

THE EVOLUTION AND ENLARGEMENT OF THE SCHENGEN AREA

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Abstract:

The Schengen acquis was conceived and functions as a coherent ensemble to be fully accepted and applied by all states supporting the principle of the abolition of checks on persons at their common borders. The provisions of the Convention Implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders which concern cross-border surveillance should be amended and their scope broadened with a view to increasing the success of criminal investigations, particularly those concerning offences connected with organized crime. Cross-border movement at external border shall be subject to check by the competent authorities. Checks shall be carried out for the contracting parties' territories, in accordance with uniform principles, within the scope of national powers and national law and taking account of the interests of all contracting parties.

Keywords: *Schengen acquis, external border, principles, the Convention implementing the Schengen Agreement.*

Brief history of the establishment of the Schengen area

Among the fundamental reasons for its construction, the European Union (EU) is the main prerequisite to ensure the right to free movement. To achieve this goal there have been made efforts that help remove impediments that restrict this seemingly simple guarantees. The EU member states in cooperation with Justice and Home Affairs began in the '70s' the creation of a legal framework to regulate immigration and asylum. Significant in this regard remains the 1984 meeting of former German Chancellor Helmut Kohl and the then French President, François Mitterand, near Saarbrücken, where they decided to eliminate border controls between Germany and France. This was

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later enshrined to explicitly specify the objective of ensuring European citizens of "a high level of safety within an area of freedom, security and justice". From this perspective, one of the ambitious projects of crystallization of European construction, is the Schengen Agreement (the Agreement) concluded on 14 June 1985 aboard Astrid, Mosel River, in the Luxembourg village of Schengen.

The agreement initiators (also called Schengen I) were **France, Belgium, Germany, Luxembourg** and the **Netherlands**. The signing by the five Contracting Parties joined the logic of the European architecture in which one of the pillars is the opening of borders.

Major considerations which led to the Schengen Agreement were:

- The desire of the peoples of the EU Member States to ensure the free passage of inner boundaries for their nationals¹, services and products;
- The need to strengthen solidarity between the peoples of the signatory states by removing obstacles to free movement at the common borders between the Benelux states, the Economic Union, the Federal Republic of Germany and the French Republic;
- The desire to suppress the control of their common borders.

To give a unitary regulation after 5 years of negotiations (19 June 1990), the Convention Implementing the Schengen Agreement (the Schengen Convention and Schengen II) was signed, in which 6 joint declarations have been made: Declaration on personal control and baggage at airports, Declaration on Preventing and stopping by administrative and Penal measures the illegal export of narcotic drugs and psychotropic substances etc.

Upon entry into force, in 1995, the Convention removed internal border controls of the signatory states, establishing a single external border where control activities are conducted according to a strict set of rules. In this regard, common rules have been put on visas, migration, asylum and measures concerning police cooperation, judiciary and customs.

The Schengen Agreement, the Convention, the decisions and declarations adopted by the EU Council, subsequent accession protocols and agreements constitute the Schengen acquis. When the Treaty of Amsterdam signed in 1997, entered into force in 1999, the Schengen acquis was integrated into the Community acquis, which contains two categories of provisions:

- a). provisions that are not related to the lifting of internal border controls in Member States, for states that are in the process of

¹ Natural and legal persons having the citizenship or nationality of the Member States of the European Union.

preparing for EU membership, must be implemented before accession and candidate countries are not subject to the Schengen evaluation process;

b). provisions directly related to the lifting of internal border controls in Member States, legislative, operational and technical requirement to be met, especially those concerning the Schengen Information System and external border control, and are subject to Schengen evaluation process and decision EU Council.

For reasons of public order and national security, Schengen internal border controls may be introduced for a limited period of time, a decision that is taken in each Schengen Member State. Border control exists not only in the interest of the Member State with an external, but of all Member States which have abolished internal border control.

The enlargement of Schengen area

Currently, there are 31 states covered by the Schengen regulations out of which 27 are EU Member States and four are non-EU countries. Of these 31 countries, only 26 fully apply the Schengen acquis. The 26 Member States full Schengen area are members: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Hungary. There are four signatories of the Schengen Agreement which are not EU members: Iceland, Norway and Liechtenstein.

On the other hand, five EU states do not fully apply the Schengen acquis, namely: UK, Ireland, Cyprus, Romania and Bulgaria.

Chronology of Schengen Area

- 1985 – France, Germany, Belgium, the Netherlands and Luxembourg;
- 1990 – Italy;
- 1991 – Spain and Portugal;
- 1992 – Greece;
- 1995 – Austria;
- 1996 – Denmark, Sweden and Finland;
- 2001 – Iceland and Norway.

The decision on Schengen enlargement was taken in late 2007 by the EU Council. Thus, on 21 December 2007 controls have been abolished at land and sea borders and at the end of March 2008 controls for domestic flights at airports in 9 Schengen countries: Poland, Hungary, Czech Republic, Slovenia, Slovakia, Latvia, Lithuania, Estonia and Malta (see Figure 1).



