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*NEW EUROPEAN BORDERS AND SECURITY
COOPERATION:
PROMOTING TRUST IN AN ENLARGED EUROPEAN UNION*

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B-1000 Brussels*

**CONFERENCE REPORT WITH RECOMMENDATIONS ON THE RESHAPING OF
EUROPE'S BORDERS: CHALLENGES FOR EU INTERNAL AND EXTERNAL
POLICY**

This colloquium brought together a distinguished list of political actors, policy makers, advisers, experts and researchers from all parts of Europe (see annex I for the list of papers presented and speakers). It was concerned with security in a broad sense, with special attention given to borders and to JHA (Justice and Home Affairs) issues.

Mr Giuliano Amato, former Prime Minister of Italy opened the conference with a speech on the long-term implications of EU enlargement. Commissioner Antonio Vitorino, Timo Summa (Director Foreign Relations, EU Commission) and Antoine Duquesne, Belgian Minister of the Interior addressed, with a wealth of current experience and examples, the difficult balance between security and freedom.

The eastern frontier after enlargement is at the centre of EU security concerns and particular attention was paid during the discussions to the perspectives of candidate and non-candidate countries of the region. Recent data was presented on the will and the capacity of Russia and the Ukraine to co-operate with the EU. Political conflicts and discontents, migration and criminal problems, and a sense of exclusion and frustration associated with the difficult transformation of former communist countries could be exacerbated without careful development of relations with all the countries of the region.

The speakers at the colloquium emphasised the necessity of a well thought out policy and system of management for the eastern frontier of an enlarged EU. A second concern of the colloquium was the central importance of trust in the promotion of security in an enlarged EU. Within this broad framework, the colloquium considered the following eight themes :

1. The changing policy agenda

Many contributions illustrated how the policy agenda changed over time and how different factors came into play on JHA and security issues. These issues came on to the policy agenda prominently after the Single European Act: the Treaty of Amsterdam and the Tampere Conclusions show how far and how rapidly they had moved up the agenda. The definition of policy changes: producing a 'European judicial area' is no longer a matter of close co-operation but involves ideological concepts such as 'a high level of safety' as well as agreement on fundamental values. The substance, urgency and prominence of particular issues such as visa policy, rights of third country nationals, the approximation of laws also are subject to considerable variation over time and relate to other policy areas in different ways. These are often the result of changes of perception of the nature of the problems faced. However, a senior Council of Ministers official argued that the EU had neither been

sufficiently pro-active nor consistent enough from Presidency to Presidency. Many speakers emphasised the dynamic nature of the policy agenda and the importance of more long-term, strategic policy ideas and proposals. The most urgent is the function to be given to Eurojust. With enlargement, a European Judicial Co-operation Plan is a requirement

2. The Justice and Home Affairs and External Relations

A tidy separation of JHA from other policy areas is no longer possible and the Treaty of Amsterdam undermined the clarity of the previous divide between first and third pillar matters. The Treaty moved immigration and asylum to the first pillar to join the policies associated with free movement of persons. The more JHA are integrated into the community method, the more they will be used in relations with third countries. The EU now has competence to negotiate agreements with these countries on judicial co-operation and extradition, and has the possibility of developing co-operative arrangements to combat money laundering. The promotion of the rule of law has become a major issue in EU external relations and the implementation of the JHA acquis in the CEECs, particularly noted for the Baltic States, necessarily implicates second pillar questions. JHA forms an increasingly extensive chapter in 'common strategies', for example with the Russian Federation and Ukraine. In addition, the developing capacity of the EU to help with civil crises in third countries is an important new asset, developed in recent years. For all these reasons Mr. Solana could, in future, 'act as Mr JHA' to the extent that they impact on third countries.

3. The Changing context of JHA Policy

General developments in the international systems are important environmental influences, but the major contextual change is the coming EU enlargement. This has already had an impact both on the perceptions and realities of JHA policy, although it should be noted that problems also arise from changing policies. The most immediate impacts of enlargement have been on thinking about immigration, free movement, border management and related issues of police co-operation. Preparations in the candidate States have often had radical effects. Some applicants, for example the Baltic States, have only recently developed border controls, visa policies and re-admission agreements. Anxieties are inevitable within member states about the technical capacity and readiness of the applicants to meet the required standards. Policies, such as the treatment of minorities, assume greater importance with the prospect of enlargement, for example, with regard to Russian minorities in the Baltic States and Hungarian minorities in states neighbouring Hungary. Without some flexibility or 'elasticity' in the operation of the Schengen system, there may be problems over Kaliningrad and resentment could arise in Hungary at having to apply regulations, which operated against the interests of Hungarians. Enlargement added a further layer of complexity to issues but the problems are not, in principle, insuperable.

4. The Impact of Policy and the need for a more Friendly Schengen Border Policy

Differences of view were expressed by the participants in the colloquium of about the practical effects of certain policies but there was agreement that policies can have unintended consequences. The differences were most marked in discussing the future influence of the adoption of the Schengen acquis by the candidate States. An influential view from within the Council of Ministers was that Schengen border controls and visas did not create significant difficulties for those outside the EU in terms of trade, exchanges and damage to relationships. The contrary view was strongly expressed that, both in psychological and practical terms, the procedures for crossing the external border were highly significant obstacles and that measures should, where necessary, be taken to counteract these. See Annex II for a CEPS-Batory Foundation Paper, which highlights the following five points of potential friction:

a) The enlargement of the European Union will move the present external Schengen border to the East, in a manner which will be more restrictive for the movement of persons in Central and Eastern

Europe than has been the case for a whole decade since the collapse of the communist regimes, and which saw the arrival of a new era of freedom of movement of persons.

b) There are several highly sensitive border regions, which could be adversely affected. In fact these are found virtually all the way round the EU's future external frontier, for example:

