

European integration and cooperation, basic vectors of European space of freedom, security and justice

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Abstract

The European countries joining to the Schengen area had the effect elimination of internal border controls between Schengen member countries, that use permanent provisions of the Schengen acquis, being a single external border where operational checks are carried out according to a set of clear rules on immigration, visas, the asylum, as well as some decisions concerning police cooperation, judicial or customs. This means that the border crossing can be made at any time through many places, and citizens of member countries who are traveling in the Schengen area must present a valid ID. Overcoming internal border can be equated with a journey through the country.

Keywords: area of freedom, security and justice, European integration, the Schengen acquis;

1. General aspects related to the European area of freedom, security and justice

The European Union is a space on the European continent delimited by the Lapland, the Mediterranean Sea, the west coast of Ireland and the shores of Cyprus. EU citizens with their traditions, languages and different cultures represent approximately 7% of the total world population. Historical legacy of the Union consists in Greek and Roman antiquities, cave paintings, Moorish and Viking architectures, medieval fortresses, renaissance palaces and baroque churches. Modern Europe attract tourism also through vibrant cities, cultural celebrations, summer and winter sports and different traditional cuisines.

The Schengen is an area of free movement in EU. Countries of this area have eliminated internal border controls in order to enable crossing the border between two states both without papers and without stopping to control. At European level, the concept was initiated in the early 80s with an understanding of the importance given to the terms of free movement. The year 1984 marked the decision to stop border controls between Germany and France. The free passage agreement was signed in 1985, in the small village of Schengen and the first countries which have applied were: France, Belgium, Germany, Portugal, Luxembourg, Spain and the Netherlands. They opened their borders on 26 March 1995, and after that, on 19 June 1990, it followed the signing of the Convention related to the introduction of Schengen Agreement. From the beginning of Schengen Agreement (1995), signatory states have abolished internal border controls and created a single external frontier, where checks are carried out according to clear rules.

On 21 December 2007, an important historical moment, another nine countries from central and Eastern Europe opened their borders, establishing a beginning for unrestricted travel over and redoubtable former Iron Curtain. On the other hand, were adopted common rules on visas, asylum, migration and on police cooperation measures, customs or judicial. All these measures, added to the provisions of the Schengen Agreement, Schengen Implementation Convention, also to the statements and decisions of the Schengen Executive Committee (in 1990) and subsequent agreements or accession protocols, together represents the Schengen acquis. Now thirty countries have signed the agreement and twenty-five of them have started to implement it.

Please note that, initially, the Schengen acquis was not part of the Community legal framework. This issue was resolved in 1997, when was signed the Treaty of Amsterdam, which came into effect in 1999. Subsequently, a protocol was attached to this Treaty in order to incorporate the Schengen acquis, institutional and regulatory framework of the EU. So, from that date, the Schengen acquis is part of Community law, being transferred in the contents of Title IV „Asylum, visa, immigration and policies related to free movement of persons” of the Treaty of Lisbon.

Schengen internal border controls perform in a limited time because of national security or public order, judgment may be taken at any Schengen state. There are theories according to which with the removal of border controls could increase risks for the security of the countries involved, because this decision would open „freeway” for criminals. Therefore, it requires cross-border cooperation, particularly through the establishment of joint services of police, border police and customs (in offices, centers and contact points), especially for contracting countries in order to protect their citizens. However, the Schengen Information System (SIS), mutual operational assistance and direct cooperation through exchange of information between the police, tracking and surveillance of traffickers are active elements of the fight against organized crime, terrorism, human trafficking and illegal immigration. In this regard, it was approved a set of uniform rules which should guarantee to the citizens protection of personal data against any violations of fundamental rights.

