

# The reestablishment of EU borders marked by the COVID-19 health crisis

*During the crisis: a yearning for harmony*

*The crisis's early stages*

*The EU Principle of conferral of powers*

*The EU Pre-Covid*

Sufyan Demir, Charlaine Nkukulu,  
Inès Abid, Prelat Ahadi, Alice Antoine  
M2 Droit des Produits de santé en Europe

# An European Area without internal borders

**Article 26 Treaty of the functioning of the EU (TFEU):**

*1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.*

*2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*

**Treaty of Rome (1957):** *Freedom of movement of persons applied to European workers*

**Maastricht Treaty (1992):** *Enshrined European citizenship*

The  
Schengen  
Area

# The Schengen Area

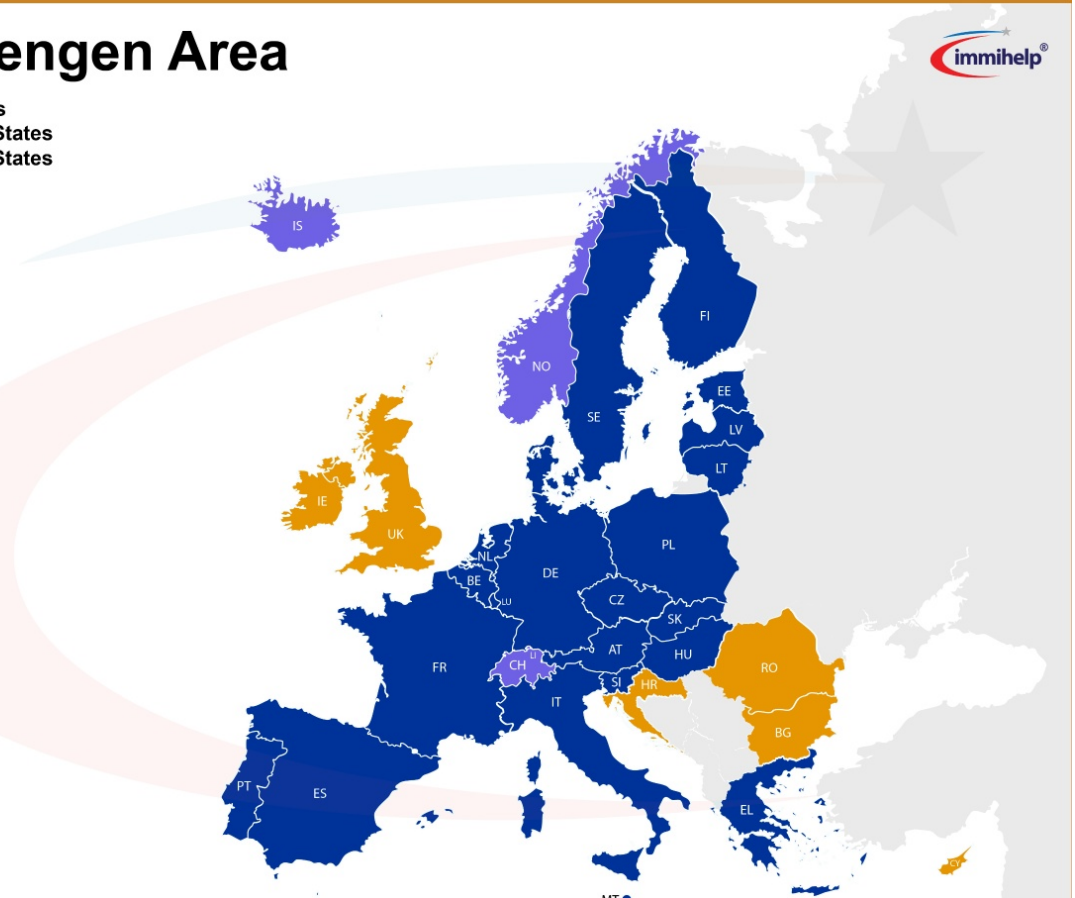
Schengen Agreement signed in 1985 by 5 member states of the EU: the Federal Republic of Germany, France, Belgium, Luxembourg and the Netherlands

