Honor Thy Promise: Why the Dutch Drug Policies Should Not Be a Barrier to the Full Implementation of the Schengen Agreement

Susan H. Easton

Follow this and additional works at: http://lawdigitalcommons.bc.edu/iclr

Part of the Comparative and Foreign Law Commons, Criminal Law Commons, European Law Commons, and the Social Welfare Law Commons

Recommended Citation

This Notes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydlowski@bc.edu.
HONOR THY PROMISE: WHY THE DUTCH DRUG POLICIES SHOULD NOT BE A BARRIER TO THE FULL IMPLEMENTATION OF THE SCHENGEN AGREEMENT

INTRODUCTION

The European Union (EU) has long proposed the elimination of internal border controls to allow for the freedom of movement among Member States.\(^1\) This idea was initially intended to facilitate economic activity but has gradually come to encompass the freedom of movement for all members of the EU for business or pleasure.\(^2\) To date, the full implementation of this idea is still a dream for the EU.\(^3\)

In an effort to begin the process of eliminating barriers to movement, several members\(^4\) of the European Community (EC), the precursor to the EU, signed the Schengen Agreement which would gradually eliminate border control measures among the signatory nations.\(^5\) This agreement still awaits full implementation by some of the signatories, in part because of differing views of narcotics control and, more specifically, objections to the Netherlands’ liberal drug policies.\(^6\)

---


\(^4\) See Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders and the Convention Applying the Agreement, June 14, 1985, Belg.-Fr.-F.D.R.-Lux.-Neth., 30 I.L.M. 68 (1991). The agreement was originally signed by France, Germany, Belgium, Luxembourg, and the Netherlands. Id. This agreement consists of two parts: the 1985 Schengen Agreement and the 1990 Convention Applying the Agreement. See id. For the purposes of this Note, “the Schengen Agreement” refers to the document in its entirety and “the Convention” refers to the latter portion of the document.

\(^5\) See Schengen Agreement, supra note 4. The agreement was named after the town in Luxembourg where it was signed. See Heaton, supra note 2, at 656.

However, in light of the actual situation in the Netherlands and the surrounding region, the concerns regarding the opening of borders because of drug laws appear to be misplaced.\(^7\)

This Note explains the current drug policy of the Netherlands and illustrates that the refusal to implement the Schengen Agreement is a denial of the freedom of movement that the agreement advocates. Part I outlines the goals and agreements regarding the freedom of movement. It also describes the drug policies of the Netherlands and the positive results these policies have achieved. Part II focuses on concerns of drug trafficking in the EU and the resistance of the signatory nations, particularly France, to fully implement the Schengen Agreement based on these concerns. Part III analyzes the concerns of the signatory nations in relation to the drug policies and the resulting situation in the Netherlands. Part IV concludes that these fears are founded on a misconception, and therefore, the agreement to eliminate barriers to movement should be fully implemented unless an actual threat is posed.

I. BACKGROUND

A. The Development of Open Borders

In 1992, the Treaty on European Union and Final Act (the Maastricht Treaty) established the EU.\(^8\) The Maastricht Treaty grants EU citizenship to "[e]very person holding the nationality of a Member State . . . ."\(^9\) As an element of EU citizenship, the concepts of open internal borders and freedom of movement have been primary goals since the inception of the EU.\(^10\) Article 8a of the Maastricht Treaty declares "[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States . . . ."\(^11\) Furthermore, the treaties which established the EC also embodied the

---


\(^8\) See Maastricht Treaty, supra note 1.

\(^9\) Id. art. 8.

\(^10\) See id. art. 8a.

\(^11\) Id.
cry for the elimination of barriers to movement. The idea of open borders was originally market-oriented and specifically intended to facilitate the movement of workers among Member States, but the concept has expanded to include all movement between Member States. Although this concept was incorporated into the Treaty of Amsterdam, which amends the Maastricht Treaty, the goal of free movement still has not been fully achieved throughout the EU.

In 1985, seven years before the signing of the Maastricht Treaty, a number of then EC Member States began discussions regarding their own agreement to open internal borders and to strengthen external borders. These discussions resulted in the signing of the Schengen Agreement on June 14, 1985, which required each signatory to prepare proposals for the gradual abolition of internal border controls. Three of the signatories to this agreement—Belgium, the Netherlands, and Luxembourg (the Benelux countries)—had been operating with open borders amongst themselves since 1960. On June 19, 1990, the Schengen Agreement signatories subsequently concluded the Convention Applying 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. The resulting document (the Convention) attempted to set forth rules of implementation.

