

***THE IMPACT OF THE
ENLARGED SCHENGEN
ZONE ON THE EASTERN
NEIGHBOURHOOD POLICY:
FROM PROPER ASSESSMENT TO
PRAGMATIC ADJUSTMENT***

A Joint Policy Brief

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Schengen – at a New Crossroads

The recent enlargement of the Schengen zone has been *a major step towards the completion of the integration process of the enlarged EU that is based on the four fundamental freedoms, including the free movement of persons within the Union*. It has been enthusiastically welcomed by the EU's new members in Central Europe, but less so by those who stay outside, most notably the EU's neighbours. In fact, the Schengen enlargement affects the EU's relations with non-Schengen EU members like Romania and Bulgaria, and it creates problems in the EU's relations with ENP countries. The ceremonial pulling-down of the internal border crossings, festive fireworks and optimistic speeches could not hinder concerns and fears in some of the EU member states, either. It has only been a few weeks since the extension of the Schengen acquis; therefore, a comprehensive assessment of its impact is hardly possible. However, this paper outlines the major challenges accompanying the enlargement of the Schengen zone and formulates recommendations for possible policy adjustments that match the realities on the ground.

The lack of consensus over the EU's Eastern policy and a low trust in the preparedness of the new member states to implement the Schengen acquis represents a strategic challenge for the EU and its common neighbourhood, security, migration and cohesion policies. The Schengen enlargement has become one of the most challenging tests for solidarity among the member states, which is a fundamental principle of the European integration. The implementation of the Schengen acquis will be affected by the following challenges:

- (1) the future enlargement of the EU and the Schengen zone – the level of integration of member and candidate states will be benchmarked by their ability to implement the Schengen acquis, accompanied by compensatory measures, while SIS II is not yet operational;
- (2) the European Neighbourhood Policy – by creating new barriers and bottlenecks, we have weakened the incentives for the neighbouring societies to see the EU favourably and to move towards modernization through faster integration and harmonization with the EU. The impact of the ENP in terms of promoting human rights, good governance and democracy in partner countries has been very modest. In fact, the ENP has generated contradictions and even negative reactions in the neighbouring countries. ENP instruments seem insufficient to effectively tackle the security challenges originating in the EU's wider and diverse neighbourhood.

- (3) the Area of Freedom, Security and Justice shall be established through the free movement of all EU citizens, accompanied by the necessary legal guarantees. Efforts to manage the legal and illegal immigration through the external dimensions of the JHA agenda have been made by the creation of a security belt around the Union. While these efforts have received serious attention, less consideration was devoted to the reduction of the inequalities inside the EU (by creating a single labour market), accompanied by effective cohesion and regional policies aimed at diminishing social and economic differences within the EU.

Identifying the Challenges

The EU under the presidencies of Finland and Germany in 2006–2007 has been pushed to react to the new challenges posed by developments in its Eastern neighbourhood. Thanks to both presidencies the EU has come up with some important new ideas on how to develop the existing policy framework and instruments vis-à-vis its Eastern neighbours. The new initiatives in the field are driven by the logic of strategic challenges as shown above and should be viewed as positive steps in the direction of a more consistent and more efficient EU policy 'towards' and 'in' Eastern Europe.

- (1) Internal Labour Market

New member states keep emphasizing the need for the liberalisation of the employment of workers from new member states. Improving the mobility of EU citizens (as inactive labour forces in stock) should precede the facilitation of legal immigration from third countries and there is a clear priority in bridging the gaps in the labour market inside the EU. Nevertheless, neither the demographic nor the skilled labour deficit can be solved by a further liberalization of the EU labour market only, and a more active "labour immigration policy" is an economic imperative for the EU. In terms of social integration and adaptability, Eastern Europeans are the most desirable labour migrants to the EU.
- (2) Non-Schengen EU members: Internal dividing lines?

Non-Schengen EU citizens (Romanians, Bulgarians) face similar constraints to non-EU citizens at the borders of the Schengen area, and they are *de facto* excluded from free movement. Creating a new dividing line inside the EU should be avoided.
- (3) Fears and concerns within the EU

Some Austrian and German concerns were voiced already on the eve of 21 December, 2007, expressing fears that public order and the internally reached security level could be endangered by the newly extended borders of Schengenland. The Bavarian Prime Minister and the

Austrian Minister of Home Affairs expressed concern over the free movement of perpetrators from the East¹. Furthermore, a “No drive in” traffic sign welcomes visitors at crossing points in Slovenské Nove Mesto and numerous Austrian villages in the border zone. The signs were set up to restrain the movement of neighbouring Hungarians². Are these actions a manifestation of deteriorating relations, or are they simply concerns that will pass once the beliefs are proven wrong?