Figure. 1 Schengen enlargement

The latest accessions are represented by the Swiss Confederation (2008) (see Figure 1) and the Principality of Lichtenstein (2011). Iceland and Norway have a particular situation, both having signed cooperation agreements with countries of the Schengen Area.

Along with Sweden, Finland and Denmark, Norway and Iceland take part in the Nordic Passport Union, in which controls have been abolished at internal borders. Iceland and Norway signed an agreement with the EU in May 1999, following which the two countries can participate in the development of new legislative instruments of the Schengen acquis. Decisions are taken only by the Member States, but they apply to Iceland and Norway. In practice, this association takes the form of a joint committee outside the EU framework, composed of representatives of Iceland, Norway, the EU Council and European Commission.

For instance, according to Decision 2009/1023/JHA, Iceland and Norway apply certain provisions of Decision 2008/615/JHA on border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA Council decision on the implementation of the foregoing. Freedom of movement of citizens virtually brought major benefits of joining the Schengen Area without it being understood as an absolute right.

On the other hand, the elimination of border controls can have a negative effect for the internal security of Member States, which triggered a set of compensatory measures in trans-boundary cooperation. The main measures taken by member states of the Schengen area, according to the Schengen Convention are:

- Abolition of controls at internal borders and establishing a set of rules for crossing the external borders;
- Separation of passengers in ports and airports;
- Harmonizing the rules on the conditions for granting visas;
- Establishing rules for asylum seekers;
- Introduction of rules on cross-border surveillance and pursuit for police forces in the Schengen States;
- Strengthening of judicial cooperation through a faster extradition system and the implementation of judicial decisions;
- Establishment of the Schengen Information System (SIS).

The Executive Committee decision of 16 September 1998 established a standing committee for evaluation and implementation of the Schengen Agreement. The Standing Committee was given the mandate, first, to determine whether a candidate State satisfies all the preconditions for lifting internal border controls and, secondly, to ensure that the Schengen acquis is applied correspondingly by states.

To reinforce mutual trust between Member States in order to better coordinate at EU level and to increase inter pares pressure on their level, the competence of adopting recommendations on any corrective action to address the shortcomings identified in the evaluation report has been conferred to the Council.

Such implementing competence reflects the specific tasks conferred upon it under Article 70 of the Treaty on the Functioning of the EU (TFEU), the mutual evaluation of the implementation of EU policies in the area of freedom, security and justice. This reflects adequately the purpose of an evaluation mechanism based on the *lex specialis*, namely, in this space alongside specific and general competence of the Commission to oversee the application of Union law under the control of the Court of Justice of the EU, which is to meet a complementary function to monitor the effectiveness of the implementation of EU policies through peer reviews.

Significant in this regard is Regulation (EU) no. 1053/2013 of the Council of 7 October 2013 which established a monitoring and evaluation

mechanism to verify the application of the Schengen acquis and repealed Executive Committee decision of 16 September 1998. The document sets two major goals of this mechanism, namely:

➤ Checking the application of the Schengen acquis in the Member States to which it applies in full and in the Member States which, in accordance with the relevant protocols annexed to the Treaty on European Union (TEU) and the TFEU, the Schengen acquis applies in part;

➤ Checking the conditions necessary for the implementation of all relevant parts of the Schengen acquis in those Member States for a Council decision declaring the full or partial application of the Schengen acquis, except in Member States where assessment had already been completed upon the entry into force of the Regulation.

Evaluation may concern all aspects of the Schengen acquis, including effective and efficient application by the Member States of accompanying measures in the field of external borders, visa policy, the SIS, data protection, police cooperation, cooperation criminal justice and the absence of internal border controls.

Member States and the Commission are jointly responsible for implementing a monitoring and evaluation mechanism with the support bodies, offices and agencies involved in the implementation of the Schengen acquis.

The main benchmarks for Romania's accession to the Schengen Area

Joining the Schengen area is an obligation assumed by the EU Accession Treaty (art. 4 of the Protocol concerning the conditions and arrangements for admission of Bulgaria and Romania to the EU, annexed to the Treaty of Accession of Romania and Bulgaria), voicing Romania agreement to participate in all forms of cooperation to deepen European integration.

Romania provides de facto external border security to the community area since its accession to the EU in January 2007.

The removal of controls at internal EU borders is one of the most visible and most important effects of the European integration process.

Under the provisions of the Schengen acquis, Schengen accession involves the following steps:

- Transmission of the declaration of readiness to join the Schengen Area;

- Schengen questionnaire completion and submission;
- Schengen evaluation visits (in these missions, the EU assesses the implementation of the Schengen acquis on five areas: police cooperation, personal data protection, visas, maritime borders, air and land and SIS/Sirene);
- Drafting reports on the results of the evaluation visits (the report includes recommendations to address any issues that are less satisfactory) and approval within the Schengen Evaluation Working Group in Brussels;
- Adoption by the EU Council decision on the elimination of controls at internal borders.