- *the Narva-Ivangorod border between Estonia and Russia*, where Russian communities are living directly alongside each other,
- *the borders of Russian Kaliningrad with Lithuania and Poland*, given that Kaliningrad is due to become an enclave within the territory of the EU,
- *the borders between Ukraine and its EU candidate neighbours (Poland, Hungary, Slovakia and Romania) as well as between Belarus and Poland*, with currently very large movements across these borders for purposes of trade and personal connections,
- *the borders of South East Europe*, where there is an outer ring of visa-free states (Croatia, Slovenia, Hungary, Romania [soon], Bulgaria and Greece), which surround an inner core subject to visa requirements (Bosnia, Macedonia, FRY and Albania) ;
- *the border between Moldova and Romania*, with many Moldovans now acquiring dual Moldovan and Romanian citizenship because of the prospect of the new Schengen frontier,
- *the Aegean islands of Greece which are very close to the Turkish coast*, where tourist movements are now being very unfortunately hampered at a time of improving Greek-Turkish relations.

c) The priority of the EU is to ensure that the new member states will be able to implement the existing Schengen rules, with new visa requirements being the main instrument. The priority of the applicant states is to clear the way for accession to the EU as soon as possible. Neither side has therefore yet given sufficient attention to the need to make the new external Schengen frontiers of the EU as friendly as possible for the new borderland neighbours. The EU has not yet developed a positive, pro-active approach to minimising these problems.

d) Many ways exist which could alleviate undesired restrictive effects of the Schengen regime on the movement of honest citizens in and out of the EU, without prejudice to the security objectives of the EU. Examples include:

- *provision of adequate consular services* for people living in frontier regions as well as capital cities, including necessary expansion of facilities in border cities and co-operative arrangements between EU member states where not all have consulates, or creation of a new category of EU-consulates, so as to facilitate the issue of the standard 3-month Schengen visa;
- *upgrading of border facilities* to provide for rapid passage of large numbers without the long queues as often experienced today, which are indicative of existing problems before irrespective of Schengen rules;
- *special bilateral agreements for border regions*, such as long-term multi-entry national visas at low or zero charge¹, very short-term visas for one or two days² to facilitate local family contacts, tourism and small scale commerce, and (outside Schengen jurisdiction) permanent resident permits³;
- *customer-friendly consular and border services*, with training of personnel to eliminate the undignified interrogation styles, cut visa queues and delays, and make available application forms by post or from internet sites;
- *advanced electronic techniques to speed up frontier procedures*, including the use of 'smart cards' for multi-entry visas, and the possibility to renew short-term visas at the frontier with on-line consultation of Schengen Information System;
- *planning in neighbouring states for visa-free status*, with help from the EU to prepare action programmes for approaching the conditions under which visa requirements may be lifted;

¹ Estonia and Russia have agreed reciprocally to issue 4000 long-term, multi-entry visas free of charge.

² One day visas are understood to be available for travellers from Morocco entering the Spanish territories of Ceuta and Melilla. The same principle could be useful in other cases, including for local residents and tourists wishing to cross the Narva-Ivangorod border, and similarly people on the Turkish coast of the Aegean Sea wishing to visit nearby Greek islands.

³ Such as for the Greek community of Southern Albania, who have become also legal residents of Greece.

- *development of Euro-region programmes* to boost co-operative regional development across the EU's new external frontier, with revision of segmented EU aid programmes (Tacis, InterReg etc.) to make them more border-region friendly;
 - *reciprocal efforts by the neighbouring states*, with efforts on their part to ease or abolish visa requirements and improve consular and border services;
 - *clarification of the rights of movement, residence and employment in the EU of stateless persons*, including the substantial number of persons of Belarus, Russian and Ukrainian origin, who are permanent residents of Estonia and Latvia but have language difficulties to obtain citizenship in these states (the EU Commission has recently made general proposals in this regard);
 - *sequencing in the introduction of Schengen*, taking care in managing the inevitably progressive application of the full Schengen regime (timing of elimination of old Schengen frontiers, and introduction of the new ones) so as to minimise frictions between accession candidates and with third countries;
 - *possible easing of immigration policy by EU member states (or later by the EU)*, which has been the subject of a recent Communication by the European Commission.
- e) These and other points should be subject of a Green Paper by the European Union, addressed to future EU border states and their neighbours for consultation and invitation of proposals. The process should be launched by a **Political Declaration** from leaders of the European Union, in favour of a **Friendly Schengen Border Policy (FSBP)**. This would constitute an invitation for all interested parties, and in particular for border regions on both sides of the future EU frontier to prepare co-operative proposals. The Political Declaration would immediately serve to give due weight to the political priority of the external policy objective of the European Union to avoid new dividing lines on the EU's Eastern frontiers, alongside its internal policy priority to achieve security objectives.

Some current requirements placed on individuals had highly discriminatory effects and policy-makers should be aware of these. In the past, the staggered acceptance of new members to the Schengen system, first having to satisfy the technical requirements and then a political decision, was on the basis of the Italian experience, an opaque process which can have negative effects within the candidate countries. Presentation of policy is also important to produce the right impact. For example, reasonable immigration policy could damage relationships if presented in a confrontational manner to non-EU sending and transit countries.

5. Policy Implementation

The lack of uniform practice in implementing agreed standards and principles constitutes a highly significant problem. Much of JHA policy depends not only on the acceptance and understanding of principles but on effective implementation. In issuing visas, certain practices such as profiling risk categories, humiliating treatment in consulates, and corruption has corrosive effects on trust and good relations. Border guards faced serious operational problems at the external border including recognition of valid travel documents, differences between national residence permits, varying practices concerning supporting documents (concerning the purpose of stay and means of financial support), and the different legal powers of border guards. Specific proposals were made to harmonise implementing measures in the Schengen Common Manual and all documents subject to checking at the external border, common training programmes for border guards, and the serious consideration of a common **European Border Guard** system after the conclusion of the Italian feasibility study. A practitioner who concluded by noting the importance of coherent strategies and practical measures to prevent illegal border crossings presented important information. Another important contribution addressed the crucial question about the degree of flexibility in implementation is compatible with the viability and effectiveness of the Schengen system.

6. Policy Analysis

The necessity of developing new tools of policy analysis became clear in many of the specialised discussions on the formulation and implementation of policy. Amongst the latter, the Colloquium received an important communication on human trafficking in, which there is a need for developing clear concepts.

