

SCHENGEN, EVOLUCIJA, ŠIRITEV IN VSTOP SLOVENIJE NA SKUPNO SCHENGENSKO OBMOČJE

SCHENGEN, EVOLUTION, ENLARGEMENT AND SLOVENIA'S ENTRY INTO THE COMMON SCHENGEN AREA

Professional article

Povzetek Kljub temu da je besedica »šengen« že kar domača, le malokdo ve, kaj pravzaprav pomeni. V geografskem smislu je Schengen ime vasice v Luksemburgu, sicer pa se z besedo schengen označuje pravni red, ki pomeni ukinitve mejnega nadzora na notranjih mejah (mejah med državami članicami schengenskega pravnega reda), ukrepe čezmejnega policijskega sodelovanja in ukrepe na zunanjih mejah. Celoten sistem, ki je zelo zapleten in v svetu pomeni svojevrsten unikum, se je razvil predvsem zaradi gospodarskih potreb. V zgodovini Evrope je to velika prelomnica. Nastajal je postopno, od prvega, sorazmerno preprostega sporazuma je prek konvencije in vrste sklepov izvršnega odbora nastal sistem, ki ga poznamo pod imenom Schengen Acquis. Zaradi svoje učinkovitosti in močne politične volje držav članic Evropske unije je bil leta 1999, torej 14 let po podpisu prvega sporazuma, vključen v pravni red EU.

Vključitev schengenskega pravnega reda v pravni red EU pomeni bistveno spremenjene okoliščine, tako za stare države (spremenjen sistem odločanja) kot tudi za nove. Za nove države članice oziroma za države kandidatke integracija schengenskega pravnega reda v pravni red EU pomeni dodatno obveznost. Ni namreč mogoče, da bi se posamezna država odločila za vstop v EU, pri tem pa ne bi izpolnila obveznosti za vstop v schengenski prostor. Kljub temu pa ostaja obratna možnost. Še vedno se lahko posamezna država odloči za vstop v schengenski prostor, ne da bi se pridružila članstvu v EU.

Vstop v družbo elitnega kluba držav, torej v schengenski prostor, pa ni brezpogojen. Država, ki se odloči za članstvo v EU ali samo za članstvo v schengenski družbi, mora izpolnjevati vrsto izjemno visoko postavljenih pogojev. Pripravljenost držav se po posebnem postopku podrobno preveri in šele po pozitivnih poročilih posebnih skupin se vrata lahko odprejo – ukine se mejna kontrola na notranjih mejah, torej na mejah med državami članicami schengenskega prostora. Širitev tega prostora v

letih 2007 in 2008 je bila povezana tudi z drugimi problemi, predvsem s težavami, ki jih je povzročil velik zaostanek pri razvoju schengenskega informacijskega sistema druge generacije. Kljub temu da je bilo sprva načrtovano, da bo ta sistem končan pred letom 2005, se to še ni zgodilo.

Republika Slovenija se je na vstop začela pripravljati že v devetdesetih letih. Priprave so trajale več kot deset let, pri tem pa je bilo opravljeno več reform, med drugimi reforma pravnega sistema na področju varovanja meja, kadrovsko-organizacijska reforma, spremenjene so bile metode in oblike nadzora državne meje, zgrajeni novi mejni prehodi, policija je dobila novo (predvsem pa drugačno) opremo in še in še.

Ključne besede *Schengen, širitev, Slovenija, schengenski pravni red, razvoj, priprave, uveljavitev, meja, policija.*

Abstract Despite the fact that “Schengen” has become a familiar term, not many know its meaning. In geographical terms it is a name of a small village in Luxembourg. In fact, the word indicates the Schengen Acquis, which means the abolition of border controls at the internal borders (the borders between Member States of the Schengen Acquis), measures of cross-border police cooperation and measures at the external borders. This extremely complex system can be seen as a peculiar uniqueness and has been developed due to economic needs. It signifies a turning point in the history of Europe and has evolved gradually. Over the period of the first, relatively simple, agreement through the Convention and the several decisions of the Executive Committee a complex system, known under the name “Schengen Acquis”, was formed. Due to its efficiency and strong political will of the Member States of the European Union, this system was integrated into the Acquis Communautaire in 1999, 14 years after the signing of the first agreement.

