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***CONSEQUENCES OF EU ENLARGEMENT  
FOR FREEDOM OF MOVEMENT BETWEEN  
COUNCIL OF EUROPE MEMBER STATES***

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Foundation for Population,  
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Institute of Geography and Spatial Organisation,  
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**Abstract:** This paper discusses the possible results of the enlargement of the EU for freedom of movement between the Council of Europe Member States, with a particular focus on the countries that are parties to the Schengen Treaty. The starting point of the discussion is an outline of the basic provisions of the Schengen acquis, concentrating on the conditions of entry for the citizens of different countries and the resulting asymmetry in the freedom of movement. Further it is argued that the strict border policy may have a negative impact on the economies of the acceding countries, especially for small entrepreneurs relying on the cross-border business contacts with the countries left outside the Schengen area. A feasible solution may be a system of inexpensive and easy to obtain visas for the citizens of non-Schengen countries in order to avoid the creation of a bureaucratic "paper curtain" across the continent. Far going cooperation between both Schengen and non-Schengen countries is required in the future.

**Keywords:** EU enlargement, freedom of movement, Schengen Treaty

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## **The main provisions of the Schengen acquis**

The basic principles of the Schengen Agreement of 14 July 1985 and the Schengen Implementing Convention of 19 June 1990, which came into force on 26 March 1995, was to abandon controls on the internal borders of signatory countries (including at airports and maritime ports), thus creating an area within which goods and persons were free to circulate, known as the Schengen Area. In addition the Accession Protocols and, over time, decisions and declarations adopted by the Executive Committee constitute the Schengen Acquis. The current members of the Schengen Agreement include all EU member states except the United Kingdom and Ireland, along with Iceland and Norway which are not EU member states. The latter two countries have associate status and can not vote on Schengen Executive Committee. The cooperation between these two countries and the EU member states is conducted through a meeting of a commission consisting of representatives of these countries and the EU.

The abolition of controls on internal borders was felt to create a security deficit. It was therefore considered indispensable to introduce compensatory measures in the areas of visa issuing, asylum, police and judicial co-operation and the exchange of information (Schengen Information System).

Initially the Schengen Agreement and the Schengen Implementing Convention were not a part of Community law. This changed when the Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999. The Treaty and its protocols basically transfer the Schengen acquis into the Treaty's new Title IV on 'Visas, asylum, immigration and other policies related to free movement of persons'. The UK, Ireland and Denmark refrained from fully subscribing to these regulations. One should not, however, draw the conclusion that the existing Schengen Area automatically expanded to cover the enlarged EU area: new member states have to meet very strict condition before being admitted to the Schengen club.

Introducing the Schengen acquis into Community legislation will have an impact on the relations of candidate countries – which in Copenhagen on 13 December 2002 completed their accession negotiations with the EU – with those of their neighbours who will not become the members of the EU in 2004. The provisions of the Schengen Protocol to the Amsterdam Treaty force any candidate country to comply with Schengen acquis without any right to derogate. In practice accession agreements with candidate countries impose on them the visa regimes and requirements already in force in the Schengen Area. Accession also requires candidate countries to enforce EU standards of border control and protection. It should further be noted that this legislation imposes all the Schengen obligations on candidate countries, without offering them any of the rights of a Schengen Area member state or of an

EU member state: the legal situation of candidate countries will only improve after their accession in 2004

### **Specification of conditions of entry and stay for citizens of various groups of countries**

Traditionally in the past EU legislation regulated only the intra-Union movements of the citizens of EU member states, specifically those who exercised the right to work, to be self-employed or to study in another EU country. Third country nationals had and still have only limited rights under EU legislation, mostly derived from personal relationships to EU citizens, besides derived from general international principles and customary legislation. The creation of the single internal market conferred freedom of movement on all persons within the territory of the EU, although the UK government disputed this view. The Schengen agreement, however, has narrower scope as it refers solely to the issue of border crossings.

One selective and limited view of the migration policy is that it concentrates on a number of measures or barriers regulating alien's access to the territory of the country. These cover:

- ◆ entry visa requirements,
- ◆ external border controls,
- ◆ long term work and residence permits,
- ◆ internal controls,
- ◆ permanent residence permits and regularisation systems,
- ◆ naturalisation (granting citizenship).