The colloquium addressed one general area where more rigorous thinking is necessary – the relationship between trust and security. Co-ordinating actions and policies within multifunctional organisations, such as the police, cannot be done without trust; this is *a fortiori* the case for co-ordination between them at the European level. The complexity of the issues here defies summary and more will be published on this by CEPS. In brief, security is a ‘thick’ public good (in the sense used by sociologists). It is based on confidence and perception. Trust is based on a dynamic process of mutual learning, enlightenment and on a belief in the capacity of others to fulfil obligations. Trust always involves acts of faith and taking of risks. The key challenge of enlargement is how to build a broader security community, which necessarily involves imagining policies to promote trust. In conclusion, it was stressed that there is an intimate connection between three elements - trust, building a security community and the constitutional foundations of Europe.

7. Sources of Mistrust

These are many and varied: although policy-makers should be aware of them, it is impossible to take all of them into account. Visas, for example, can be regarded as expressions of mistrust – until the mid-1980s they expressed a mistrust of governments and subsequently a mistrust of the peoples of non-EU countries of origin of migrants. Visas and border controls have, recently caused mistrust between European institutions as illustrated by cases before the European Court of Justice. Difficult issues arising in the negotiation and implementation of the Schengen II information system will indicate the level of distrust of new member states. In vertical information exchange (local-national-European), there is often failure to communicate to Europol – a failing that the creation of Eurojust may help to address. The extradition procedure and its maintenance to date have been an expression of mistrust between judicial systems. Apparent double standards on corruption and organised crime (member states expecting standards of candidate states which they did not meet themselves) is both a manifestation and cause of mistrust. Any evidence of police corruption has a destructive effect on trust. The contrasting discourse of foreign policy makers and interior ministry representatives (the first emphasise co-operation and inclusiveness, the second security and exclusion) represent a gulf and sometimes mistrust between them. The use of pre-trial detention in some countries on other EU nationals is a particular cause of misunderstanding that should be addressed. In conclusion, more intellectual effort is required on the nature and basis of trust and the design of policies to promote it. In the coming months, CEPS intends to promote more reflection on concepts involved in policy-making and in policy implementation as well as on a European Border Guard and Public Prosecutor, and advances in Europol.

ANNEX I

List of Papers ⁴Presented at the Conference (Alphabetical Order according to the speakers)

The Long-term Implications of EU Enlargement: the Nature of the New Border
(Full report included in the reference section of the documentation pack)

Giuliano Amato

Trust and Police Co-operation

Malcom Anderson

Transfer of Competence: Between Sovereignty and Supranationality

Joanna Apap

Recommendation to the European Union and accession candidate states to adopt a Political Declaration on Friendly Schengen Borderland Policy

Jakub Boratynski and Michael Emerson

Russia and the EU: The Kaliningrad Dilemma

Yuri Borko

Roundtable Discussion on the Candidate and neighbouring countries' perspective: The Baltic Dimension

Ryszard Cholewinski

Foreign Policy Implications of JHA: the Case of the Baltic States

Ryszard Cholewinski and Erikas Slavenas

To What Extent Can There Be Flexibility in the Application of Schengen in the New Member States?

Monica den Boer

Determining Minimum Standards for the Expulsion Procedures in Europe

Alessia di Pascale and Bruno Nascimbene

Belgian Presidency of the European Union

Antoine Duquesne

The Problem of Corruption of Police Officials

Cyrille Fijnaut

The Implications of Implementing the EU Visa Policy for Central and Eastern Europe

Elsbeth Guild and Didier Bigo

Terrorism and Trans-border Co-operation

Oscar Jaime Jimenez

The Main Operational Problems of the External Border; The Current Situation and Future Perspectives; The Finnish Perspective

Pekka Järviö

⁴ These papers will be published soon in a collective volume.

The Schengen Challenge and its Balkan Dimensions

Péter Kovács

Excluded from Europe? European Identity and Fears of Exclusion East of the Schengen Border

John Löwenhardt

Some Comments on the Problem of Pre-Trial Detention

Neil MacCormick

Extradiction

Manuel Malheiros

Counteracting Human Trafficking

Felicita Medved and Peter Cullen

Establishing a ‘European Area of Justice’

Jörg Monar

Perceptions and Realities of the EU External Borders of an Enlarged Union: The Italian Perspective

Ferruccio Pastore

Russia’s Engagement with the JHA and the Question of Mutual Trust

Olga Potemkina

The Application of JHA and the Position of Minorities: The Case of Hungarian Minorities

Judit Tóth

The Kaliningrad dilemma: a brief commentary

Marius Vahl

Striking the Balance between Security and Freedom

Antonio Vitorino

The Problem of Trust in an Enlarged Area of Freedom, Security and Justice: A Conceptual Analysis

Neil Walker

ANNEX II

**FRIENDLY SCHENGEN BORDERLAND POLICY
ON THE NEW BORDERS OF AN ENLARGED EU
AND ITS NEIGHBOURS**

A COLLECTIVE CEPS-BATORY FOUNDATION PAPER
BY JOANNA APAP, JAKUB BORATYNSKI, MICHAEL EMERSON,
GRZEGORZ GROMADZKI, MARIUS VAHL
& NICHOLAS WHYTE

Prepared for a seminar on
New European Borders and Security Cooperation:
Promoting Trust in an Enlarged European Union

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CONTENTS

1. Introduction	1
2. The Schengen acquis today	3
3. Recommendations	4
3.1 Solutions within the Schengen <i>acquis</i> framework	5
a) Upgrading and reinforcing consular services	5
b) Types of visas which could facilitate movement of persons	6
c) Inexpensive visas	8
d) Development and upgrading of border crossings	8
e) Attitude of border guards on the external frontier	8
f) EU responsibility for external borders	9
g) Mutuality on the part of East European states	9
3.2 Long-term solutions	10
a) Modification of the 'black list'	10
b) The possibility of obtaining visas at the border	11
c) Multiple single-day entry visa	11
d) Active immigration policy	12

FRIENDLY SCHENGEN BORDERLAND POLICY ON THE NEW BORDERS OF AN ENLARGED EU AND ITS NEIGHBOURS

JOANNA APAP, JAKUB BORATYNSKI, MICHAEL EMERSON,
GRZEGORZ GROMADZKI, MARIUS VAHL & NICHOLAS WHYTE

1. Introduction

One often hears the term 'Europe' being used interchangeably with 'European Union', giving the impression that those countries that are not destined to become members of the EU in the near future are not part of the same continent. Even after the forthcoming accession by 13 new countries, a significant part of Europe will remain outside the 'EU club'.