The accession of Romania to the EU, on 1 January 2007, was one of the most considerable achievements of our country on the international level. This was possible by adding the efforts of all key institutions of the Romanian State. A direct impact on Romanian citizens represent their recognition as citizens of the EU, in particular, recognition of the right for free movement which is guaranteed to all citizens from Europe by the article 18 of the European Community Treaty (Rome 1957), reinforced by the Treaties held in Maastricht (1992), in Amsterdam (1997) and later in Nice (2001).

Creating an unmistakable market of over 500 million people generated a wide range of offers and low prices. In fact, most of EU people believe that they can travel in EU just as easily as in their own country. „One of the effects of obtaining Schengen membership is the cancellation of internal border controls only between Schengen States which are applying the Schengen acquis in full.” This has led to the simplification of obtaining right of free movement by removing obligation to present a travel document to cross the Schengen internal borders for European citizens who are traveling within the Schengen area.

Schengen acquis was included in the acquis starting with 1997 together with the Treaty held at Amsterdam in Netherlands. After this treaty, the regulations about the status Borders were more clear. Schengen internal borders are defined according to Regulation no. 562 from 2006 (Schengen Borders Code) as being: „common land borders, including river and lake borders of the Member States, Member States’ airports for internal flights; sea, river and lakes ports for common links with ferryboat”. So, no more perform internal border controls between the 22 EU Member States (Austria, Belgium, Denmark, Finland, France, Greece, Germany, Italy, Netherlands, Luxembourg, Portugal, Sweden, Spain, Czech Republic, Latvia,

Estonia, Lithuania, Malta, Hungary, Poland, Slovakia, Slovenia) and in 2 other countries (Iceland and Norway) who had signed the Schengen Convention, but which are not EU Member States. The details of the Schengen member states map are in Figure 1.

The UK and Ireland (EU member states) have decided to partially apply the Schengen acquis, working with Schengen countries only in certain areas. Furthermore, Cyprus has decided to postpone the implementation of the Schengen acquis desiring in near future to integrate into that system. Other two countries (Swiss Confederation and Liechtenstein) are currently negotiating to join the Schengen area. Swiss Confederation began negotiations to join the Schengen area in 2002, and in 2004 it was approved the Agreement between the EU, the European Community and the Swiss Confederation regarding the respect and implementation of the Schengen acquis. The agreement was approved in 2005, in a referendum, in the Swiss Confederation and it became effective on 1 March 2008. Even though, the Swiss Confederation and Liechtenstein joined the Schengen Treaty, they haven't started to implement the provisions. Currently, Liechtenstein doesn't perform controls on Swiss border, but those controls are performed at the border between Liechtenstein and Austria.



Figure 1. Schengen Member States Map

In a limited period of time, on the level of each Schengen countries can be occasions when, for reasons of national security or public order, they perform controls at the Schengen internal border. This situation will involve implementation of Schengen internal border controls by the same rules as they perform external border controls. Thus, as shown in the issues raised, in 5 EU countries (Ireland, Cyprus, Romania, UK and Bulgaria) for crossing these countries, the European citizen must present valid travel documents (passport or identity card) at the internal borders of these countries . On the other hand, Bulgaria and Romania, the last states who joined the EU, on 1 January 2007, plans to join Schengen with equal rights equal, probably in 2013.

For a citizen of an EU member wishing to visit another country (non-EU state), the only document recognized is passport both EU's external borders and non-EU state borders. Authorities recommended that an EU citizen traveling within the EU have always carry a valid travel document (identity card or passport), particularly where proof of identity is required.

Note that according to the law no. 248 from 2005, related to the regime of free movement of Romanian citizens abroad, subsequently modified by Ordinance no. 5 from 2006, O.U.G. no. 96 from 2006, Law no. 50 from 2006 and O.U.G. no. 126 from 2007, were provided travel

conditions of Romanian minors in Europe. Adding the fact that the EU has made cooperation agreements in some areas, with the four member states of the European Free Trade Agreement (EFTA), namely Iceland and Norway (Schengen states, but non-EU), Liechtenstein and Switzerland. The EU citizens, who wish to visit EFTA countries or the citizens of EFTA Member State who intend to travel to EU countries can enter or exit from this countries using a valid travel document accepted at European level (identity card or passport).