The inclusion of the Schengen Acquis into the Acquis Communautaire signifies substantial changes in conditions, both for the old (a modified system of decision-making) as well as the new Member States. For the new Member States and Candidate States, for the integration of the Schengen Acquis into the Acquis Communautaire, it represents an additional obligation. It is not possible that a state decides to join the European Union and fails to fulfil its obligations for entry into the Schengen area. Nevertheless, there still remains a possibility that a state decides to enter the Schengen area without joining the European Union.

Entry into the elite club of states - joining the Schengen area is not easy. A state that decides to join the European Union or merely the Schengen area must fulfil a number of extremely high set conditions. The readiness of the states is fully examined with a special procedure and only after positive findings from specific groups can the doors open - border checks at internal borders are abolished at the borders between Member States of the Schengen area. The enlargement of the Schengen area in 2007 and 2008 was also associated with other difficulties, especially with the difficulties resulting from the arrears in the development of the second generation of the

Schengen Information System (SIS II). Despite the fact that SIS II should have been completed by the year 2005, this project is still ongoing.

The Republic of Slovenia started to prepare for entry in the nineties. The preparation lasted over 10 years with the implementation of numerous reforms. A reform of the legal system in the field of Border Security, reform of the human resources organization and changes of the methods and types of border control were made. In addition a new border crossing point was built; the Police received new (and above all different) equipment and there was a series of other changes.

Key words *Schengen, enlargement, Slovenia, Schengen acquis, evolution, preparation, implementation, borders, police.*

Introduction The slovenized word *šengen* is known to everyone and frequently heard. It is often used in phrases such as the Schengen border (*šengenska meja*), the Schengen Policemen (*šengenski policisti*) etc. Due to problems this border brings for the local inhabitants it often has a negative meaning. Not many people know that Schengen is a small village in Luxemburg near the triple border of Germany, France and Luxemburg. In this village, with less than 500 inhabitants, an Agreement on the gradual abolition of checks at their common borders was signed in 1985 and in 1990 the Convention implementing the Schengen Agreement was signed in the same village. More precisely, both documents were signed on a small boat. The region is otherwise known for winemaking, even so, in 2006, the municipal council of the Remerschen municipality named the entire municipality after the renowned Schengen village. The reputation of this village is in deed justified. Both documents, signed in this village mark a turning point in the philosophy of providing security for inhabitants, and a unique, non-recurring paradigm in the history of Europe. Out of a relatively simple agreement and convention developed one of the most comprehensive systems of modern time.

1 REASONS FOR CREATION AND DEVELOPMENT OF THE SCHENGEN ACQUIS

Essentially, the national borders represent a conflict imperative. The borders should be concurrently open and closed and should at the same time be a wall and a door (Marenin, 2006, p. 19). Globalisation and new security threats require new approaches to the management of borders. In this field, development should and does follow economic development and economic possibilities. This statement is of global nature, since the successfulness of the economy, its growth and progress and not least the level of democracy are closely connected with the management of national borders.