Enlargement of the European Union will create a new external EU border in the eastern part of the continent. This new border will stretch from the north beginning with the twin town of Narva-Ivangorod on the Estonian-Russian border, through areas of Western Belarus bordering Latvia, Lithuania and Poland, to the Ukrainian borders with Poland, Slovakia, Hungary and all the way south along the Romanian border with Moldova and Ukraine. There will also be the Russian enclave of Kaliningrad, surrounded by the EU countries of Poland and Lithuania. Other new external EU borders will be drawn between Hungary and Slovenia on the one hand and Yugoslavia and Croatia on the other.

For both practical and symbolic reasons, the management of this future border will have a profound impact on relations between the EU and the non-EU parts of Europe. It is very important for the EU to take all possible measures to facilitate the crossing of its borders by the citizens of states neighbouring the EU. The construction of a new wall at the eastern-most extremes of the EU is an anachronism in post-cold war era. The stability of the countries of Eastern and South-Eastern Europe that are outside the EU will be one of the crucial challenges for the enlarged European Union as a whole.

EU policies, whether explicitly targeted at non-candidate countries or only affecting them indirectly, should be fundamentally consistent to produce the desired result. Such consistency would not only encourage the governments of that region to implement the institutional and economic reforms that would put the countries on a European track, but would also appeal to and reinforce the pro-European aspirations of ordinary citizens of Ukraine, Belarus, Russia and Moldova and the countries of former Yugoslavia.

Unfortunately, however, such consistency appears to be lacking. In fact, one can observe a distinct lack of coherence and co-ordination among three principal areas of EU policy, namely external relations, enlargement and justice and home affairs.

First, looking at EU foreign policies (CFSP) manifested both in high-level declarations by top EU officials and some of the Foreign Ministers of member countries, one can see an attempt to maintain a certain degree of openness towards the countries neighbouring with the enlarged EU. The line here is that no new Berlin walls are to be erected and that the closest possible partnerships are the ultimate goal.

These declarations, however, are contradicted by the dynamics of the enlargement process, where the strict application of the Schengen acquis concerning border controls and visa regimes is required from candidate countries. Their willingness to implement all restrictive border provisions is considered as one of most important indicators of their preparedness for

membership. Furthermore, and in contrast to the stance taken vis-à-vis current EU member states, this appears to be a non-negotiable issue.

The underlying reason for such EU positions lies in the domain of EU home affairs policy, which is strongly influenced by widespread fear of uncontrolled immigration from beyond EU territory, and criminal activity by foreigners within members state societies. Restrictive immigration controls, manifested in particular in the form of visa regimes at external borders, are seen as a necessary response to those fears and determine the nature of external borders. This is the case, despite fact that visas are not necessarily very effective instruments in curbing either criminal activity or illegal immigration.

These fears result in a paradox: new members are expected to introduce 'hard' Schengen borders that could negatively affect these countries' relations with non-EU neighbours, while at the same time the expected advantage of lifting border controls between old and new members, and the freedom of taking up employment, will be delayed for several years after accession. This consequence will not only have a negative impact on future EU neighbouring countries, but it will also produce feelings of second-class membership among new members. The EU's position is generated by a dual fear on the part of current members: fear of immigration from non-candidate countries (the citizens of which are all subject to the visa regime) but also the fear of immigration originating from candidate countries. That is why the citizens of Bulgaria and Romania, which are already negotiating their accession, still have to obtain visas to visit EU countries. (The requirement was only very recently lifted for Bulgaria).

Candidate states are being asked to fully implement the Schengen acquis without sufficient consideration being given to the maintenance of stable geo-political relations in the region.

In the 1990s, the walls that had divided Europe since the end of the Second World War ceased to exist. One was the boundary between the bloc of socialist states and Western Europe. The other, far less frequently mentioned, was the heavily guarded border between the USSR and Moscow's satellite countries.

As a result of the complex forces that brought down these walls, a unique area of liberalised movement of persons emerged in Central Europe. The citizens of the states that became candidates for membership of the EU (with the exception of Bulgarian and Romanian citizens), were granted the possibility to travel to the EU without a visas. On the other hand, inhabitants of countries such as Russia, Ukraine or Belarus, have been able to travel to Central and Eastern Europe without major difficulty. The open borders policy was a part of a wider policy of maintaining good relationships with neighbouring countries pursued by the governments of the Central European states. The West has encouraged such regional and bilateral cooperation since the fall of the Berlin Wall. This is generally seen to have played a significant role in preventing destabilisation in the region, as occurred following the First World War in Central and Eastern Europe, and as happened in the Balkans in the 1990s. The open-borders policy has affected thousands of ordinary citizens on both sides of the border, and has significantly contributed to efforts to overcome the historical legacy of mutual prejudice, stereotypes and resentment. Among the numerous examples one may single out the difficult and blood-tainted relationships between Poland and Russia, between Poland and Ukraine and between Hungary and Romania. Open borders have also fostered contacts of national minorities, such as the Belarussians in Poland or the Hungarians in Ukraine (Trans-Carpatia), Yugoslavia (Vojvodina) and Romania, with their mother countries.

The EU accession of Central European states such as Poland, Hungary or Slovakia, may lead to the disappearance of that specific area of liberalised movement of persons. As EU candidate countries adopt the Schengen acquis, they will have to impose visas on citizens of

neighbouring countries that are not in line for membership. The process of implementation of the Schengen system has already begun. In February 2000, the Czech Republic announced that it would introduce visa requirements for citizens of Russia, Belarus and Ukraine. Slovakia followed suit the following month, while the Romanian government announced that it would introduce visas for Moldovans. In September, Estonia introduced a full visa regime for Russian citizens. This followed the termination in March of the Estonian-Russian agreement on simplified border crossings. In December 2000, Bulgaria announced that it was withdrawing from its bilateral agreement on visa-free travel with Russia. Poland intends to introduce visas for Belarussians and Russians probably this year, and on the date of its accession to the EU, for Ukrainians. Lithuania has warned that it may have to terminate the agreement allowing visa-free travel for residents of Kaliningrad by 2003. Thus, one of the unquestionable achievements of the 1990s, which consisted of the freedom of travel between Eastern Europe and Central Europe, is seriously endangered.