Integration within the EU in 1999

## The Schengen Area

- EU Schengen States
- Non-Schengen EU States
- Non-EU Schengen States

AT Austria  
BE Belgium  
BG Bulgaria  
CH Switzerland  
CY Cyprus  
CZ Czech Republic  
DE Germany  
DK Denmark  
EE Estonia  
EL Greece  
ES Spain  
FI Finland  
FR France  
HR Croatia  
HU Hungary  
IE Ireland  
IS Iceland  
IT Italy  
LI Liechtenstein  
LT Lithuania  
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# The principle of Conferral of Powers

*Article 5 Treaty on European Union (TEU):*

- 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.*
- 2. Under the principle of conferral, **the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties** to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.*

Conferred  
Powers

# Different types of conferred powers

## Exclusive competences

(Article 3 of the TFEU) areas in which the EU alone is able to legislate and adopt binding acts. EU countries are able to do so themselves only if empowered by the EU to implement these acts. The EU have exclusive competence in the following areas:

- customs union
- the establishing of the competition rules necessary for the functioning of the internal market
- monetary policy for the member states whose currency is the euro
- conservation of marine biological resources under the common fisheries policy
- common commercial policy
- concluding international agreements, subject to certain conditions

## Shared competences

(Article 4 of the TFEU): the EU and EU countries are able to legislate and adopt legally binding acts. EU countries exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence. Shared competence between the EU and EU countries applies in the following areas:

- social policy, but only for aspects specifically defined in the Treaty
- Internal market
- economic, social and territorial cohesion (regional policy)
- agriculture and fisheries (except conservation of marine biological resources)
- environment
- consumer protection
- transport
- trans-European networks
- energy
- area of freedom, security, justice
- shared safety concerns in public health matters, limited to the aspects defined in the TFEU
- research, technological development, space
- development cooperation and humanitarian aid

## Supporting competences

(Article 6 of the TFEU): the EU can only intervene to support, coordinate or complement the action of EU countries. Legally binding EU acts must not require the harmonisation of EU countries' laws or regulations. Supporting competences relate to the following policy areas:

- protection and improvement of human health
- industry
- culture
- tourism
- education, vocational training, youth and sport
- civil protection
- administrative cooperation

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## Reestablishment of internal borders

Almost complete closure of internal borders: "*a primary state reflex*".  
Pr A. Bouveresse