The Schengen acquis focuses on the two former and the fourth issues. All non-Schengen countries are divided into two categories: those whose citizens need a Schengen visa, and those whose citizens are granted visa-free entry to Schengen area. All countries which completed negotiations on EU accession on 13 December 2002 are on the list of countries whose nationals enjoy the right to enter the Schengen Area (but not the territory of non-Schengen EU-member states) without a visa. By a series of regulations adopted in Community law, the list of countries whose nationals must have a visa in order to enter the territory of the Member States is common to all Member States (except the two which have opted out). It similarly includes a standard list of those countries whose nationals do not require a visa to enter a Member State.

The visa issuing process under Schengen is simplified: an applicant lodges an application in the consulate of the Schengen country to which he wants to travel or to the first Schengen country which he wishes to enter. The applicant must present a valid travel document, an entry visa if required, and documents specifying the purpose of the journey and proving that the applicant has sufficient means to cover the costs of travel and subsistence. The applicant must not be on the list of persons not to be admitted to the Schengen area, and must not constitute a threat to the public policy, national security or international relations of any of the Schengen states. All persons who fall into any of the above categories are recorded in the Schengen Information System.

There are two types of visa: tourist and transit. These are the short stay visas: A – for airport transit, B – normal transit, C – Tourist visa. The long term D visa is issued for work purposes and is regulated by national legislations. Transit visas are valid for up to five days and allow for transit through the Schengen Area to a third country. Tourist visas issued by a particular Schengen country allow the holder to enter Schengen territory and to enjoy unrestricted travel within it: this visa is valid for three months.

A foreigner (understood as a citizen of a non-EU member state) who enters the Schengen area on a Schengen visa is obliged to report this fact to the local authorities either on crossing the boundary or within three days from that time.

Any person who stays in the Schengen Area on a Schengen visa for longer than 3 months must leave it, unless he has a D visa. The same applies to those whose situation changes or who violate the conditions of issue of the Schengen visa, in particular those taking employment in the Schengen Area with a short term visas. In many cases the Schengen visa is used as a means of entering the Schengen Area with the aim of finding illegal employment or of overstaying, making the legal situation of the persons in question quite complex and, potentially, leading to their expulsion. It is important, therefore, that a mechanism of assisted voluntary humanitarian returns is developed and made available whenever possible, in accordance with local legislation, as a much less humiliating and also less expensive tool than deportation for the return of foreigners to their countries of origin.

It should be stressed that the Schengen Agreement does not regulate long term stays, work permits, permanent residence permits or the granting of citizenship. All these issues remain in the hands of national authorities, subject of certain EU Directives. The Schengen Acquis mentions the D visa, but it describes it as National Visas. Nevertheless the general common basic criteria apply: 1. Guaranteeing security of all Schengen States, 2. Preventing illegal immigration and 3. Thorough check of all entry conditions (art. 5 Schengen Convention). Further, there is one more working principle: the responsibility of each state in assessing individual visa application (national appeal).

It should be noted that the practice of issuing visas to the citizens of countries not on the list of those eligible for visa-free entry to the Schengen Area may vary. Persons originating from countries whose citizens often claim asylum – in particular where the success rate of such applications is low – may be less likely to obtain a visa than citizens of other countries.

### **Asymmetry of freedom of movement**

The right to freedom of movement, being an universal right, in practice is restricted solely to the right of citizens with respect to their own country, but individual's rights in other countries is restricted by these countries sovereignty. It means that anyone should be allowed to leave his country and to return to it without restrictions or obstruction. The only exception of this rule may be due to specific and well defined reasons, such as for example pending criminal charges. The freedom of movement regulates how a person's own country may restrict that person's movements.

Freedom of movement does not mean, however, the unrestricted right to enter another country of which a person is not a citizen. Each country has the right to be sovereign and the execution of this sovereignty includes the right to control the admission of foreigners to its territory. Special provisions relate to asylum seekers (Geneva Convention, Dublin Convention), but these are not the subject of this paper and therefore will not be considered.