The EU citizens, who wish to visit the EU and the Schengen area, do not need visas. The main objectives of the Schengen Agreement take account of: conformity of the legal provisions about the entry and the stay for a short period in the Schengen area for citizens outside the EU, solving asylum problem, homogenization of Schengen visa, combating drug-related crime at customs, police cooperation, cooperation between Schengen countries in legal issues etc.

2. Normative bases of the approach European integration and cooperation concepts

Any theoretical approach started from 19 June 1990, the date when it was signed the Convention concerning the application of the Schengen Agreement, which aimed to create a common area of security and justice after removing the customs control. This convention came into effect on 1 September 1993 and it began to cause effects on 26 March 1995, for reasons that have depended on the timely technical and legal conditions.

The key points of the Convention are: citizens of countries that apply the Schengen Agreement can transit the internal borders of the signatory countries through any checkpoint without control; without territorial restrictions visa allows the holder to enter without customs control in all signatory countries and to stay 90 days in the six month period approved; harmonization of visa policy in Schengen countries; external border control based on the Schengen common standard; Access of Schengen countries without restriction to the Schengen information System (SIS), which provides information on personal identity or any other information in the Schengen area; close cooperation between the police and justice; unification of efforts for combating drug-related crime; rules about the competence of give asylum. All these measures, the provisions of the Convention Implementing the Schengen Agreement, decisions and declarations of the Schengen Executive Committee, also protocols and agreements, had constituted the Schengen acquis.

The incorporation of the Schengen acquis within institutional and legal framework of the EU was done by the Protocol attached to the Treaty of Amsterdam, which was signed on 02 October 1997 and after two years, came into effect on 01 May 1999. From that moment the Schengen acquis was included into Community law being transferred in Article 2 of the Schengen Convention which deals with the crossing of internal borders through any checkpoint without a check on the persons concerned.

The Schengen Information System (SIS) is part of Title IV of the Convention implementing the Schengen Agreement (art. 92-101). On this basis, members of the Convention will create and will use shared information system (SIS), comprising: a national section - NSIS (in each state), a technical assistance service and a central unit - CSIS, the Strasbourg, France.

The Schengen Information System (SIS) allows authorities designated by each Member State to have access to configuration details of persons and objects, "and the signalment and information provided in art. 96 for issuing visas, residence permits and for monitoring foreigners in the context of the provisions of the Convention relating to the movement of persons". All these facilities can be obtained through an automated retrieval system control and security of borders.

Each Member State manages and develops on his own risk and on its own, its national section of the Schengen Information System (NSIS) whose database and information will be identical

to the databases of other national sections of each Member State through facilities of technical support service. Since the creation of its national section, to allow fast and efficient information, each member country shall comply with procedures and protocols established by agreement with other countries for technical support service.

All national systems are combined on-line under the lead of central system. If a state enter information into SIS through NSIS, they are sent to CSIS, where are forwarded to all correspondents and all bases NSIS. This ensures: homogenization for national databases SIS II allowing authorities access to SIS diversification (Eurojust, Interpol, Europol, the vehicle registration authority), the use of biometric data in order to facilitate the function of individualization of the European arrest warrant.

On the Schengen level exist other kinds of databases, as follows:

- **VIS** – is a system used for consular cooperation in internal security matters and prevent illegal operations like "buying a visa". This system enables both checks at entry points of the external borders and checks within the territories of Member States. It contains alphanumeric and biometric information, enabling their use in applying precise search criteria;

- **EUROPOL** - centralizes all information available in the member countries of organized crime. For any person is recorded: physical, information of identity DNA profile, fingerprints, crime for which he is registered in the system etc..