---

12 See The Single European Act, Feb. 17, 1986, [1987] 2 C.M.L.R. 741 (1987) [hereinafter SEA]. The SEA reads, in pertinent part: “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 this Treaty.” Id. at 747. See also Heaton, supra note 2, at 644, 647.

13 See Heaton, supra note 2, at 647–48.

14 See Treaty of Amsterdam, supra note 3. Ratification of the Treaty of Amsterdam does not force open borders because, by incorporating the Schengen Agreement, Article 2(2) of the Convention relating to border controls for public policy or national security reasons is also incorporated. See id.; Convention, supra note 4, art. 2(2); infra notes 23–29 and accompanying text.

15 See Joined Cases C-65/95 and C-111/95, The Queen v. Secretary of the State for the Home Dept., ex parte Mann Singh Shingara and Abbas Radiom, 1997 E.C.R. I-3343, 3354 n.9 (finding United Kingdom’s border control measures valid because Schengen Agreement is not matter of Community law).

16 See Schengen Agreement, supra note 4 and accompanying text.


18 See Schutte, supra note 17, at 550.

19 Convention, supra note 4, at 84.

20 See Schengen Agreement, supra note 4, at Introductory Note.
The Schengen Agreement began as an informal gesture between France and the Federal Republic of Germany, intended to make progress toward achieving freedom of movement within the EC—and later the EU.21 The Franco-German gesture prompted officials of the Benelux countries to seize the opportunity to begin discussions regarding the opening of borders among all five nations.22 Although the Schengen Agreement calls for the elimination of border checks at its internal borders, the signatories were unwilling to relinquish all power concerning control of their borders.23 Article 2(2) of the Convention reserves the power of each signatory state to exercise border control measures “[w]here public policy or national security so require . . . .”24 Unless deemed an emergency, the affected nations must be consulted by the signatory wishing to impose border control measures under the Article 2 reservation.25 This is akin to a goodwill requirement, however, because the affected country, or countries, need not approve.26 Additionally, the Convention contains nothing that describes an appropriate use of this reservation, other than the provision that border checks “appropriate to the situation” may be conducted for a limited period when public policy or national security so require.27 However, no delineated criteria indicate when public policy

21 See Schutte, supra note 17, at 549.
22 See id. Since the original agreement, Italy, Spain, and Portugal have joined the agreement. See Anne Van Lanckel, Transparency and Accountability of Schengen, in SCHENGEN, JUDICIAL COOPERATION AND POLICY COORDINATION, supra note 7, at 61, 62 & n.3.
23 See Convention, supra note 4, art. 2. See also Heaton, supra note 2, at 664; Schutte, supra note 17, at 552.
24 See Convention, supra note 4, art. 2(2). See also Schutte, supra note 17, at 552. Article 2 of the 1990 Schengen Convention provides, in pertinent part:

1. Internal borders may be crossed at any point without any checks on persons being carried out.
2. Where public policy or national security so require, however, a Contracting Party may, after consulting with other Contracting Parties, decide that for a limited period national border checks appropriate to the situation will be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and shall inform the other Contracting Parties thereof at the earliest opportunity.
3. The abolition of checks on persons at internal borders shall not affect . . . the exercise of police powers by the competent authorities under each Contracting Party’s legislation throughout its territory . . . .

Convention, supra note 4, art. 2.
25 See id. art. 2(2). See also Van Lancker, supra note 22, at 63.
26 See Van Lancker, supra note 22, at 63.
27 See Convention, supra note 4, art. 2.
or national security would require such emergency border checks. Thus, there is no effective control over the maintenance of the open borders.

B. Drug Policies of the Netherlands

The attitude towards, and policies regarding, drugs in the Netherlands is different than in most nations, including the other signatories of the Schengen Agreement. In fact, the drug policies of the Netherlands have been described as appearing “at the opposite [end] of the [continuum]” from France, one of the signatory nations. The Dutch view drugs and drug use as a social welfare issue as well as a criminal one. This is evident from the fact that the Departments of Health, Justice and the Interior share the responsibilities of administering the drug policy. In addressing drug and drug use issues, the Dutch make a distinction between “hard drugs,” or “drugs presenting unacceptable risks” (i.e., cocaine and heroin), and “soft drugs,” or “cannabis products” (i.e., marijuana and hashish).