There is no doubt that the tragic events of September 11<sup>th</sup> had a profound impact on visa issuing policies and practice world wide. Many European countries, noting that the terrorists who attacked the Pentagon and the World Trade Centre had entered the US legally, have substantially tightened their visa issuing policies. As the political situation is unlikely to change for the better in the foreseeable future, with the continuing silent war in Chechnya and an increasing threat of war against Iraq, we may expect that in future Schengen and EU countries will exercise their power to restrict the admission of foreigners by imposing increasingly restrictive visa policies.

In practical terms this asymmetry of freedom of movement may be a source of frustration and disappointment, already familiar to citizens of many Central European countries which, after regaining their freedoms and in particular the freedom of travel in 1989, were severely restricted in enjoying this freedom by the restrictive and humiliating visa regimes of West European countries and by the immigration-zero policy of these countries. These practices involved interviews in which consular officers have asked very personal questions, not only on financial resources, but also on family life, satisfaction from life condition and life style, relationship with other members of family etc. while in the same time having a high discretionary power in issuing visas. Large number of forms and certificates were required, including bank statement, confirmation of ownership of a house/flat, employer's confirmation of leave of absence and confirmation of employment after the travel etc. For travellers from many countries practices have changed over the last 12 years, and are now much less obtrusive and hostile: transit and short term visits are allowed without visas, formal checks and interviews for those who still need visas are conducted in less humiliating way and in better conditions, what certainly is a consequence of lower case load for consular offices. Some practices of EU member states, for example pre-departure screening of Czech Roma in Ruzyně airport by UK immigration officers, still raise doubts.

It is important to ensure that the Schengen agreements do not restrict unnecessarily the freedom of movement of citizens who are not on the list of countries permitted visa-free travel to Schengen countries. The necessary restrictions should be limited solely to those who meet the condition on the restriction list of the Schengen Agreement and the Schengen Implementing Convention mentioned earlier in the paper.

### **The issue of the new iron curtain between Schengen and non-Schengen states**

It is natural in this era of integration and the removal of barriers to trade and movement of people that certain countries decide to remove restrictions on the movement of their citizens by abolishing border controls. It is also natural that they would want to restrict access to their territories and reinforce the policing of external borders to compensate for any reduction in



their security. The danger of such a strategy is that if this policing is too tight, it may effectively result in constructing another iron curtain – or perhaps more accurately a “paper curtain” – preventing normal contact between peoples. The main cause of this “paper curtain” being built may be the fear in receiving countries of an uncontrolled inflow of foreigners, along with negative perceptions in the receiving societies of the behaviour, criminal activities, culture etc. of foreigners, which combine to exert pressure on governments to curb inflows. Quite often these perceptions are false, built on negative media coverage which generalises facts relevant to certain, usually small, groups of foreigners across entire populations. The possibility of building such a “paper curtain” is a nightmare scenario of European integration and should be avoided. It is therefore important that Schengen countries, while maintaining the necessary security level, refrain from unnecessary, unjustified and humiliating procedures while issuing visas.

## **Economic consequences of Schengen**

In the literature on the economic consequences of the Schengen Agreement, many authors discuss the impact of the agreement on labour migration. One should note that the Schengen acquis does not regulate this issue and refers solely to the problems of short term travel without taking employment in the destination country. This does not mean, however, that the Schengen Agreement is irrelevant to the economies of countries involved.

Many economic activities on the eastern boundaries of candidate countries, soon to be subject to Schengen legislation, rely on petty trade and both legal and illegal economic transactions with their eastern neighbours, notably the Kaliningrad Oblast, Belarus and Ukraine. The introduction of strict visa regimes will no doubt be detrimental to these activities. That will have beneficial results in terms of reducing illegal and criminal behaviour, especially smuggling. On the other hand it will also reduce the client base for numerous small businesses particular needs of eastern clients, both in terms of fashion, colours and prices. The distribution of this production takes place through informal channels, the “suitcase trade” based on unobstructed travel between countries. The closure or reduction of these markets will inevitably increase unemployment on both sides of the border. To reduce the impact of these changes, the introduction of an inexpensive visa issuing system is indispensable.