- **EURODAC** – is a system used to determine which Member State is responsible under the Dublin Regulation, for the examination of applications for asylum lodged in a Member State of a person from a third country. It includes biometric information (fingerprints) for comparison between asylum seekers and illegal immigrants.

For reasons of national security or public order a Schengen member country can decide, after consultation with the other Contracting Party to perform national border controls for a short period of time, depending on the situation arise. External border crossing issue is governed by Art. 3-8 of the Schengen Convention. Usually, the borders can be crossed only by specially arranged points this purpose, between hours established, Contracting Parties undertaking to impose penalties for illegal crossing of external borders outside the program or through other points than those specially arranged. The 5 Article regulates the aliens who cross the border a Schengen state. If the period of stay not exceeding three months, aliens can get approval to enter the territory of Schengen countries, only in certain conditions. By consultation with other countries, in exceptional circumstances, a Member State may accept exemptions from the common visa rules in connection with a third State where overriding reasons of national policy require a urgent adoption of a decision. The Articles from 10 to 17 explains the rules for visa approval for the case when they do not surpass a maximum of three months. The stay visas, that are considered short-term visa, can be travel or transit visas. The Article 28 reaffirms compliance by the Schengen countries without any geographical limitation, of obligations under the Geneva Convention (1951), concerning the refugees status, modified by the Protocol signed in New York (1967) and the cooperation agreements, concerning the application of these documents, with the UN Commissioner for Refugees.

Regardless of Schengen Member State, when a foreigner citizen is addressing to request asylum, only the state responding to the request. A number of articles from the Schengen Convention refer to: the procedure for receiving / taking back of an foreign citizen found out in asylum, located in the country where he submit the request; family reunification procedure, exchange of information on national legislation of the Contracting States, concerning the procedure asylum, and other statistical information that you have on asylum seekers.

Regarding to the movement of aliens in the Schengen Area Community ,the rules provide that the holder of a common visa and foreigners who do not depend on the visa requirement, have the right to stay in those 24 Schengen states maximum 90 days, on a period six months, proving that the visa is valid. When you entered on that territory, no more than three working

days of the entry, declaration of arrival is required. The Article 25 regulates the issue of residence documents for important purposes (especially humanitarian or as a result of an international obligations concerning foreigners who fall under special rules for non-admission).

Police authorities of the Member States may assist one each other in actions relating to prevention and detection of crime. There is the possibility of creating structures for the exchange of information and cooperation at the level of joint police stations or centers of internal border customs cooperation. In this connection, will be improved communication links (telephone, computer, fax etc.) in the border areas and will be taken measures necessary to confirm identity with a valid document of identity. The Article 46 gives to the police authorities the right to exchange information with other countries, on its own initiative, in order to prevent crime and threats to public order. In the Convention are specified procedures regarding to the crossing border supervision and the surveillance of suspects who want to escape the identity verification by authorized national border.

Mutual assistance in civil and criminal matters can be granted by the administrative authorities in order to solve issues concerning: illegal acts can be punished by one of the two Contracting States in accordance with national law; special action and damages for instances of erroneous conviction or unjustified prosecution; clemency proceedings etc. Requests for assistance can be made directly between judicial authorities and, equally, it can return information using the same channels.

Provisions on extradition are set out in the European Convention on Extradition, in force since 13 September 1957. In accordance with this, the Schengen Member States have committed to extradite a person prosecuted by the judicial authorities of the Contracting Party making the request.

On narcotics trafficking, Schengen member states have decided to adopt: measures necessary to prevent and punish illegal traffic in narcotic drugs and psychotropic substances; confiscation measures for gathering revenue from illicit trafficking in narcotic drugs and substances psychotropic; measures for controlling the delivery of narcotic drugs and psychotropic substances. Also it mentioned the possibility that those people who are crossing the border, can hold drugs or psychotropic substances that are necessary for treatment, the condition being that every check, to produce a certificate issued and certified by a structure jurisdiction of the State where they reside.