The drug policy of the Netherlands is based on the Opium Act of 1928 as amended in 1976. The amendments were integrated as part of Dutch welfare legislation, rather than criminal legislation. The policy acknowledges the fact that, by virtue of human nature, people experiment with drugs, and society’s demand cannot be eradicated by prohibition. Therefore, instead of strict prohibition, the policy follows the principles of “separate markets” and “risk-reduction.”

28 See id.
29 See id.
30 See Korf, supra note 7, at 46–47. See, e.g., H.J. Albrecht, Drug Policy in the Federal Republic of Germany, in Drug Policies in Western Europe, supra note 7, at 175, 177–79; E. Boutmans, The Situation in Belgium, in Drug Policies in Western Europe, supra note 7, at 89, 89–90; J. Bernat de Celis, France’s Policy Convening Illegal Drug Users, in Drug Policies in Western Europe, supra note 7, at 143, 144–47.
31 Ottevanger, supra note 7, at 166.
32 See id.
33 See id.
34 See Berkman, supra note 6, at 178–79; van Vliet, supra note 6, at 724.
35 See Berkman, supra note 6, at 177; van Vliet, supra note 6, at 724.
36 See van Vliet, supra note 6, at 724.
37 See id. at 727.
38 See Ottevanger, supra note 7, at 165. Ottevanger briefly compares the prohibition of soft drugs to the prohibition of alcohol with reference to the 1920s Prohibition Era in the United States which is believed to have resulted in the growth of organized crime, illegal jobs and corruption among public officials. See id. at 165–66.
39 See Korf, supra note 7, at 44; van Vliet, supra note 6, at 725.
(also referred to as “harm-reduction”). Because of this dual system, coupled with the welfare approach, many people believe that drugs have been legalized in the Netherlands. The extent of the legality of drugs in the Netherlands, however, is a misconception.

All narcotics in the Netherlands are considered controlled substances—some are just more controlled than others. The separate markets doctrine encompasses the idea of drawing a line between hard and soft drugs. This distinction is based on legitimate doubts about the dangers of soft drugs, on doubts that soft drug use leads to hard drug use, and on a belief that different treatment will keep the drug cultures separate. The treatment of hard drugs is just as stringent in the Netherlands as it is in other EU countries. Soft drugs, however, are regulated more leniently.

Risk-reduction is the theory that measures should be taken to make inevitable drug use as safe as possible for both the individual and society. This is accomplished through a variety of welfare programs and harsh penalties for drug-related offenses that are a nuisance to the community or that harm society. This element of the drug policy is also pursued through the separate markets approach because it is believed that the isolation of the soft drug culture will reduce the risk of cross-over to the more dangerous hard drug culture.

The Netherlands has not always approached drug policy in the fashion described above. The 1976 amendments to the Opium Act were the result of a recognition that the problems that often cause drug use—social, economic, and psychological problems—were not

---

40 See Ottevanger, supra note 7, at 166–67.
41 See Dick C. Kaasjager & Marcel de Kort, Mutual Influences between National Drugs Policies in Europe, in Schengen, Judicial Cooperation and Policy Coordination, supra note 7, at 181, 185; Ottevanger, supra note 7, at 168.
42 See Ottevanger, supra note 7, at 168; Berkman, supra note 6, at 179.
43 See Ottevanger, supra note 7, at 168; Berkman, supra note 6, at 179; van Vliet, supra note 6, at 731.
44 See Ottevanger, supra note 7, at 168; van Vliet, supra note 6, at 724–25.
45 See Ottevanger, supra note 7, at 167–68.
46 See van Kalmthout, supra note 7, at 264.
47 See Berkman, supra note 6, at 178–79.
48 See id. at 179. See also van Vliet, supra note 6, at 724.
49 See van Vliet, supra note 6, at 727. See also Ottevanger, supra note 7, at 166–67; van Kalmthout, supra note 7, at 263.
50 See Ottevanger, supra note 7, at 168; van Kalmthout, supra note 7, at 271–77.
51 See van Vliet, supra note 6, at 725.
52 See van Kalmthout, supra note 7, at 261; Berkman, supra note 6, at 177; van Vliet, supra note 6, at 722.
addressed by the penal approach to drug use. In essence, the legislature, after investigation by and consultation with an appointed multidisciplinary committee, sought to implement measures that would treat the problem rather than its symptoms.