The declaration of the country's readiness for accession to the Schengen Area was presented at the meeting of the Schengen Evaluation on 28 June 2007 for the areas of visas, police cooperation and data protection.

The second statement confirming preparation for starting the Schengen evaluation process and on other areas or land borders, sea, air and SIS/Sirene was submitted on 2 June 2008.

The technical step assessment of Romania ended with positive results, and the assessment mission reports revealed that all the provisions of the Schengen acquis were implemented in a uniform and fair manner.

The assessment missions for Romania were conducted during the period March 2009 – December 2010 and involved the examination by teams of experts from Member States and EU institutions of the implementation of the provisions of the Schengen acquis in areas related to police cooperation, data protection, visas, maritime borders, land, air, the use of SIS/Sirene.

The conclusions of the evaluation revealed that Romania meets all the criteria of the legislation governing accession to the Schengen and its functioning.

Recent developments in the light of the Report on the Cooperation and Verification Mechanism and the European Council meeting in Brussels

As with the previous report regarding the Chapter Justice and Home Affairs (JHA), the latest European Commission report, published on 28.01.2015, regarding Romania and Bulgaria's progress under the Cooperation and Verification Mechanism (CVM), highlights the important progress made by Romania, in terms of strengthening judicial independence and the activity of institutions responsible for fighting corruption.

Despite of a succession of positive CVM reports, which is an acknowledgment of internal consolidation efforts in combating corruption plans, functioning institutions, increase transparency and credibility, the reticence of the Netherlands is maintained.

Traditionally contesting the start of the phasing out process of CVM for Romania, the Netherlands continues to oppose the inclusion of Romania and Bulgaria into the Schengen area, saying that "Justice expects further progress".

In contrast, the president of the Party of European Socialists (PES) Sergey Stanishev said that Bulgaria's and Romania's absence from the Schengen Area is contrary to European standards and in light of recent terrorist attacks in Europe it is "neither effective nor fair."

Present at the Washington ministerial meeting on countering violent extremism (02/18/2015), the Bulgarian Deputy Prime Minister Meglena Kuneva underlined the need to strengthen the EU's external border control, reiterating the idea that Schengen enlargement with Bulgaria and Romania will contribute to European security on the whole.

In the same sense, the president of Latvia - the country holding the EU presidency - emphasized that the theme of strengthening European security "must not be used as an excuse not to continue the expansion of the Schengen Area", while Latvia's Ambassador to Romania Ilgvars Klava stressed "its support for Romania's entry into Schengen and committed to working with all Member States to reach consensus on this file".

The "earthquake" produced by Islamist terrorist attacks in Paris and in Denmark was a pretext for resuming the proposals to reintroduce controls at internal borders of the Schengen area. For instance, due to the conduct of the Meeting of Madrid European social democratic leaders, the Spanish Minister of the Interior has proposed the reintroduction of border controls within the Schengen area "to stop dangerous individuals" while French Prime Minister underlined the need to strengthen the capacity to combat terrorism and by protect the "more effective border of Europe", particularly by creating a common register with the European passenger data (Passenger Name Records/PNR).

Significant issues to address in the current Schengen members remain the Declaration of the Brussels European Council of 02.12.2015 which contained the following ideas:

➤ **Use of the current framework to strengthen and modernize the Schengen external border controls;**

➤ **Establishment "without delay" of a systematic and coordinated checks on persons exercising their right to free movement in the relevant databases in the fight against terrorism, using risk indicators;**

➤ **Examining the need to amend the Schengen Borders Code when necessary verifications should be made permanent, on a proposal from the Commission;**

➤ **Punctual change of the rules to allow the systematic checks of EU citizens entering the Schengen Area by external borders.**

In counterpoint, the insurance of the Grand Duchy of Luxembourg presidency of the EU Council II semester of 2015, Romania sent its support for Luxembourg's priorities for action at European level, being also agreed an increased coordination on dossiers of common interest.

In this context, Luxembourg said that Romania has completed its entry into the EU, all technical preparations, as required under the acquis, stressing that "all Member States that have land ready 100%, including technical, demonstrating political will in this regard must be able to enter the Schengen area".

Conclusions

The current configuration of the new European institutional architecture could be described succinctly as: a fragmented legislative assembly and a small but highly motivated Eurosceptic group.

The relative rise of anti-European parties of the type UKIP (UK) is a reality. At best, the anti EU group can count on about 20% of the vote in the European Parliament. Basically they can't block the decision, but it may delay the event for some files.

In this context, a legitimate question arises: changing the rules of the game will force the European Union to transform, for example, the Easterners in second class citizens, as otherwise anti - European faction from the West perceives them?. Thus, although Romania's entry into Schengen is endorsed by the European Commission, the technical conditions are met, our country being a provider of security and stability, effective acceptance the timing of still remains uncertain in the absence of a political agreement of the member countries.

Naturally, European policies on the management of external borders, focusing on immigration and their implementation should be governed by the principle of solidarity and fair sharing of responsibility between Member States.

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