It can be stated that the establishment of the common market and the related greater economic power is the most important reason for European integration. This was

one of the objectives of the six¹ Member States of the European Coal and Steel Community (ECSC) already in 1955. On the basis of the Messina Declaration two other communities have been founded in 1957 with the two Treaties of Rome – European Economic Community (EEC) and the European Atomic Energy Community (EAEC). The Contracting States wrote a definition of the internal market in the treaties regarding the European Economic Community (EEC) /.../ “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty”. In order to attain this objective the border control on internal borders had to be abolished and as free movement of all factors of the internal market as possible had to be ensured. In this way the states engaged themselves to give up control, which up until then effectively prevented cross-border criminal, drug and weapons smuggling, terrorism and illegal migrations. In short, the ambition to abolish internal borders was conditional on the economy (Sie Dhian Ho, 2006, p. 125)

Regardless of the fact that the abolition of border control on internal borders was one of the basic factors of the European integration, this process was difficult and tedious. In addition to technical difficulties, caused by the abolition of the border control, arose political difficulties. Despite integration the internal security of Member States remained at the national level. Due to the lack of a clear and generally accepted political encouragement the process was conducted in a two-track manner – within the community and on the initiative of certain Member States.

Within the framework of the community developed a mechanism for greater mobility of students and pensioners² and on the initiative of the Member States the so-called TREVI³group, whose origin dates back to 1976, has been formed. It should be stressed that the two trends have not complemented themselves, but have in some parts been rivals to one another. Due to an exceptionally great political motivation of certain Member States, the system as we know it today, developed under the auspices of international cooperation and not within the framework of the Community law. Numerous analysts ascertain that the system in its present form - based on the level of community could not be established due to the lack of political will (Gogu, 2006).

The first step towards the objective (abolishment of the border control on internal borders) was the agreement signed between France and the Federal Republic of Germany on 13 July 1984 in the German city Saarbrücken. The agreement on the gradual abolition of checks at the Franco-German borders is most known for the so-called “green E” - a label on cargo vehicles, due to which the crossing of border was possible without border control on roads that linked the two states.

¹ *The Federal Republic of Germany, Italy and the Benelux states – Belgium, Netherlands and Luxemburg.*

² *Examples are the directives 90/364/EEC and 90/365/EEC.*

³ *After a series of terrorist attacks a first meeting of senior officials has been convened in Rome on the British initiative at which they have discussed the possibilities of fight against terrorism and the cross-border criminal. The general opinion is that the group got a name after a famous fountain in Rome, particularly because the president of the meeting was a Dutch representative with the surname Fonteyjn.*

On 11 December of the same year, the ministers of transport of the Federal Republic of Germany and the Benelux states adopted an agreement on the mitigation of the border congestions in the car traffic, while a day later, on 12 December 1984 a group of five (Federal Republic of Germany, France and the Benelux states) was established with the Benelux Manifest. The representatives of the states prepared an Agreement on the gradual abolition of checks at their common borders⁴, which was signed in a small Luxemburg village Schengen on 14 June 1985 by the presidents of the governments. In everyday use the term Schengen Agreement is used for this agreement. The agreement is very general in nature with principle-based objectives, framework program and short- and long-term measures for their realization.

It took five years for the states to reach an agreement on concrete measures, which have been written down in the new convention. On 19 June 1990, again in the Schengen village, has been signed the convention on the realization of the Schengen Agreement. The new convention with the full name *Convention implementing the Schengen Agreement dated 14 June 1985 between the governments of the Benelux Economic Union, Federal Republic of Germany and the French Republic on the gradual abolition of checks on their common borders*⁵ is an important step to the realization of political objectives and the Schengen Agreement. For this document the name Schengen Convention is used in practice. The original signatory states of the Convention were Belgium, Netherlands, Luxemburg, Germany and France.

Both documents together (the Agreement and the Convention) got the title *Schengen* in everyday use. Since Schengen or the Schengen system signified an actual progress in the abolition of checks at the internal borders Italy (27 November 1990), Spain and Portugal (25 June 1991), Greece (6 November 1992), Austria (28 April 1995), Denmark, Finland and Sweden (19 December 1996) also acceded to this convention. On December 19, 1996 Iceland and Norway, which are not members of the EU, but were able to become members of Schengen, also signed the cooperation agreement.

