effectively and used the [Schengen Borders Code](#) (SBC, amended in 2013) to reintroduce temporary border controls. The SBC allows these in the case of a 'serious threat to public policy or internal security'. In April 2018, [six Member States](#) were controlling all or some of their internal borders.

The [EPRS study](#) has modelled the costs of reintroducing border controls according to three scenarios. Closing internal borders indefinitely would cost Member States **between €29.31 billion and €56.26 billion** over 10 years (one-off and regular operating costs combined). A second study for EPRS on the [single market aspects of the Cost of Non-Schengen](#) calculated that the impact of reintroducing internal border controls on countries' administrations, commuters, tourists, and imported and exported freight would likely range **between €100 billion and €230 billion** over 10 years.

ENDNOTES

¹ See Directive 2004/38/EC Article 24 for equal treatment and Article 7(3)(b) and (c) for conditions for retaining worker status.

² Z. Horváth, *Handbook on the European Union*, Hvg-Orac 2011, pp. 243-257.

³ Directive 2004/38/EC, Articles 14 (4) (b) and 24 (2).

⁴ Case [C-75/11](#), *European Commission v Republic of Austria*, par. 54.

⁵ R. Baldwin / C. Wyplosz, *The Economics of European Integration*, McGraw Hill, 2015, p. 206.

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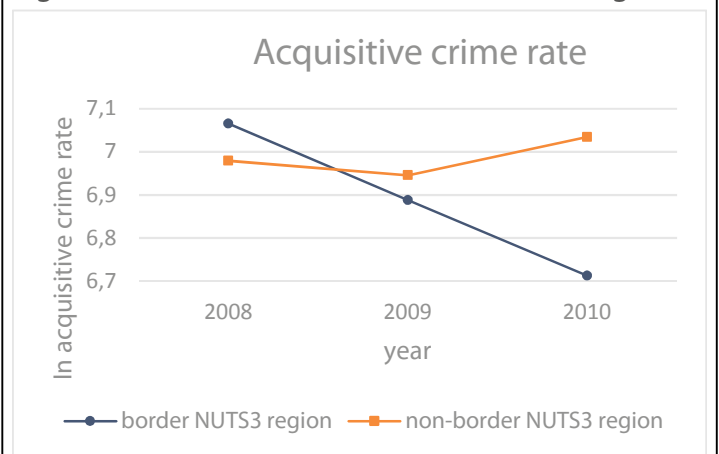
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Figure 3 – Crime in border and non-border regions



Source: [RAND](#), based on UNODC crime statistics.