One may also consider to what extent, if any, the cost of operating businesses which co-operate across Schengen external border will increase, and whether that increase may damage the competitiveness of these businesses. That, obviously, depends on the fees for issuing visas and, probably even more, on the non-pecuniary costs such as collection and validation of documents, queues, inability to obtain visas quickly etc.

## **How to reduce the negative impact of Schengen?**

### **Towards an inexpensive, seamless visa system**

The almost inevitable enlargement of the European Union will expand the boundaries of the Schengen Area east- and south-east-wards. This will result in changed visa regimes for citizens of the former Soviet Union (except the three Baltic States) travelling to candidate

countries. In the past visa-free regimes for travel between most former Soviet block countries were in force, and in most cases these regimes survived the political changes of the late 1980s and early 1990s. The EU enlargement process will substantially modify these regimes, introducing visa requirements for travel from the former Soviet Union to candidate and eventually new member countries of the EU. This process is regulated not only by the Schengen acquis, but is a part of the *acquis communautaire*. These member states, which signed the Schengen Agreement, have to conduct their co-operation under the EU law. The measures adopted are no longer subject to multilateral intergovernmental agreements. They have to be accepted by the Council of the European Union and are subject to judicial supervision of the Court of Justice. The UK and Ireland have the right to apply the Schengen acquis selectively. In particular they are not bound by the decision on the list of countries nationals of whom require visa to enter the territory of the UK and Ireland. A good example is the case of Slovak citizens who can freely travel within the Schengen area, but are obliged to apply for visas when they want to enter the UK.

The key issue is to consider what should be done to reduce the impact of the new visa regimes on freedom of travel. In my view there is a need to expand the consular services of the EU and, in particular, of the new member states, to provide capacity for issuing visas quickly and without unnecessary disruption or humiliation of applicants. The main issue here is to avoid long queues and limitations on the number of applications accepted over given periods of time. The costs of this expansion should be met by EU finances, otherwise the already stretched budgets of candidate countries may prove insufficient to meet all the demands of accession.

A second issue is that, in order to reduce the consular case-load, there should be mechanisms for the issue of multiple-entry visas of long validity. Five years seems to be a reasonable length of time, as it reduces the pressure on consular services whilst still allowing periodical examination of an applicant's documents. Although certain technical problems will have to be resolved, notably regarding the checks on documentation required to issue the Schengen visa (relating to the purpose of particular trips and of the resources available to cover their cost) which will have to be conducted at border crossing points.

An important factor is the cost of the visas. This should be as low as possible so as not to discriminate against the less well-off who still wish to travel. It should be noted that, as the cost of visas is usually set on reciprocal basis, the low cost visa should be offered not only by EU member states to citizens of non-EU countries, but also to the citizens of EU countries wishing to travel to countries not belonging to the EU.

It is also important to streamline formalities and to devise procedures which would on the one hand provide the security necessary to EU/Schengen countries, whilst on the other hand be user-friendly, avoiding delays and, whenever possible, the need for direct interviews, and limiting the amount of documentation needed to issue the visa. Only documents indispensable to justifying an applicant's statements should be requested by the consular authorities of Schengen countries, and violations of privacy, both during the examination of documents and during any interviews, must be avoided. The possibility of making applications by post should also be considered.

One should remember that this process is a double edged sword, as it will affect not only the citizens of non-EU countries travelling to future new EU member states, but also the citizens of new EU member states travelling to non-EU countries. This is due to the fact that the enforcement of visa requirements by candidate countries on, for example, former Soviet Union citizens will most likely result in identical, reciprocal requirements being imposed. It is therefore important not only that Schengen and EU countries expand their consular services, but also that countries from outside the Schengen Area expand their own consular services within Schengen, EU and candidate countries.

It is also necessary to point to the fact that the final decision on admitting a third country national to the Schengen Area is taken by the immigration officers of the first country of travel. All efforts should be made to ensure that those who have obtained visas in advance are not turned back at the border simply because the immigration officer is not happy with their appearance or behaviour. Non-admission at the border check point of people with valid visas should be an exceptional measure rather than a normal or routine practice.