Thus, in conformity with the separate markets and risk-reduction concepts, the amendments to the Opium Act increased the penalties for the sale and possession of hard drugs and significantly decreased those for soft drugs. For example, the possession of 30 grams or less of marijuana or hashish is characterized as a misdemeanor, rather than an offense, and is considered a low priority in terms of investigation and prosecution. Domestic retail of soft drugs, on a small-scale basis, is tolerated in designated places, but such retail is subject to strict guidelines, the violation of which can result in harsh penalties. The penalties for hard drugs, however, are similar to those in other Western European nations.

In contrast to the lenient Dutch drug policy regarding domestic situations, the Netherlands maintains a strong stance and active pursuit against international drug trafficking. The Netherlands invests large sums of money in abating international drug trade, and since July 1995, it has implemented checks on international trains. Additionally, the Dutch government has agreed to apply foreign laws when other Schengen nationals are involved in drug prosecution. Hence, although the policies towards soft drugs within the borders of the Netherlands are more lax than other places, the drive to abate international trade is very strong.

---

53 See van Kalmthout, supra note 7, at 261.
54 See id. at 261–62; van Vliet, supra note 6, at 722–23.
55 See van Kalmthout, supra note 7, at 262; van Vliet, supra note 6, at 724. See also Korf, supra note 7, at 43–45.
56 See van Vliet, supra note 6, at 731.
57 See Ottevanger, supra note 7, at 168. The guidelines include prohibitions against the sale of hard drugs and any sale to juveniles, as well as prohibitions against advertising. See id.
58 See van Kalmthout, supra note 7, at 266; Berkman, supra note 6, at 178–79.
59 See Ottevanger, supra note 7, at 171, 176.
60 See id. at 171.
61 See id. at 176.
62 See van Vliet, supra note 6, at 744.
63 See Ottevanger, supra note 7, at 171, 176.
II. THE CONCERN ABOUT DRUG TRAFFICKING AND FRANCE’S RESISTENCE TO FULL IMPLEMENTATION OF THE SCHENGEN AGREEMENT

Drug trafficking is a valid national concern for all EU nations.64 The ability to regulate drugs falls under the auspices of an individual nation’s police power, and possibly its national security.65 The concept of open borders challenges the ability to control what enters and exits a participating nation.66 As a result, throughout the discussions regarding open borders, both among the Schengen Agreement signatory nations and in the EU as a whole, questions have been posed addressing measures to be taken to combat drug trafficking in the EU.67 For example, in 1992, Written Question No. 118/92 to the Commission of the European Communities inquired into what measures would be taken to “combat the growing traffic in drugs in the EC” and whether narcotics laws could be harmonized throughout the EC.68 At the time, narcotics control was left to the province of each Member State, and there was no harmonization of drug laws.69

In addition to the concerns regarding drug trafficking throughout the EU, the signatories of the Schengen Agreement have expressed similar concerns,70 specifically in the Schengen Agreement.71 Chapter 6 of the Convention includes several Articles regarding the prevention and control of drug trafficking.72 These provisions, however, are limited to trafficking and do not apply to domestic control.73

Unlike the Netherlands, the other original signatory countries do not formally subscribe to the separate markets and non-prohibition

---

64 See Written Question No. 118/92 by Mr. Gerd Müller (PPE) to the Commission of the European Communities, 1992 O.J. (C 281) 15, 15 [hereinafter Written Question No. 118/92]; Ottevanger, supra note 7, at 174–76.
65 See Ottevanger, supra note 7, at 174–76.
66 See Heaton, supra note 2, at 645.
67 See Written Question No. 118/92, supra note 64.
68 Id.
69 See id.
71 See Convention, supra note 4, at 116–18.
72 See id.
73 See id. See also Korf, supra note 7, at 48.
approach to drugs. France, for example, imposes harsh penalties for personal possession and small-scale dealing, regardless of the type of drug. Belgium and Germany are more lenient than France but prescribe minimum penalties that either equal or exceed the maximum penalty in the Netherlands for the same offense. Due to the concern about drug trafficking and the different policies towards drugs since the inception of the Schengen Agreement, some of the signatory nations have resisted full implementation. France has been particularly vocal about its resistance. In 1996, France finally announced that it would partially implement the Schengen Agreement by opening its borders with Germany and Spain, but would “continue to inspect arrivals from Belgium, Luxembourg and the Netherlands until it settles its disagreement with The Hague over measures to prevent drug trafficking.”

Although the Benelux countries have different approaches to drug policy, the fact that they have had open borders amongst themselves since the 1960s precludes Belgium and Luxembourg from enjoying open borders with France. The fear is that the opening of the borders will open the participating countries to an influx of drugs carried by the people arriving from the Benelux countries.