(4) Migration Pressures

The implementation of migration laws has been complicated not only due to the heterogeneity of the applicable rules and case law, but also due to the differences in the legal status of migrants. In the hasty period of preparations to the Schengen acquis a far-fetched transposition of ten directives on combating illegal migration and asylum had to be implemented in parallel. Naturally, similar security, public order and screening measures of new member states were combined regardless of the broader context of each.

Due to strict control at the external border zone, the number of detected illegal migrants and asylum seekers is growing.

During the first three weeks after the Schengen enlargement, 614 illegal migrants and 420 illegally entered asylum seekers were apprehended at the Polish-German and Czech-German borders, coming from Chechnya and Vietnam. 340 asylum seekers arrived in Austria from Chechnya, 235 of whom were sent back to Poland. The number of inmates in refugee centres in Austria has doubled, and centres in Poland are overcrowded. 63 migrants at the Hungarian-Ukrainian and the Hungarian-Serbian borders were apprehended. Also, the detected usage of falsified or forged documents was five times higher than before. Although according to the EU Commission this increase is not in direct relation to safer external borders, a further harmonisation of refugee law has been underlined in order to avoid the secondary migratory movement of applicants inside the Union³. Nevertheless, these cases illustrate how the more restrictive requirements of entry increase the number of applications for the legalisation of entry and in fact how the safety measures do work.

The advancement of security, justice and freedom has been the leading aim of the EU and the Schengen zone enlargement (see the Hague Programme’s score board). However, the screening out and readmission of illegal migrants has increased the costs of smuggling, the gravity of exploitation, and the level of organised crime activities.

Local reports from Mukacheve (Ukraine)⁴ indicate a “bonanza for trafficking in human beings from Ukraine after the extended Schengenland.” Due to “porous Ukraine western borders” and ceasing passport control at internal borders, the smugglers can continue to operate in accordance with their routine, that is, bribing border guards, drivers, innkeepers and other assistants (about 10,000 £/case).

Despite the security measures, assistance in smuggling remains to be the only income for many families in the border zone. Only about one third of the illegal entrants can be apprehended, and thus these illegal activities still involve a low risk but high income in the Ukraine and in the border zones of Hungary and Slovakia. Furthermore, although organised smuggling and the related locally assisted activities in Ukraine had been reported to have been liquidated in previous years, in the Hungarian-Ukraine border zone, which is now controlled by 3 000 policemen, 70 illegally entered migrants have been captured within 3 weeks according to bilateral consultations with the Ukrainian border authority held on 21 January, 2008.⁵

(5) Social Cohesion and Exclusion

The Schengen enlargement poses a *challenge for the social and regional cohesion* of the EU. The equality of the EU citizenship is challenged by the removal of beggars and homeless people (e.g. Roma persons’ removal from Italy to Romania in November 2007) based on public order reasons, stretching Community law. Cases of child migration draw the attention of the wider public to severe problems of segregation, disintegration, exclusion and prejudices, particularly in the new member states. In Hungary, the case of a violent 10-year old Romanian boy with no documents has provoked a serious public debate about the migration of lonely, undocumented (Roma) children through the Schengen borders.

In general, the benefits resulting from the removal of internal borders seem to outweigh the costs of the external border control (in a broader border zone) and of the extended data storage and data protection system (including those of building SISone4All), as well as those of establishing joint consular offices and police contact points, and of the readmission transfer of third country nationals, etc.

(6) The Eastern Borders of the EU – Border Management (BM)

The enlargement of the Schengen area directly influences Belarus, Ukraine, Russia (as well as the Balkans). There are growing lines and blockades at the EU’s external borders. Passengers have to wait for hours or even days in poor conditions at crossing points or in front of the consular offices.

Moreover, higher transaction prices have been established than before the Schengen enlargement.