The Schengen Convention envisages a complete abolition of checks on internal borders for everyone, even for the citizens of the so-called third countries.⁶ In order to compensate for the abandoned security tool⁷ the Agreement introduces a variety of mechanisms for the provision of security in the Member States. The Schengen Convention is a rather comprehensive document comprising the provisions on: free crossing of the internal borders without personal border control;

⁴ The full name is the Agreement between the governments of the states of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

⁵ The full name is: Convention implementing the Schengen agreement of 14 June 1985 between the governments of the states of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

⁶ The Convention demands that the Member States completely remove all facilities in which the border control has been implemented. The traffic on internal borders must be running smoothly and unimpeded. Only reasonable speed limits are allowed (conclusion of the administrative board SCH/Com-ex (94) 1, rev. 2).

⁷ The control of the national border included both the border crossings control as well as the protection of the national border outside the border crossings; more precisely is the protection of the green and the blue border.

- uniform conditions for the entry and a short stay;
- asylum;
- police cooperation;
- judicial cooperation;
- Schengen Information System;
- free circulation and free movement of goods;
- tasks and competences of the Executive Committee for the implementation of the Convention;

It is even more important that we can assert that the convention was not rigid, for it had built-in a special instrument for simultaneous upgrading. From Article 131 to 133 the convention defines the establishment of the Executive Committee and its jurisdictions. The decisions of the Executive Committee have been obligatory and have gradually upgraded the Convention in relation to the actual state and political progress.

Because the decisions of the Executive Committee have been binding for the Member States the entire legal system developed in practice. This system has been composed of the Schengen Agreement and the Schengen Convention, the Accession Agreement of the Member States, the provisions of the Schengen Executive Committee, declaration and decisions of the Schengen authorities. For this legal order is used the term Schengen legal order⁸ or the Schengen Acquis (quoted from Travner, 2008).

It should be stressed that the Schengen Acquis was created shape and was developing independently from the Acquis Communautaire, nonetheless the Schengen members constantly endeavoured that the Schengen Acquis would be in compliance with the Acquis Communautaire. Both the Schengen Agreement and the Convention are addressed to the citizens of the EU Member States. The Convention determines that its provisions are to be applied only if they are in compliance with the Community law; any Member State can adhere to the Convention at any time.

Even though the two-track system seemed coordinated this was not the case, due to which the tendencies for the integration of the Schengen Acquis into the Acquis Communautaire appeared (unfortunately unsuccessfully) already during negotiations for the Maastricht Treaty⁹.

The idea of integration re-emerged during the negotiations for the Amsterdam Treaty¹⁰, which is one of the key landmarks in the development and the transformation of the EU, being a result of endeavours at the Intergovernmental Conference esta-

⁸ *The general Secretariat of the council issued a publication The Schengen acquis integrated into the European Union in which are collected all important documents, which were elaborated under the »Schengen« auspices by 1999. This publication is actually a collection of all documents for which we use the name the Schengen ACQUIS.*

⁹ *The established name for the Treaty on European Union or shorter TEU.*

¹⁰ *The Amsterdam Treaty consists of three parts, an annex, 13 protocols and 51 statements, adopted by the conference, and 8 statements that were presented at the conference.*

blished on the basis of the Article 48 of the European Union Treaty. The Schengen Protocol is a part of the changes introduced into the Acquis Communautaire by the Amsterdam Treaty II.

On the basis of the Schengen Protocol the participation of the Schengen states moved under the institutional and legal frame of the EU. Such transfer was enabled by the establishment of the legal concept of a closer cooperation under the Amsterdam Treaty. Article 1 of the Schengen Protocol allows the thirteen EU Member States to carry on with the Schengen cooperation within the legal and institutional framework of the EU¹². Article 2 Paragraph 1 defines that the Schengen Acquis is applied immediately after the establishment of the Amsterdam Treaty, that is, as a part of the Acquis Communautaire.