---

74 See Boutmans, supra note 30, at 89–90; de Celis, supra note 30, at 145–47; Kaasjager & de Kort, supra note 41, at 185; Ottevanger, supra note 7, at 166. See also KORF, supra note 7, at 46–47. For example, France prescribes two to ten years imprisonment for the production/cultivation of cannabis, whereas the majority of Western European nations cap their penalties at five years or less, absent some other criteria (i.e., recidivism or commercial intent). See KORF, supra note 7, at 46–47. Furthermore, France sets a penalty of two to ten years for the mere possession of cannabis in contrast to others whose penalties range from one month to five years, again, except when certain other criteria are present. See id.

75 See id. at 46.

76 See id. at 46–47.

77 See Report 2119/IV/8, supra note 70; Report 1873/1/1, supra note 70; Schutte, supra note 17, at 557–58.

78 See Report 2119/IV/8, supra note 70; Report 1873/1/1, supra note 70. See also Kaasjager & de Kort, supra note 41, at 185.

79 See Van Lancker, supra note 22, at 62. Spain joined the Schengen Agreement after the initial signing. See id.

80 Report 2119/IV/8, supra note 70.

81 See id. See also Schutte, supra note 17, at 550.

82 See Report 2119/IV/8, supra note 70; Report 1873/1/1, supra note 70. See van Vliet, supra note 6, at 741.
III. Analysis—The Real Situation and the Call for Open Borders

The tension among the signatories of the Schengen Agreement regarding the opening of borders and the drug policies of the Netherlands is a pressing concern. The Dutch drug policies have been specifically cited as the reason for France’s refusal to open its borders to citizens of the Benelux countries. Accordingly, all persons entering France from these countries are subject to border control measures regardless of the lack of any specific act identifying them as a threat to national security or public policy.

Some believe that the best way, or at least the most likely way, to relieve the tension regarding open borders and Dutch drug policies is for the Netherlands to bring its laws into accordance with the other signatory nations. This solution, however, seems ill-advised for two reasons.

First, the drug policies appear to work. In terms of problems associated with drug use, the situation in the Netherlands is no worse than that in other EU nations. In fact, in some ways, the Netherlands has more control over these problems. It has been observed, for example, that the separate markets approach works and that soft drug users rarely turn to hard drug use. In addition, although compulsive drug use has not been eliminated, hard drug use has decreased, and the percentage of addicts in the Netherlands is significantly lower than in the other original signatory states, with the exception of Belgium where it is about the same.

Second, other nations have begun to consider the possibility of aligning their drug laws with those of the Netherlands. For example, the separate markets approach appears in other nations. Italy and Spain, recent additions to the Schengen Agreement, differ from the Netherlands in terms of penalties, but formally draw a distinction be-

---

83 Report 2119/IV/8, supra note 70.
84 See id.
85 See Berkman, supra note 6, at 180–82.
86 See van Vliet, supra note 6, at 737.
87 See Ottevanger, supra note 7, at 169. Studies show that, in comparison to many other EU nations, the Netherlands has fewer AIDS sufferers and a significantly lower rate of drug-related deaths. See id. at 169–73.
88 See id.
89 See van Vliet, supra note 6, at 728.
90 See Ottevanger, supra note 7, at 170.
91 See van Vliet, supra note 6, at 747–48.
92 See id. See also Korf, supra note 7, at 46–47.
tween hard and soft drugs. Additionally, although many other countries do not formally observe separate markets, many do so in practice. Furthermore, signatory nations, including France, are beginning to incorporate risk-reduction measures into their policies. It would not make sense for the Netherlands to take a step backwards and return drug control to the sole province of crime control when other nations are moving in the opposite direction.

Since 1987, the Netherlands has increased control over narcotics in response to the fears of the Schengen Agreement signatory nations. For example, since October 1, 1996, the guidelines governing the small-scale retail of soft drugs in coffeeshops (small-scale cannabis retail outlets) have been tightened. In addition, the Netherlands has applied foreign laws in its jurisdiction in cases involving nationals from other signatory nations and has worked with its neighbors against international trafficking.