The strict application of the Schengen border regime in general, and visa policy in particular, will directly affect and reinforce the growing socio-economic and psychological gap between the two parts of Europe. It will also adversely affect national minorities for example, Hungarian minorities living in the states neighbouring Hungary (Slovakia, Romania, Ukraine and Serbia). It is likely that Romania (at least for the time being⁵), Ukraine and Serbia (with the exception of Slovakia) will be subject to the Schengen visa regime.

In fact, Hungary's adoption of the Schengen *acquis* without modification could constitute a breach of its treaty commitment with Romania to maintain free cross-border contacts across frontiers for minorities. Moreover, this treaty was concluded only in 1996 with strong pressure from the EU.

For the first time since the end of the cold war, the EU will border an area that has essentially different political, economic and social systems. The imposition of restrictive principles for crossing the borders will contribute to the widening of these gaps, which will be detrimental to the European Union as a whole.

Paradoxically the end of the cold war adversely affected former Yugoslavia. One of the distinctive features of Yugoslav communism as opposed to the Soviet-style regime, was a general freedom of travel granted its citizens. With the advent of war in Bosnia, European countries started to impose visa regimes in an effort to limit the number of refugees seeking safety in Western Europe. By the end of the 1990s, the situation was extremely confused, with citizens of Croatia enjoying visa-free access to the EU, while citizens of Macedonia, Bosnia-Herzegovina and rump Yugoslavia were obliged to obtain visas; not to mention the thousands who left bereft of any citizenship documentation whatsoever by the conflicts.

2. The Schengen *acquis* today

The EU has imposed a fixed set of rules on new members, laid out in some 3,000 pages of the Schengen *acquis*. While this will bring undisputed advantages in some areas, it has not produced the intended result in others. Furthermore, there is an element of a double standard being introduced here in EU policy, since some current EU countries are allowed to 'opt-out' of the Schengen agreement and others that have signed up to the agreement are in reality implementing the Schengen rules selectively according to national preferences.

Freedom of movement – one of fundamental rights of EU citizens - is suffering various obstructions. Sixteen years since the signing of the Schengen Agreements in 1985, there are still visible and hidden barriers to the free movement of persons.

⁵ The EU may lift the imposition of visas on Romanian nationals following a decision in December 2001.

Schengen was expected to facilitate the free movement of persons in the Schengen zone. Before one can gain access to the Schengen area, however, various conditions need to be fulfilled by the nationals of countries that are subject to the visa regime.

A lack of transparency and barriers to access to information persist in the granting of Schengen visas. From evidence received, it seems to be that there are unofficial quotas established by some of the Schengen countries which have the effect of limiting the number of visas issued, particularly for certain countries of origin. The justification for not granting the visa is not necessarily 'a threat to public order', but also that a certain number of visas have already been granted to nationals of that state during that same year.

The continued existence of national immigration policies means that third-country nationals may be lawfully resident in one Member State but an illegal alien in another. Even if s/he can argue that s/he cannot be subject to control at the internal frontiers of the Schengen zone, s/he may be confronted by continuing national restrictions on immigration, enforced by rigorous methods of internal controls.

SIS II will not be completely set up till 2004. Candidate countries are preparing themselves so that they can be in full conformity with a system that has not yet been sufficiently explained to them.

Approximation of laws and harmonisation of legal and administrative provisions have undisputedly been the leading technical instrument of European integration, laying the foundation for the basic freedoms (free movement of goods, services, capital and people) that define the content of united Europe. Exceptions or deviations from a general model maintained by some members states have been regarded as distortions and negative factors from an integrationist perspective.

In view of the circumstances outlined above, the enlarged EU faces a serious dilemma. Is a uniform approach the best way to ensure a stable, prosperous Union? Does the orthodox, inflexible approach of imposing a pre-defined set of Schengen rules on new members really best serve its purpose? These questions are especially valid in light of the fact that one of the major underlying concepts behind the EU's external border is deeply embedded in a European immigration policy that requires major rethinking.

3. Recommendations

The specific recommendations contained in this paper focus on the visa policy of the enlarged EU. Visas are still seen as one of the main instruments for controlling external EU borders. As noted above, the criterion for not granting a visa is not necessarily that the individual presents 'a threat to public order' or poses a high risk of immigration or illegal employment. There seems to be an unofficial quota system established by some of the Schengen countries under which only a limited number of visas are approved, particularly for applicants of certain countries, in any one year. Other 'unofficial' elements of the current EU visa policy include long waiting periods and bothersome procedures. Visa applicants may be obliged to wait for up to three weeks and in some cases, the visa has been refused for reasons that are not communicated to the applicant. Applicants often have to go through in-depth interviews that intrude on their privacy. Moreover, due to a lack of transparency in the administration of Schengen visas, it is not clear to whom applicants can submit an appeal if their application is denied.

Another important aspect is the Schengen Information System (SIS). The implication of having one's name on the SIS list could range from simply having one's documents scrutinised every time one enters the Schengen zone, to a blank refusal of a visa. Not all Schengen countries feel obliged to offer an explanation for refusing to issue a visa and this is a policy area that is still governed by the principle of sovereignty of each Schengen state. The persons usually included in the SIS database are those who either have a criminal record (even simply defined as a threat to public order) or have possibly been subject to a criminal act. In the latter case, persons whose documents were stolen while visiting or

residing in a Schengen country, and whose documents were later replaced, but had filed a report with the police of that country, would also be listed in the SIS to prevent the fraudulent use of the stolen documents by another person. In such cases, the 'victim of the theft' may also be asked intrusive questions by the immigration officer to verify his/her identity.

The recommendations proposed below can be divided into two basic groups:

The first group includes recommendations for the near future. The assumption here is that due to the political climate in the member states, neither a major amendment of the Schengen *acquis* nor an approach of partial or selective implementation of the *acquis* by accession countries is possible at present. We put forward specific options that can be undertaken by the candidate states and the European Union in order to minimise the potentially negative effects on the movement of persons between non-candidate countries and prospective members. These options are based on the premise that the Schengen *acquis* leaves a certain margin of flexibility and adjustment to meet the particular needs at hand.