The implementation of the Schengen *acquis* was not sufficiently communicated to the public. The transposition of the legal rules, the authorities and police control was not accompanied by an information campaign for local communities along the border about the rules of traffic, entry conditions, notices, etc. For instance, small border traffic or regional communication is in need of a reconstruction of bus stops, train stations, and roads that had been out of usage in previous decades. Since the Eastern enlargement, border regions have also been suffering from a steep increase of freight transportation, resulting in noise and pollution. Conditions for third country passengers have to be improved to diminish the snarling face of Schengen.

(7) The Eastern Borders of the EU - Cross-Border Cooperation (CBC)

The ENP has reinforced the regional dimension by improving the territorial and social cohesion of the involved states through the Instruments of Pre-Accession (IPA) and the European Neighbourhood and Partnership Instrument (ENPI). So far regional development and cross-border co-operation have been inhibited by a lack of competence and finance at local level, the absence of the decentralisation of the local self-government, differences in legal frameworks, administrative rules and traditions in partner countries. In order to achieve sustainable economic and social development, a new generation of programmes and measures should be defined (2007-2013), aimed at progressive integration, deeper political co-operation and the development of common infrastructure.

The EU's ability to manage its new external border effectively is challenged by existing legal, institutional and social gaps in the borderlands⁶. More specifically, the legal status of the Euroregions and their institutions has not been defined in a coherent way. It depends on whether the involved states are party to the Madrid Framework Agreement, its Additional Protocol⁷, whether they have concluded bilateral agreements on cross border co-operation, or whether they are partners in the European Group of Territorial Co-operation⁸, and how the constitutional, national rules provide decentralisation and competences for local self-governments, regions or administrative levels. Furthermore, the involvement of the civil sector in the CBC has also been diverse. Thus, despite the positive political climate inspired by the integration, the supportive EU programmes and instruments of the CBC and ENP cannot provide the minimal coherent

legal basis necessary for the elimination of the dividing role of the (external) borders in this context.

(8) A Case for Subsidiarity – Bilateral Arrangements

The ENP covers a very diverse community of neighbours of the EU: Eastern Europe, Russia and the Mediterranean countries. The V4 countries have been active in developing certain compensations for the exclusionary effects of the new external borders. The rules on local border trafficking⁹, the Schengen visa prices, the facilitated visa and travelling documents all intend to compensate for the damages in people-to-people relations. Based on the modifications for national visa requirements, settlement permits and nationality acquisitions, it can be observed that compensatory measures are further developed at national level. These efforts explain why bilateralism – developing relations to different neighbours, at kin-minority and economic or community level – is not only possible¹⁰ but also desirable (e.g. the agreement on local border trafficking with Ukraine for instance).

The integration of previously divided communities, infrastructures, regions and minorities across the internal borders has been increasingly visible, but its immediate mental and political acceptance in general is doubtful. The disappearing Hungarian-Slovakian borders would explain why and how the development of strategic infrastructural investments (such as lines of highway between Bratislava and Košice, railway, gas or petroleum pipes) keeps clear of the border regions. The extended Schengen zone may become a solution for the divided nations and ethnic communities in Central Europe, if there is enough of a spirit of neighbourhood, goodwill and democracy.

Policy recommendations

The Schengen *acquis* should be adjusted to match the realities on the ground and it should also be harmonized with the goals of the ENP based on the following recommendations:

- (i) The EU's external ability for action, such as the credible and successful ENP, depends on the internal impact of the extended Schengen zone. Therefore, it is necessary to harmonize the external aspects of the JHA and the ENP policy instruments (e.g. visa policy, visa procedure, energy solidarity). Legal and illegal migration are two completely different agendas that should be addressed by different policy instruments. The external border of the EU should be as open as possible for *legal* migrants ("friendly border"), and as closed as possible for *illegal* ones ("safe border"). A too strict visa regime impedes the desired

legal movement of persons, but does not thwart the *illegal* migration from third countries. It should not be forgotten that illegal migrants from third countries never apply for a Schengen visa.