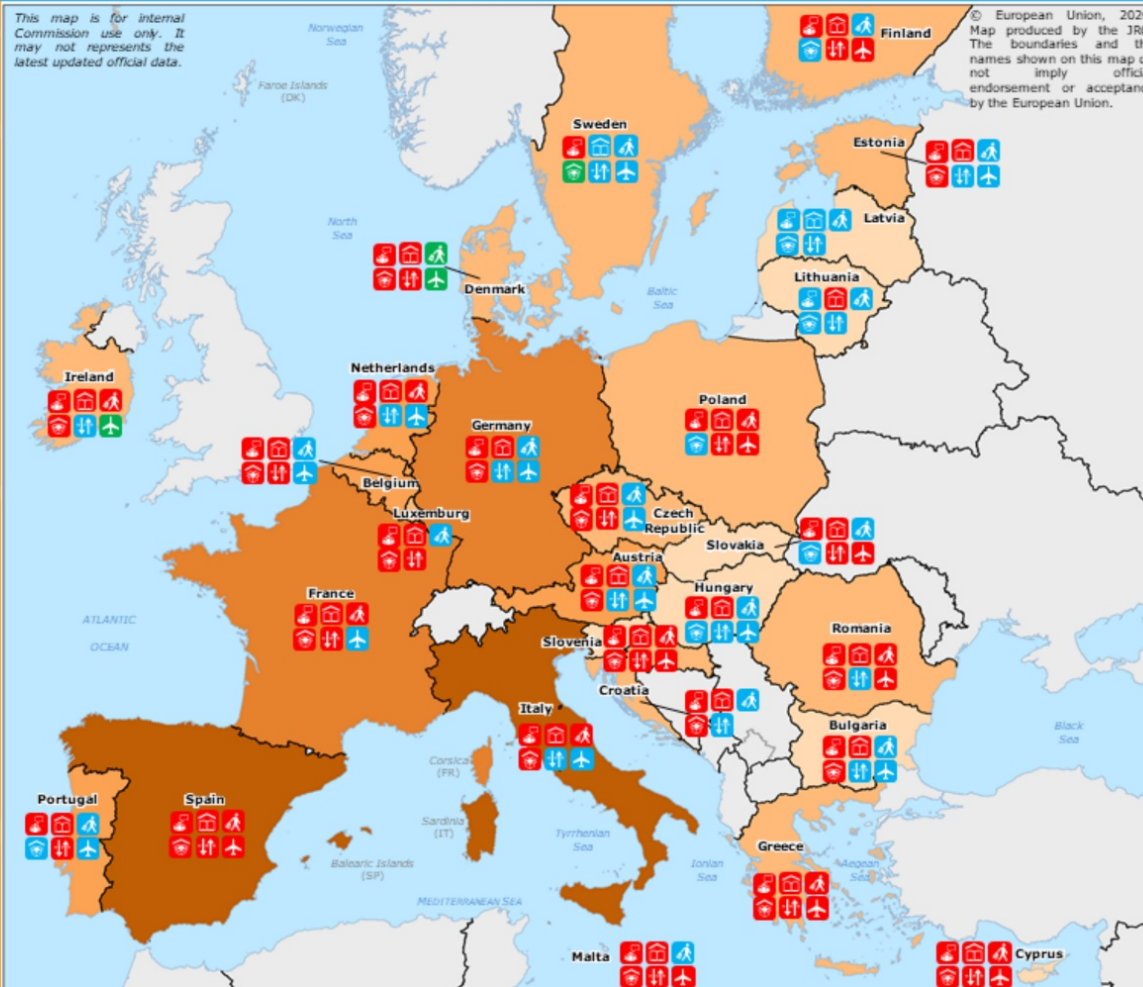


First Restrictive measures

JRC Map 6 April 2020 at 14.00 UTC  
**European Union | COVID-19 restriction measures**



*This map is for internal Commission use only. It may not represent the latest updated official data.*



**RESTRICTION MEASURES PER COUNTRY**

- National events stop
- Schools, nurseries, kindergartens, educational facilities closure
- National movements restrictions
- Non-essential shops closure
- International movements restrictions
- Flights restrictions

- National measures
- Partial/regional measures
- No restrictions

**NUMBER OF COVID-19 CASES PER COUNTRY**

- 0 – 250
- 250 – 1,000
- 1,001 – 10,000
- 10,001 – 50,000
- 50,001 – 100,000
- 100,001 – 135,032

Source: JRC, [WebCritech](#), National Authorities

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# Supporting initiatives of the EU

**In a later stage of the pandemic**  
Different indirect restrictions throughout Europe:

**COVID Test:** PCR or Antigenic

- PCR test that requires payment in some EU states (60~150€ in Germany, 47€ in Greece ...) and free in others (Belgium, France, The Netherlands...)

**Obligation to vaccinate:** 6 vaccines that have been approved for commercialization by the European Medicines Agency (EMA)

- 1st marketing authorization in december 2021 for the Pfizer's vaccine

Obligation to wear a mask/Curfews/different travel online forms...

**The Key role  
of the  
Commission**

# Some of the Commission's initiatives

- The Commission's guidelines regarding seasonal cross-border workers in July 2020
- **Re-open**: to help citizens with the different measures implemented in the member states



- **Vaccine recognition:** In July 2021, the EU issued a regulation on digital certificates for COVID, which resulted in the creation of an "EU digital certificate" (combined with the work of the European Medicines Agency on the marketing authorization)



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