Given the actual situation in the Netherlands, there does not appear to be a real threat to France or other nations who may open their borders to the Benelux countries. The Netherlands’ liberal approach to drug policy is limited to the domestic sphere. The laws allow for decreased penalties for the possession of a small quantity of cannabis products and regulate the sale of such products in designated locales. Dutch drug laws, like those of the other EU countries, are tough on drug trafficking, thus minimizing its impact on other nations. This is not to say that drug trafficking does not exist, but rather that it is not a result of the treatment of drugs in the Netherlands. In fact, the Netherlands has implemented a number of measures to curb international drug trafficking.

---

93 See KORF, supra note 7, at 47–49.
94 See Kaasjager & de Kort, supra note 41, at 188.
95 See id. at 186–87.
96 See van Vliet, supra note 6, at 743–44.
97 See Ottevanger, supra note 7, at 177.
98 See van Vliet, supra note 6, at 744.
99 See Ottevanger, supra note 7, at 176.
100 See KORF, supra note 7, at 48; Ottevanger, supra note 7, at 176; van Kalmthout, supra note 7, at 262.
101 See KORF, supra note 7, at 60. See also Ottevanger, supra note 7, at 171, 176.
102 See van Vliet, supra note 6, at 731.
103 See id. See also Ottevanger, supra note 7, at 171, 176.
104 See id.
105 See Ottevanger, supra note 7, at 171, 176.
Because the Schengen Agreement calls for the gradual opening of internal borders, France is not technically in violation of the Agreement. France’s refusal, however, contradicts the provisions that the Schengen Agreement lays out to address national security and police power issues. The Agreement asserts that measures may be taken for “a limited period” and must be “appropriate to the situation.” France, instead, maintains a blanket refusal to open its borders to the Benelux countries because of an unsubstantiated threat.

In light of the efforts by the Netherlands since 1987, a novel option to ease the tension would be for France to meet the Netherlands halfway and fully implement the Schengen Agreement, abiding by the provisions of Article 2 of the Convention. If France finds that there is an actual threat, Article 2(2) of the Convention will allow it to enact border control measures once again.

France, the most vocal opponent to opening its borders to the Benelux countries, signed the Schengen Agreement with full knowledge of the Dutch drug policies. Despite the efforts of the Netherlands to address the signatories’ concerns regarding the Dutch drug policy, France has continued to refuse to open its borders. Furthermore, the Schengen Agreement began as an informal agreement between France and Germany. The leaders of the Benelux countries joined in order to broaden their already open borders. Thus, the countries to which France refused to open its borders may be viewed as having interfered with France’s plans. Given these facts, it is unclear whether France ever intended to open its borders to the Netherlands and the other Benelux countries.

---

106 Schengen Agreement, supra note 4, at 68. The title of the agreement is the “Schengen Agreement on the Gradual Abolition of Checks at Their Common Borders” (emphasis added). See id.
107 See Convention, supra note 4, art. 2(2).
108 Id.
109 See Report 2119/IV/8, supra note 70; Report 1873/1/1, supra note 70; Berkman, supra note 6, at 177; van Vliet, supra note 6, at 724.
110 See generally Schengen Agreement, supra note 4.
111 See Convention, supra note 4, art. 2(2).
112 See van Vliet, supra note 6, at 724 (Dutch drug policy adopted in 1976, nine years before Schengen Agreement); see also Kaasjager & de Kort, supra note 41, at 185.
113 See Report 2119/IV/8, supra note 70; van Vliet, supra note 6, at 743–44.
114 See Schutte, supra note 17, at 549.
115 See id.
116 See Van Lancker, supra note 22, at 64 (reference to France finding several “security” reasons not to fully implement the Schengen Agreement).
CONCLUSION

Freedom of movement is a fundamental goal of the EU. It has supposedly been embraced by the signatories of the Schengen Agreement, although full implementation is still wanting. Essentially, the recognized impediment to the full implementation of the Schengen Agreement is the fear of the influence of the Dutch drug policies. The experience in the Netherlands, however, indicates that such fears are unfounded. The extent to which drug use is tolerated in the Netherlands does not imply that if controls at the Benelux borders are removed, drug trafficking will increase in the participating nations.

France was willing to sign the Schengen Agreement in 1985. Absent a showing of an actual threat, it should be willing to implement what it signed. Until France accepts the success of the Netherlands and agrees to open its borders absent some actual threat to national security or public policy, the freedom of movement within this region of the EU will remain at a standstill. Given the location of the Benelux countries, tucked away between France, Germany, and the North Sea, these countries will not be able to fully enjoy the freedom of movement and, therefore, will not be able to benefit from the agreement they signed over a decade ago.

Susan H. Easton