The second group includes far-reaching recommendations, based on the belief that the Schengen provisions should be modified to better serve the fundamental aim of a open, free and undivided Europe proclaimed by the European Union.

3.1 Solutions within the Schengen *acquis* framework

The recommendations presented below take into account the assumption that the candidate countries will introduce visa requirements on the traffic of persons from the blacklisted states no later than their date of accession to EU membership. Their principal aim is to alleviate the undesirable results of the introduction of the visa regime and enable easier access to visas, so as to remove the major impediments preventing the citizens of Eastern Europe from travelling to Central European countries. The achievement of this goal requires a range of activities and the fulfilment of numerous conditions, as presented below.

a) Upgrading and reinforcement of consular services

- *More consular staff*

In order to process a similar magnitude of persons crossing these border today, the majority of whom possess single-entry visas, more consular staff will be required in order to provide for smooth cross-border traffic. For example, the Polish consular services stationed in the countries of Eastern Europe would need to issue ca. 5,000 visas per day.

This translates into the necessity to employ some 250–300 consular officers and to provide the consulate outposts with adequate premises. This calls for the co-ordination of efforts between the consulates of member states of the enlarged EU. The network of consulates should be developed as appropriate along the future eastern border of the EU.

- *Visa: a right, not a privilege?*

A visa must not be deemed a privilege. The policy concerning visas should not consist of coercing the applicant to prove his or her innocence, but just the routine granting of a visa, unless there is evidence suggesting a prior illegal stay of a given citizen in the country issuing the visa, or criminal activities on record. It is very important that the manner in which visas are granted should not give rise to a sense, among the citizens of non-EU countries, of being marginalised or of being second-class Europeans. The manner in which visa applicants are handled should be an expression of impartial professionalism on the part of the civil servant and customer-oriented service.

The organisation of consular work should eliminate queues to the extent possible. If long waiting times cannot be prevented, a numbered queue system or appointments at a specific time should be arranged as standard practice.

An extremely important measure facilitating the visa application procedure consists of the option to submit an application by mail (the application forms could be also made available from the consulates' websites), whereby only a single visit to the consulate would suffice to obtain the visa.

An alternative solution could consist of the possibility to submit the documents and to collect one's visa on the same day. The effective operation of such a system might necessitate further improvements of the Schengen Information System and of other data collection systems, so as to enable the immediate verification and comparison of data.

The constant rotation of the consular staff is intended to discourage the formation of bad habits that could lead to a relaxed vigilance. Bad habits also include however excessive restrictiveness, discrimination and the violation of human dignity of the persons who are at times asked questions touching upon strictly private matters.

The proposed solutions suggested here are intended to reduce to a minimum the inconveniences experienced by citizens of the countries neighbouring the EU applicant countries in their travel to and from those countries, once the requirements of the Schengen Treaty enter into force.

b) Types of visas that could facilitate the movement of persons

- *National visas*

Before lifting border controls between old and new members:

National visas issued by candidate countries before accession may be less rigorous, as they do not expose the EU members to any risk.

Once the candidate countries become members, border controls will be maintained on the existing internal borders (e.g. Polish-German, Hungarian-Austrian) for some time. The applicant countries will continue to be able to issue national visas on hitherto existing principles, since the citizens of the states of Eastern Europe possessing such visas will not be able to cross the border of the country that issued the visa.

The applicant states will naturally aim to making this period as short as possible, as the continued control on the internal border will be unfavourably perceived psychologically, as a symbol of incomplete or second-rate membership. The European Union should also strive to shorten this period, not only in order to avoid giving rise to bad feelings, but also to mobilise the border services of the states protecting the future external borders to promptly implement the transformation required to reach the appropriate standards.

After lifting border controls between old and new members:

The national visa will then change its function. In accordance with the Schengen *acquis*, it will only be issued for long-term residence, i.e. for stays of more than three months. It will only entitle the holder to reside in the area of the country that issues such a visa. Staying in other Schengen states can only be justified by transit through such states, during a maximum of five days, which is not taken into account in the case of Eastern and South-East European citizens.

It is technically feasible for third-country citizens holding long-term national visas to cross the internal border, but the risk of sanctions in the event that the authorities learn of the visit to another member state (complete ban on all entry to the EU for several years) should serve as adequate deterrence.

Issuing long-term national visas in large numbers may become one of the main mechanisms to facilitate travel by Eastern and South-East Europe's citizens to accession countries willing to pursue such a liberal policy.

It would comply with the Schengen *acquis*. The implementation of such a policy, however, would require political dialogue with the member countries in order to reassure them of the good will of the new members of the Union.

The absence of precise regulations concerning national, and therefore long-term, visas introduced by the Schengen *acquis*, and the fact that such regulations were left to the competence of national governments, can probably be attributed to the belief by the signatories of the respective convention treaties, that the national regulations concerning the criteria for granting long-term national visas would not only be less lenient, but rather that they would be more restrictive than the common regulations of the EU concerning visas subject to the Schengen system. A liberal policy on the part of Poland and other new EU member countries with this respect could therefore lead to unfavourable reactions on the part of the EU. Liberal policies have to be well structured, as they must appear credible to old members.

Likewise, the 15 EU countries should extend their thinking in terms of the categories of Schengen and perceive in this solution the possibility to fashion an instrument for the foreign policy of the Union that does not isolate its eastern neighbours.

- *The Schengen visa (allowing the holder to stay in all member states)*

The key purpose of the visa procedure is to eliminate the risk of illegal immigration. In principle, however, the verification procedures contained in the *acquis*, however, are intended to evaluate the risk of immigration in accordance with local conditions. In the case of travel, when its main destination as declared by the citizen concerned is the neighbouring country, and when there are no substantial grounds to doubt this, the formalities should be simplified. The monitoring of the situation (e.g. a major increase in detentions of holders of visas issued by the new member states, for illegal extension of their visit or other offences on the territory of the 15 EU states) might provide the grounds for more stringent verification. Similarly as in the case of national visas, political considerations require that travel is not hindered by excessive formalities.