After the Amsterdam Treaty entered into force, the Council of the EU replaced the Schengen Executive Committee. Measures adopted by the Council, which substitute the provisions on the abolishment of checks on the internal borders from the Schengen Convention, must provide the same degree of security as the Schengen Convention provides. This made the Schengen Acquis more transparent and more effective.¹³

2 CONCEPTUAL IDEAS IN THE EUROPEAN UNION

After the transposition of the Schengen Acquis to the Acquis Communautaire that is after 1999 appeared the first tendencies and need to upgrade and improve the control of the external EU borders. The European Council held in Laeken between 14 and 15 December 2001, has adopted a carefully selected compromise text¹⁴, providing a mandate for the Senate and the Commission during which they should find more successful means of cooperation in controlling the external borders (Monar, 2006).

Prior to this event appeared the idea of the establishment of the European border police. Since this idea has been rather futuristic Belgium, Finland and Austria engaged themselves to prepare a study on the so-called European border police. The study was concluded in March 2002. On 30 May 2002 Italy, which also participated in the

¹¹ *The B2 Protocol – Protocol on the integration of the Schengen acquis into the EU. The Point B of the Amsterdam Treaty includes the protocols, which are an appendix to the European Union Treaty and the Treaty Establishing the European Community.*

¹² *Denmark is also included in these 13 states. Great Britain and Ireland are the only EU members not participating in the Schengen Agreement. Norway and Iceland are members of Schengen, but not members of the EU. Based on the Council's Decision from December 2007, Slovenia, Hungary; Slovakia, Czech, Poland, Lithuania, Latvia, Estonia and Malta, enter the Schengen area.*

¹³ *Until this moment the Schengen Acquis was composed of almost 100 different documents, out of which some were classified and available only to a limited circle of persons in the Member States. The system has been truly nontransparent. This manifested in a series of decisions of the Executive Committee, which referred to the Executive Committee's previous decisions, supplementing or partly canceling them.*

¹⁴ *Decision no. 42.*

study and 12 other states, organized a ministerial conference in Rome. The candidate countries for the entry into the EU have also been invited to the conference¹⁵.

Due to opposition of certain large countries it became clear at the conference that the EU is still not ready for such radical changes in the control of its external borders. Even though the idea on the establishment of a uniform European border police has not been adopted, the conference was a great success; it highlighted certain priorities which served as a guideline for the development of this area during a few more years to come. The need for a more close cooperation and the division of burden of protecting the external borders was also stressed. Until that time the policy of the EU was that each state has to ensure the control of its own borders, which are at the same time the external borders of the EU. This was not a just solution, because those states, which did not have an external border, could redirect a part of the budget, primarily devoted for the protection of their borders, while those states, which did have external borders were sometimes forced to allocate more resources for the protection of the external borders due to increasing demands for protection.

Based on the Laekn decisions from May 2002, simultaneously with the idea on the establishment of the European border police, the European Commission issued a communication envisioning five key components of development in the field of management of the external borders of the EU (Gogu, 2006).

The Commission suggested the following in order to unify the legal order:

- a. common coordination and the establishment of an operational mechanism;
- b. joint threat assessment;
- c. uniform approach to training and infrastructure;
- d. burden-sharing.

The European Commission suggested the establishment of a common unit of external border practitioners as a concrete proposal for the improvement of coordination and operational mechanisms. A few weeks later, in June 2002, the European Council adopted an action plan envisaging the establishment of such group. Following the discussion on the legal basis and the form of this body was adopted a solution, which signified that the so-called SCIFA+/Common unit is to be formed within the SCIFA (strategic committee for migration frontiers and asylum). This group was composed of the representatives (mainly chiefs) of the EU Member States border police. The working group met for the first time at the end of July 2002 in Denmark (Gogu, 2006). This group's¹⁶ task was to prepare a discussion or the proposals for closer cooperation in the field of protection of the EU's external borders. Based on the initiatives of several Member States and in accordance with the Commission's communication numerous centres (Threat assessment centre in Finland, Centre for air borders in Italy, Training Centre in Austria, Sea borders centre in Greece and Spain and the Land borders centre in Germany) have been established.