In the Schengen Convention reference is made to harmonize of national legislation on the acquisition, possession, trade and disposal of weapons systems and ammunition as well as firearms hierarchy. In this respect, they are presented: firearms with ammunition prohibited; firearms and ammunition for which is necessary an authorization or a declaration, the conditions under which grant the authorization. Romania has aligned the weapons legislation by transposing the Council Directive no. 91/477/EEC on control of the acquisition and possession of firearms. In the Convention is regulated how to purchase ammunition and lists the conditions under which such firearms may be supplemented or amended. Its mention the possibility of making strictly laws and provisions regarding acquisition and possession of firearms and ammunition. In this context, Romania has adopted a more stringent classification of firearms through the establishment of only two categories (prohibited firearms and firearms subject to authorization), to the three categories under the Convention.

It should be noted that the non-lethal weapons (guns gas, compressed air or the array) are not subject to the regulations of the Convention, which are expressly excluded from the lists of firearms. The Article 91 of the Convention provides for exchange of information on the purchase of firearms and ammunition and the procedure by which the competent national authority sends or receives information. Nationally, IGRP, Directorate Weapons, Explosives

and Toxic Substances is the competent authority designated for the exchange of information in this area.

Removing remaining obstacles to the free movement of persons within the Community was made by regulations on cooperation in justice and home affairs, contained in the Treaty of Lisbon. Through the Title VI of the Treaty, called "Area of freedom, security and justice" was replaced Title IV on visas, immigration, asylum and other policies related to free movement of persons. This title includes chapters on border control policies, the right to asylum and immigration (Articles 62-63b), judicial cooperation in civil matters (Article 65), in criminal matters (Articles 69-69E) and cooperation police (Articles 69F-69H). The stated goal of this cooperation was to „to remove the obstacles from the way of free movement of persons within the EU and Member States to deepen cooperation in these areas."

The cooperation in matters of justice and home affairs (JHA) (the third pillar of the community structure) has covered nine areas of common interest, namely: „the granting of asylum, crossing the external borders of the Member States, migration policy, combating trafficking and drug addiction, combating international fraud, judicial cooperation in civil matters, judicial cooperation on criminal matters, customs cooperation, police cooperation ". The essential aim of JHA cooperation is preserving and extending the area of freedom, security and justice represented by the EU. Community policy JAI includes important and sensitive interests for EU citizens. Therefore, rules and regulations in this field aim at finding ways to increase confidence in the ability of Member States of the European institutions to develop and implement the relevant acquis.

In the process of EU accession, the candidate countries had to prove that they can apply in practice the relevant legislation, that till on the accession, have the administrative capacity to implement measures related to community standards. The main steps taken by the European Community institutions Community law creation in this field were:

-*The Amsterdam Treaty*, establish an area of freedom, security and justice in which the free movement of persons is ensured in the EU, such as taking action on crossing of external borders, asylum, immigration, and crime prevention;

- *European Council on the meeting from* issued in December 1998, the Action Plan of the Council and the Commission for establishing an area of freedom, security and justice. The Council warned Member States that they must pay more attention to the creation of a European judicial area, according to the Treaty of Amsterdam, which contains tools for effective cooperation and increase Europol's role as the main tool to combat organized crime;

- *European Council on the meeting from Tampere*, in October 1999, has resumed the problem of European Judicial Area (SJE) and it had circumscribed to the Community legislative framework a number of sectors, fields and methods. Later, while outside the legal status of the EU was created Schengen Area and specific regulations in this field, who were included in the EU and EC. The functioning of these institutions has resulted in stopping internal EU border controls and hence the borders between Member States;

-*Treaty of Nice* has revised some provisions aimed at closer cooperation in justice and home affairs;

- *Lisbon Treaty* contains regulations on border control, the right to asylum, immigration and judicial cooperation in civil, criminal and police.