One example of a practical solution would be to eliminate the interview process (they are not obligatory according to the *acquis*) or to perform an interview only for first-time visa applicants. The granting of multiple-entry visas valid for one year, which the Schengen *acquis* allows for, could also provide practical facilitation. Given the possibility of issuing a long-term national visa, a visa valid for a period longer than one year, which is permitted by the Schengen Treaty in certain cases, does not appear to be all that important.

The persons who should be regarded as the first in line to be entitled to access to these two categories of visas, i.e. the long-term national visa and the multiple-entry Schengen visa valid for one year (allowing a stay of a 6-month duration) may be divided into the following categories:

- a) persons involved in business activities;
- b) persons active in culture, science, scholarship holders, students, sports;
- c) persons visiting their families;
- d) inhabitants of border regions (it could become a substitute for a simplified non-visa cross-border movement in borderland areas which will not be compatible with Schengen); and
- e) representatives of local government authorities, activists of non-government organisations (NGO).

Should it prove impossible to introduce small-scale non-visa movement, the issuance of long-term visas is a good alternative for the purpose of maintaining intensive cross-border contacts.

c) Inexpensive visas

Ideally, single-visit visas should be free of charge, with the cost covered by the EU. This would send a strong political signal at a modest price. As a second-best solution, the price of single-visit visas should not exceed 5-10 euro, and of multiple-entry Schengen visas and long-term national visas allowing visits for defined periods of time - 10-20 euro. The low price is like a declaration of intent: We do not wish to establish barriers or additional obstacles. A simultaneous reduction of prices to the same level by all of the member states could be a valuable and well-received gesture to accompany the enlargement.

d) Development and upgrading of border crossings

The EU should invest in the technical infrastructure at border crossings, which should ensure the efficient and speedy crossing of the border. It should also contribute more to the establishment of new border crossings on an external frontier where needed. A properly developed infrastructure of border crossings and their adequate capacity to efficiently manage the movement of people across the external border will be an important political message.

e) Attitude of border guards on the external frontier

An inclusive and open approach is not credible if the border guards – the first EU officials that a foreigner meets upon entering EU territory – treat non-EU citizens like an inferior species that is by definition suspect. The regulations concerning the organisation of the work of consular services (common consular instructions) ought to be changed, as they bear the imprint of this attitude.

Developing specific training activities and introducing appropriate organisational and incentive mechanisms addressed to border guard and customs officers will help to limit corruption and to significantly improve the approach to foreigners. Unfortunately, the discrimination of foreigners and the violation of their dignity are daily occurrences at these border crossings. This is a problem that characterises to some extent all of the external borders of the European Union.

f) EU responsibility for external borders

A pro-active policy on European borders wisely combining element of control with facilitation of cross-border movements has to become the responsibility of the EU as a whole, and not just the countries along its external frontier.

Investment in the infrastructure of border crossings from the EU budget must be increased. Some support must also be extended to the consular services of countries bearing the highest burden of issuing visas and having intensive networks of consular offices in the territories of EU neighbours. It could be the first step towards creating Euro-consulates, which could optimise cost-effectiveness and facilitate access to Schengen visas.

The idea of European border guards seems to be a distant future and moving whole units of Polish border guards to the Turkish-Greek border or Germans on the Hungarian-Ukrainian border is not necessarily rational. However, the placement of individual officers from member states in border guard units on external borders could be an effective instrument of fostering the concept of European responsibility and promoting trust between member states.

g) Mutuality on the part of East European states

The quest for ways to alleviate the impact of the introduction of visas ought to be the subject of political dialogue not only of a bilateral nature (by the new members with the individual Eastern European non-candidate states), but also between the Union and the individual countries of Eastern Europe. The dialogue should cover the following issues:

- Co-ordination of mutual measures by each party in visa policy and a civilised manner of the introduction of visas, i.e. by giving adequate advance notice, and by broadly disseminating the respective information addressed to the people concerned.
- The introduction of mechanisms aimed at reducing the fear of illegal immigration on the part of the countries of the Union, i.e. by increasing the effectiveness of the readmission agreements (with Ukraine) and also by signing such agreements with other countries.
- The introduction of similar non-restrictive mechanisms with regard to citizens of the EU countries travelling to Eastern Europe.

Unfortunately, in view of the mindset typically found among Eastern European political elites, one has to anticipate that there would be a certain lack of commitment or enthusiasm in engaging in a dialogue of that kind. The requirement to apply for a visa will be an inconvenience above all for the ordinary citizen, rather than for politicians or big businessmen. And even if there did exist good political will on the part of these same elites, the inefficiency of the state administration may turn out to be a major hindrance to the effectiveness of such dialogue. Nevertheless, support for such dialogue ought to be one of the main components of the long-term foreign policy of the Union, and should not remain solely within the competence of the ministries of internal affairs of the individual EU states.

The introduction of visas for the citizens of the newly admitted member countries of the Union by the countries of Eastern Europe remains today a virtually unnoticed effect of the introduction of the Schengen *acquis*. In the face of the above-mentioned inefficiency of the administration prevailing there, it might very effectively discourage travels to the East, which even under the present arrangements for visa-free movement are not very frequent. Paradoxically, the decline of traffic in that direction may turn out to be far more painful in the longer term. After all, such a situation would widen the distance between the neighbouring nations and reinforce their ignorance of one another. In order to avoid a scenario of that kind, the possibility of granting support for the development and modernisation of consular services of the Eastern European countries with the assistance of aid programmes should be taken into serious consideration. More importantly, the future East European neighbours of the EU should be encouraged not to reciprocate in kind when the EU accession candidates introduce visas for their citizens. Although such an asymmetry might be hard to accept politically, the EU's neighbours should recognise that the EU's concerns are legitimate, and that it would be counter-productive to make this issue into a contest of political will.

3.1 Long-term solutions

Through a more flexible application of the Schengen acquis one may envisage the following as potential long-term solutions:

a) Modification of the 'black list'

Citizens of Belarus, Russia, Ukraine and Yugoslavia must produce a visa upon entering the EU. The possibility of removing the Eastern European countries from the black list in the future should be considered. Their presence on the list is largely caused by the fear of intensive immigration. Such fears were expressed in advance of previous EU enlargements, but with hindsight were found to be unfounded. The same fear was evident at the beginning of the 1990s, when the matter of removal of visas for Central European citizens was discussed in the EU. The experience of the past decade has demonstrated, however, that the fear of a flood of immigration from countries such as Poland or Hungary was completely unjustified.