¹⁵ The author of this article was also among the participants of this conference.

¹⁶ The author of the article has been a member of this working group from May 2003 to June 2004.

Initially the task of these centres has been the care for the unification of standards and procedures on individual areas of control of the external EU border. The practice showed very different approaches. Some centres (primarily for the land borders, threat assessment and training) have performed their work very seriously and accurately and have in deed greatly contributed to progress on individual fields, while others have been less active.

The results of the centres' work have been often discussed at the SCIFA+/Common Unit. The outcomes of the discussion in this working group, strongly supported by the Commission, showed that perhaps the best answer to the initial idea (unification of the standards for the control of the external border of the EU with the establishment of the European border police) is the establishment of the agency for external borders. After lengthy and wearisome discussions (mainly regarding the seat of the new agency – Slovenia also stood as a candidate for the seat, but the agency finally ended up in Warszawa) Frontex¹⁷ was established in 2004, while the decision regarding the seat has not been adopted before April 2005¹⁸.

Today Frontex is a modern agency, employing over 180 experts and other personnel. In 2008, it used over 70.4 million Euros for salaries and other expenses, mainly for the support and financing of joint operations (operations on external borders return of the foreigners to their home states and other operations). Frontex is lead and directed by the *executive committee* composed of the representatives of all Member States. It is currently presided by Austria's representative, Robert Strondl. The executive director, which is currently the Finland representative Ilka Laitinen, is in charge of the operational management of the agency. Beside a member of the *executive committee* Slovenia also has some other people employed in Frontex. It should be noted that after the initial period Frontex developed rapidly and is taking over more and more important tasks (More about the agency can be read at the www.frontex.europa.eu).

The Regulation (EC) no. 863/2007 of the European Parliament and European Council dated 11 July 2007 on the establishment of the mechanism for the foundation of the groups for rapid intervention on the frontiers and on the changes of the Council Regulation (EC) no. 2007/2004, referring to this mechanism and to the arrangement of tasks and authorisations of the guest officials prove that the idea of the European border police is not entirely forgotten. This introduces the so-called Rapid Border intervention Teams (RaBIT), which were given the name "rabbits". The Regulation introduces a rapid intervention mechanism on frontiers, intended for the provision of time-limited rapid technical and operational assistance for the Member States confronted with worrying and immense pressure, particularly due to the arrival of a large number of the third countries citizens, which are trying to

¹⁷ Regulation of the Council no. 2007/2004 dated 26 October 2004 on the establishment of the Agency for the management of external borders of the EU Member States.

¹⁸ The Decision of the Council dated 26 April regarding the determination of the seat of the Agency for the Management of External Borders (2005/358/EC).

illegally enter the EU at its external borders. The Regulation also defines tasks and authorisations of group members during operations in the Member States. The rapid intervention units, capable of providing personnel, expert and technical support at any time and anywhere to states which ask for such help, were formed under the auspices of Frontex.

Contingents are composed of competent border policemen from all Member States, which can exercise all border police authorizations in any state or which are equal to the home policemen. They are a kind of a European border police and if a foreign policeman addresses you in English at the border crossing point or at the green border, this is no longer unusual or unlikely to happen as it has been some years ago.

We can only guess of the direction the progress will take. However, it is true that the question of protecting the external EU border is a very delicate one, especially after the enlargement of the Schengen area. During the enlargement strong critics and a fear of the deterioration of internal security could be perceived in certain “old” states. These fears were proven to be entirely unjustified, nonetheless this topic remains very popular and a good way of acquiring votes, particularly by radical political parties in certain EU states.

3 SLOVENIA AND SCHENGEN

3.1 First steps

The first preparations for Slovenia’s entry into the Schengen area started well before 1999. The first pioneers were employed in the then division for national border and foreigners within the Uniformed Police Directorate of the General Police Directorate¹⁹. Due to exceptional understanding of the then director of the Administration²⁰ and the management of the police started the first preparations and the first conceptual steps were undertaken. These steps later showed that Slovenia was the only new member that prepared for the entry into the Schengen area in a timely manner and the most thoroughly (Anželj, 2002 also discusses this topic).