Justice and home affairs (JHA) cooperation is achieved through three specific tools, such as: common positions, joint actions and conventions.

Common positions - through this cooperation instrument shall be determined answers to the problems and specific questions. For example, can be give the first common EU position on the definition of a refugee under the 1951 Convention and common criteria are applied in all Member States of the European Union.

Joint actions - based on this tool, it plans and carry out joint actions of Member States being achieved goals that could not be taken into account for no member state individually or on their own. In this way were adopted joint cooperation between national police departments, ministries of justice, customs control departments, but also for taking adoption of annual arrangements for refugees;

Conventions - through this third instrument of cooperation on justice and home affairs are borrowed specific instruments of international law. Adoption and implementation of international conventions proved quite difficult. For example, the creation of Europol (European Police Office) Convention from 1961 (it could not be adopted only in 1965 by the decision of all member states).

Currently, difficulties in cooperation JHA line, according to the same source (European Institute of Romania), mainly consisting of: Court limits for statutory audits only where the regulations expressly provide that right; Parliament is informed by event, although it should be consulted before the Council, the Commission has the right of initiative only six of the nine areas of common interest, delay or ineffectiveness of Council decisions because they are taken unanimously. Also, the sensitivities of U.E. on JHA are: security and border control, illegal migration and shortcomings of legal migration, organized crime, antisocial acts committed resurgence of citizens; communitarian in the new Member States within the Western community of states: Italy, Spain, France, Ireland, money laundering, police and judicial cooperation, protection of individuals with regard to processing of personal data and on the free movement of such data.

3. Conclusions

EU accession on 1 January 2007, was one of the achievements of our country internationally, being possible by adding the efforts of all key institutions of the Romanian state and Romanian citizens, who were recognized as citizens of the EU full rights of free movement, to the free movement of persons is guaranteed to all citizens of Europe;

The police authorities of Member States can assist one another in actions relating to prevention and detection of crime, possibly setting up structures for the exchange of information and cooperation as joint police stations or centers of internal border customs cooperation;

Schengen Information System, mutual operational assistance and direct cooperation through exchange of information between the police, prosecution of traffickers and border surveillance are active elements of the fight against organized crime, terrorism, human trafficking and illegal immigration;

The decision to eliminate border controls could open it „freeway" criminals and would increase security risks for the countries involved, issues to be tackled through effective cross-border cooperation at EU and at national level through the establishment of common services police, border police and customs (in offices, centers and contact points) in order to protect their citizens.

Analyzing processes, measures and actions taken at national level to join the Schengen area, we believe that voters received At the beginning of this year, our country should not discourage us, but take trains to step up to legitimize the accession of Romania to the Schengen area, to continue the process of strengthening the judiciary and national adaptation strategies border Security Community requirements for all three media (air, sea and land), respecting Community law consistently and effectively applying the principle of sound neighborhood relationship between Romania and neighboring countries.

References:

1. Diaconu N. (2008), "European Union Law Treaty", Lumina Lex, Bucharest
2. Frunzeti T. and Zodian V. (eds.) (2011), "World 2011. Political and military encyclopedia", CTEA Publishing, Bucharest, 2011
3. *** Convention implementing the Schengen Agreement, Title IV, art. 96
4. *** Council Regulation no. 539/2001
5. *** EU Internal Security Strategy in Action: Five steps towards a more secure Europe, 2010
6. *** International Revue of Criminology No. 4/2005 - France, Translation and Documentation Information Bulletin No. 3/2006
7. *** National Strategy for Accession to Schengen 2008-2011, 25 November 2008, published in Official Gazette no. 832 of 10 December 2008
8. *** Regulation no. 562/2006 (Schengen Borders Code) Art. 2 point 1
9. *** Regulation of the European Parliament and European Union Council. 1889/2005
10. *** Romanian European Institute, Series "Minimonographs" - European Policies. Justice and Home Affairs ", 2005