- *Ukraine*

The removal of Ukraine from the black list may seem today utterly utopian, when we compare the living standards in Ukraine and in the EU countries. Also the sheer size of the country, with a population of 50 million, may provide an argument against Ukraine. In the

perspective of a number of years, especially if a process of real reforms will start in Ukraine, such a scenario should begin to be taken into account seriously. This would require the establishment of an effective control system on the external border, so as to eliminate the crossing of the border by persons recorded in the Schengen Information System. It would also be important to put effective controls in place on the Russian-Ukrainian border. Controls on the border, although not directly relevant to the issue of visas, would enhance the growth of confidence in Ukraine and could serve as an additional instrument of stopping illegal immigration from non-European countries.

- *Belarus*

Belarus is a definitely smaller country than Ukraine, and hence it possesses a significantly smaller migration potential. The emergence of substantial political changes, such as the fall of the Lukashenka regime, could provide an excellent opportunity for the Union to eliminate visas. It would also encourage further transformations and strengthen the pro-western orientation, which at present is virtually absent.

- *Russia*

Due to the size of the country, the scenario of removing visas appears to be the most remote, but in the case of favourable changes in Russia, it could become a very important instrument for strengthening the pro-western option. Just as in the case of the above-mentioned two countries, Russia's potential as a source of illegal immigration is far overstated. This is also evidenced by up-to-date statistics concerning illegal visits and deportations.

Special regulations are required for Kaliningrad, which will become a Russian enclave within the European Union. Kaliningrad should obviously be one of the priority targets of the proposals of the first section of these recommendations, e.g. the procedure of granting long-term national visas for citizens of that district should be simplified significantly. One should also take into account the possibility of removing the visa requirement for the inhabitants of that region – which would of course require an agreement between the EU and Russia, as well as appropriate modifications of the black list. Obviously, high standards of verification of persons crossing the SIS border should be observed. It would be worthwhile to extend the solutions applied for Kaliningrad so as to cover the other Russian regions that will border the enlarged EU.

- *Yugoslavia and other Balkan countries*

Restoring visa-free travel to those citizens of ex-Yugoslav republics who do not currently enjoy it, and extending this right also to Albania, should be one of the political priorities built into the EU's Stabilisation and Association Process - conditioned of course on the implementation of reforms, in much the same way as Bulgaria and Romania were obliged to undertake. The problem of issuing travel documents for Kosovo residents who may have difficulty in obtaining or using Yugoslav passports is, however, more directly the problem of the international community.

b) The possibility to obtain a visa on the border

At present, visas are issued on the border only in exceptional cases. The future development of the technical infrastructure of the SIS (introduction of easy-to-use magnetic readers, popularisation of passports with a magnetic code) would allow for visas to be issued on the border. That would require the application of readers able to immediately and automatically print visa stickers. Such a possibility could apply to persons who have passed the procedure of visa application before, and have a clear record in the SIS. The inspection of passport documents with the use of a reader, and the comparison of data upon the person's departure from the EU area, would allow an immediate determination of whether the duration of the visit had been exceeded.

This could in time lead to the abolishment of visas as such. According to this scenario, a visa would only be issued at the initiative of a person travelling to the countries of the European Union. Its purpose would be also to reduce the risk of refusal of entry and the related losses due to the travel

expenses incurred. A model of universal movement without visas (currently allowing for visits of up to three months) would require advanced SIS technological solutions. Similarly as in the above-mentioned scenario, the so-called traditional visa procedure could be compulsory upon the first visit.

c) Multiple single-day entry visa

One way to simplify the entry by the citizens living close to the EU's future border (e.g. residents of the St. Petersburg area, Western Belarus, Western Ukraine and Kaliningrad District, Moldovans, Serbs and Hungarians in Vojvodina, etc.), and at the same time to prevent them from staying illegally in other EU countries, is to provide them with a multiple single-day entry visa (MDV). It would be a travel document valid only together with a passport allowing a maximum of (for example) an 18-hour stay in one of these countries. If the person exceeded the duration of stay allowed by the visa, the border guards would retain the MDV and from that time forward, the person concerned could only enter the country on the basis of a Schengen Visa.

The MDV could work like a credit card, which would facilitate the handling and make the clearance procedure quicker. Upon entry to Poland, it would be inserted in a reader machine. If the allowed duration of stay had been exceeded, the machine would withhold the card upon the return. It would limit the possibilities for the persons using a document of that type of getting across to the territories of other EU countries, since a the journey from the area of Eastern Europe to Germany, for example, and back within 18 hours is practically impossible. At the same time, such a border clearance regime would enable the individual to maintain small business trade, neighbourly and family contacts, as well as employment in the border zone.

d) Active immigration policy

A long-term foreign policy on the part of the European Union should effectively limit the pathological phenomena such as the smuggling of people by organised criminal groups, without isolating the immediate neighbours of the Union at the same time. The demographic situation (the dramatic ageing of society and the fall of the birth rate below the level of simple reproduction of generations) both in the countries of Western and Central Europe, with the resulting implications for the employment markets, pension systems and health care systems, demonstrate clearly that Europe is in need of immigrants. For this reason, entry to the EU for hundreds of seasonal workers should be legalised. The existing policy involves immense hypocrisy. On the one hand, we pretend to abide by stringent and restrictive laws and on the other, we tolerate the existence of extensive areas of the shadow economy based on immigrant labour, which is undoubtedly beneficial. Both the immigration regulations and the insurance and tax regulations need to be reconsidered, as they provide the soil in which the pathologies grow. Although the immigration policy is above all a challenge to the countries of the 15 EU countries, it increasingly also concerns the future member states, as shown by the experience of recent years.

Undoubtedly, the scenarios presented here require huge investments in order for the visa-free border control methods to be effective. The new members, on whom the core burden of responsibility for protecting the external border will rest, will need to receive technical and financial support from the Union. We should also bear in mind, however, that the outlay of capital expenditures involved would be balanced by the decreasing costs of consular services, which are very high at present.