### **Schengen Information System – only a tool for improving security in the Schengen area?**

Schengen Information System is an enormous network database of persons and goods. Its main aim is to improve security and the fight against organised crime. All persons who are non-Schengen Area citizens and are either not to be admitted entry to the Schengen area, have a criminal record, or are considered a threat to the public policy, national security or international relations of any of the Schengen states are recorded. The SIS is supposed to compensate for the risk to security caused by the abolition of controls at internal boundaries between Schengen member states.

The SIS gives enormous power to its administrative organs and to the administration of the member states, as well as to the police, border guards and other relevant authorities of these countries. It is important to note that the system may be expanded to cover additional categories of persons; the sheer size of the system, however, would make any expansion both costly and time consuming. Nevertheless, with the enlargement of the EU a new Schengen Information System II is under construction.

The potential threat posed by the use of such a system lies in the possibility for its abuse. Abuse may occur due to two factors. Firstly, the Schengen Information stores information on the citizens of third countries without much respect for these countries' legislation on individual data protection. Schengen Area member states will, therefore, be able to store and exchange information without any control by the third countries whose citizens' details will be recorded on the system, let alone control by the individuals concerned. Another source of potential abuse may occur due to leaks of information by dishonest officers with access to the SIS system.

It should be stressed that the Schengen acquis gives to anyone whose details are recorded or who believes them to be recorded on the Schengen Information System a restricted right to

request that the contents of such information be made known to him/her, along with a right to request that the information, if incorrect, be corrected. It is important that the procedures for obtaining and correcting information are well known to anyone who may be interested, for example through displaying posters in the consulates of Schengen countries or through distribution of leaflets to applicants for Schengen visas. The procedures for obtaining and/ or correcting the information should be clear, simple and fast.

It should also be noted that some human rights group perceive the SIS as a tool of oppression, designed to limit the freedoms and human rights of citizens of countries not belonging to the Schengen area. I believe that this is not the case at present, as the information stored in the SIS pertains only to those who in some way have violated the laws of one of the Schengen countries. It seems to me to be perfectly legitimate for police and other authorities to keep appropriate registers of such information.

### **Summary: a complex picture**

The Schengen Agreement gives rise to mixed feelings: it is a visionary project for the formation of a united space for the citizens of Europe, a space without frontiers or border controls. This project does not come without cost: the lack of control on internal borders of the Schengen member states has been compensated for by stricter controls on external borders and by the expansion of various policing methods. Increased control makes it more difficult for citizens not of Schengen or EU member states to cross external boundaries of Schengen Area. The Schengen legislation must, therefore, be used wisely so as to avoid unnecessary restrictions on the movement of persons between countries. Unwise use of this legislation may lead to a new division of the continent, the creation of a new “paper curtain”. This must be avoided, by creating a seamless, cheap and efficient visa-issuing system which is easily accessible and affordable to the citizens of those countries not belonging to the EU.

From that perspective one may ask a crucial question: will it be possible to expand the list of countries whose citizens will be allowed to enter the Schengen Area, to include countries on the eastern and south-eastern outskirts of Europe? One precondition for such a much-hoped for change is a very significant reduction in organized crime. Curbing organized crime, however, may take a decade or more. Another precondition is a reduction in the incidence of tourists from eastern and south-eastern Europe travelling on Schengen visas and then either illegally taking work in the destination country, unjustifiably claiming asylum there, or simply overstaying. This is conditional on an improvement in the economic situation of these countries and a decrease in the difference in income between the affluent Schengen Area and poor former Soviet and Yugoslav countries. Such an improvement of economic conditions, however, even if possible, is a matter of decades rather than years. Consequently, it is unlikely in the foreseeable future that the Schengen Area will be opened up to include the post-Soviet and post-Yugoslav spaces. It cannot be doubted, however, that the future of the freedom of movement in Europe depends not only on the countries of the Schengen Area, but also on the countries whose citizens are currently required to obtain Schengen visas.



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