3.2 Inter-Institutional Assistance

The EU provided considerable financial resources for the assistance at the preparations for the entry of Slovenia into the EU and into the Schengen Area. Initially these were the projects of the PHARE program (over 50 million Euros), and later the instrument called the SCHENGEN FACILITY (over 110 million Euros). The assets have been used for equipment, infrastructure, partly for the salaries of policemen, education and training, while a part of them has been intended for various projects.

¹⁹ *Branko Celar, Marko Gašperlin and Rajko Komat have been heads of the division for national border and foreigners until the year 2000. From 2000 to 2004, the author of this article has been head of the department for Border Security and later the head of the division for national border and foreigners.*

²⁰ *In this period Stanislav Veniger was the head of the Uniformed Police Directorate.*

Since 1999, we have come across different *twinning* projects. I would like to highlight three projects within the PHARE Institution Building titled *Establishment of an effective national border control system I*, *Establishment of an effective national border control system II* and *Police cooperation*. In the first two projects participated experts from Germany and Austria and in the last one participated experts from Spain. The projects between 1999 and 2003 helped to set-up the foundation of subsequent reforms and Slovenia's preparations for the entry into the Schengen area.

3.3 Adjustment of the National System

Most importantly, the Republic of Slovenia persisted in the process of joining to the EU and consequently did not have to establish a special border police, which all other new members had to do. In view of the attainment of standards set-up by the Schengen Acquis, we have prepared organizational changes on all three levels; local, regional and national.

3.3.1 Deciding Between the Concept of Independent Border Police and the Concept of Border Police as an Integral Part of the Police

The Schengen Area Member States had different organizational personnel approaches, because of which the European Commission proposed certain measures in the field of education and appointments and infrastructure, already in correspondence from 2002.

Organizational approach to the control of the external border has two forms in Europe:

- border police as an integral part of other police forces or security services;
- border police as an independent service.

The personnel controlling the external border can be policemen (e.g. Belgium), border guards (Finland), gendarmes (France) or even the coast guard (e.g. Greece, where the coast guard is a part of the armed forces under civilian control). Influenced by large states, the European efforts have directed towards unification of the standards for appointment and training (Gogou, 2006). The sovereignty of the Member States taken in consideration, the Commission and other certain Member States have not managed to direct the development in such a way that the external borders would be protected by special border guards. Such ideas have been unacceptable for the old members, but the conditions for the new members have been completely different. The standpoints have been rather “soft”, meaning that a majority of the experts insisted on recommendations that we should follow the examples of good practice in the reorganization of the border services, among which attention was drawn particularly to the Finland and German border guards.

In the process of joining the EU, the Republic of Slovenia managed to assert the concept of a single police and consequently avoid a too large increase of employments. The then management of the police was convinced that this would be

the only acceptable and rational concept for Slovenia as a small state. Otherwise Slovenia would introduce special border police and as a result additionally and unnecessarily burden the national budget. The enforcement of this decision was not very simple, because it demanded a lot of efforts, persuasion and lobbying. During the first *twinning* project already, the foreign experts suggested and persisted that Slovenia should establish a special autonomous and independent border police. In so doing they followed the tendencies of the European Commission and experiences of certain old Member States, in particularly Germany and Finland. The pressures at both, expert and political levels have been extremely strong and persistent. Due to these pressures the majority of the new states decided to introduce a special autonomous and independent border police. The Slovenian concept of the integrated border police received a lot of political and expert critiques (Hills, 2006).

As we have already mentioned, Slovenia stubbornly opposed to the introduction of a special autonomous and independent border police and persistently defended its views. To this day, quite a few other states gave up the special border police and rather decided to have an integrated border police (Hungary, Estonia and Germany, after it lost its external border), which proves that our path was a right one.