- (2) The Commission should engage in extensive data and information collection about the impact of the enlarged Schengen area on the EU neighbours by requesting HoMs reports in neighbouring countries, commissioning surveys and conducting a consultation process with the representatives of local governments and the civil society (NGOs) in the border regions.
- (3) A public awareness campaign would be desirable to properly inform travellers so that they will be prepared for the new requirements of entry and residence. Currently, local internet portals and newspapers are gathering frequently asked questions and are publishing information on visas, letters of invitation, residence permits and fees¹. This, however, is done on an *ad hoc* basis, without a clear coordination.
- (4) In order to achieve a unified legal practice (to exclude an arbitrary one), a more convenient visa service for third country nationals through establishment of joint consular offices is desirable². Moreover, the facilitation of the movement of the residents of border regions with natural long-term economic and human ties should be considered (provided that authorities in neighbouring countries prove their ability to issue residence certificates for their citizens in respective regions in a transparent and abuse-free manner).
- (5) The EU should assist its Eastern European neighbours in developing cooperation in the JHA area. A Partnership for Joint Border Management with neighbouring countries should be established. This may include various forms of cooperation and assistance, including the appointment of permanent liaison officers at the respective border control units, and common training programs on border protection standards and rules. In addition, the EU's Eastern borders would be far more secure if the Belarus-Russia and Ukraine-Russia borders were brought in line with higher security standards. Improved cooperation between the Eastern European countries in the area of readmission is urgently needed.
- (6) Community agencies and programmes for Eastern EU and ENP states at regional level have to focus on developing the cross-border regional communities that may bridge the gaps or diminish the dividing lines made by the Schengen acquis. Moreover, sharp inequalities in social, environmental, infrastructural, and security capacities between the EU states and non-Schengen states should be

reduced. In this context, a development of the EU's regional policy towards Eastern European countries aimed at faster sectoral modernisation and solidarity may contribute to a better cohesion inside the Union. A coherent legal basis for CBC should be defined, and the cross-border infrastructure projects facilitating the flow of people and goods should be accelerated.

- (7) Finally, a liberalised migration policy stimulating legal employment of qualified or semi-qualified workers on the basis of more comprehensive and up-to-date migration statistics would help accomplish the above-mentioned priorities, whereas its absence may hinder the EU's external action ability in JHA and ENP, tolerance, lawful migration management, community building and legality. The EU needs to develop an "active labour migration policy" to sustain its economic growth and social welfare. The special treatment of Eastern Europeans ("*blue cards for E-Europeans*") should be seriously considered in future adjustments of the Schengen system.

"Schengen is a Janus-face: internally it is smiling and externally it is snarling."³ There is an urgent need to work further to diminish the snarling face.

¹ Der Standard 11 January 2008, Népszabadság 17 and 24 December 2007

² Népszabadság, 24 December 2007, 5 January 2008

³ Bundesministry of the Interior, Germany www.kitenkito.hu (17 January 2008), Bild Zeitung – InfoRadio (12 January 2008), Magyar Nemzet Online, (7 January 2008)

⁴ 20 January 2008 www.hvg.hu, The Sunday Telegraph, The Sunday Times, www.hirszerzo.hu

⁵ Szabolcs Online interview with General Szepesi, István – Headquarters of the Police (www.kaprrpatinfo.net – 24 January 2008)

⁶ Fejes Zsuzsa et al.: Schengenre hangolva. Európai Műhelytanulmányok, No.113, Budapest, 2007.

⁷ Framework Convention on Cross-border Co-operation among local governments and administrative authorities (21 May 1980, Madrid), and Additional Protocols (9 November 1995, Strasbourg and 5 May 1998, Strasbourg).

⁸ 1082/2006/EC regulation of the European Parliament and the Council on EGTC (OJ L of 31. 07. 2007)

⁹ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the

provisions of the Schengen Convention (OJ L 405 of 31.12.2006). Member States may conclude agreements on local border traffic with neighbouring third countries. They may also maintain existing agreements provided they comply with the Regulation. Furthermore, they must ensure that the third countries apply the principle of reciprocity and grant treatment that is at least comparable to citizens of the EU wishing to travel to its border area.

- ¹⁰ Similar precedents exist in the Schengen area, e.g. specific visa arrangements for local border traffic between the two Spain provinces Ceuta and Melilla, and the two bordering Moroccan provinces Tetuan and Nador.
- ¹¹ Tudnivalók vízumügyben (FAQ on Visa Issues) Kárpáti Igaz Szó, www.karpatinfo.net – 17 January 2008
- ¹² On the experiences in Chisinau where Hungarian staff issues visa on behalf of other member states (e.g. Austria, Slovenia, and Denmark on the base of bilateral agreement) a similar co-operation would be extended in other non-EU states.
- ¹³ Újszászi, Ilona: Schengen arcai, 20 November 2007 www.delmagyar.hu

