

Schengen without a customs union

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Since Switzerland joined the Schengen area, the control of persons at its borders with Germany and France has followed the logic of an internal Schengen border. The association agreement was signed in 2004, approved by referendum in 2005, and became operational at the land borders on 12 December 2008 and at the airports on 29 March 2009. Systematic identity checks were abolished, although officials may still carry out checks based on risk analysis or police information. The result is a combination that is unusual in Europe: persons cross the border freely, while goods remain subject to customs control because Switzerland is outside the customs union.¹

This combination explains why travellers in Basel still see customs officers at the border, even though no one asks for their passport in ordinary circumstances. The officers are entitled to stop vehicles and persons in order to check whether goods are being imported without declaration. In practice such checks also lead to the discovery of persons who are wanted by the police or who stay irregularly in the Schengen area. The merger of customs and border guard functions within the FOCBS is designed for exactly this situation. The same officer who checks the boot of a car for undeclared meat or cash can also verify the identity of its passengers when there are grounds to do so.²

Germany and France have occasionally reintroduced temporary controls at their internal Schengen borders, including at the borders with Switzerland, in response to migration pressure, terrorist threats or major events. Since 2023 and 2024, Germany has maintained such controls at its land borders, including the border with Switzerland, under the provisions of the Schengen Borders Code that allow temporary reintroduction. These controls are carried out by the German Federal Police and have caused delays at the crossings around Basel. Their legality under European law, which permits them only for limited periods and as a last resort, has been

questioned. The Basel experience shows that the Schengen promise of open borders remains conditional and that the physical infrastructure of control has never been dismantled.³

1 Notes

1. Agreement of 26 October 2004 between the Swiss Confederation, the European Union and the European Community concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis (SR 0.362.31); referendum of 5 June 2005; operational at land borders on 12 December 2008 and at airports on 29 March 2009. To be verified. ↩
2. On the legal basis for checks of persons by the FOCBS within the Schengen framework, see Article 100 CA and the FOCBS information on Schengen. To be verified. ↩
3. Regulation (EU) 2016/399 (Schengen Borders Code), Articles 25 et seq., as amended by Regulation (EU) 2024/1717; on the German notifications of temporary border controls at the border with Switzerland from October 2023, see the European Commission's list of notifications. Status to be verified. ↩

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