The Slovenian concept is actually a bit more complicated, as we have the border police on the local level, while the police on the regional and national level (with the exception of the special operational units) are an integral part of police directorates and of the General Police Directorate²¹ (more on this in Hills, 2006, p. 52–54).

Through the single police concept we have established a standpoint, supported also by Slovenia's national legislation (mainly in the National Border Control Act and in the Police Act), which determines that the external EU border is controlled across the entire Slovenia's territory and not only at the border line and some ten kilometre zones, such as is the case in other states which have incomparably more policemen per kilometre of a border than Slovenia does. This is also apparent from Slovenia's negotiation position for Chapter 24 of the Acquis Communautaire.

3.3.2 Possibility of Participation of the Slovenian Armed Forces in Border Control and the Possibility of Establishing a Gendarmerie

Due to frequent and justified tendencies of rationalization in 2003 and 2004, appeared the idea that the Slovenian Armed Forces could participate in the protection of the national border. Inherently, the idea is not bad and would indeed be a great contribution to the rationalization of the use of the budgetary resources, but such solution is simply unacceptable. The idea is not unacceptable because such manner would be less effective, transparent or undemocratic. On the contrary, the solution would be just as effective, the system just as transparent and democratic control would be provided for the police as well as for the army. The problem lies elsewhere, namely in the legal order and the recommendations as well as in the practice of the EU. The

²¹ More on the organization of the Slovenian police is available at the www.policija.si.

Schengen Convention does not clearly state that the armed forces could not be used for the protection of the borders; however, this is clearly defined in the Schengen Catalogue which is a guide for all states and which indicates the unification of the practice and is at the same time used as a guide for evaluation. In 2003, evaluation has been performed in Austria. The experts came to a conclusion that the Austrian Armed Forces are not responsible or competent for the protection of the green border and that they merely assist the Austrian gendarmerie in its protection. The report has been negative and critical²² and the Justice and Home Affairs Council instructed Austria to immediately abolish this practice. It is true that Austria lingered for a long time and has not immediately complied with the decision, but what is even more important is the second fact, which is that Austria has already been a member of the Schengen area during evaluation. If it would not have been a member already, it would not be allowed to enter this area. Slovenia followed these examples of practice and complied with the clear decisions of the Council and after careful consideration decided that Slovenian Armed Forces will not participate in the protection of the border.

The other proposal, similar to the first one, has been to establish in Slovenia a gendarmerie, which would be a semi-military organization. Not even this idea, which has been in play for quite some time, has been applied at the end. To this contributed not only the arguments previously used to counter the use of the armed forces at the borders, but also the demand of the EU for specialization and professionalization of the personnel for the protection of the national border. It is written in the catalogue, that the formation protecting the border cannot be a military one, but it is also written that the officials protecting the border must be specially trained and professionalised. Considering these demands the introduction of gendarmerie would not indicate rationalization, but would additionally complicate the system, making the management of personnel even less transparent.

The EU practice described beforehand, the establishment of the Agency and the introduction of the rapid intervention units point to the accuracy of Slovenia's decision, also confirmed by the results of the Schengen evaluation.

3.4 Schengen Implementation Plan

As a part of preparations for the EU membership Slovenia's government adopted the Schengen Implementation Plan (SIN, decision 003-06/2001-4)²³ at its 28th session on 24 May 2001 in which it defined the tasks and deadlines for the implementation of the Schengen standards for the control of the future external border (Mihovec, 2007). In view of the implementation plan regarding the enforcement of the Schengen control standards for the future EU external border started a new type of activities which were to ensure that by 2005 Slovenia would be able to apply the Schengen level of control at the external EU border, at which the border control on internal borders could be abolished.

²² All evaluation reports are confidential.

²³ The majority of the Government material has been prepared by the Police.

As a part of the negotiation positions for the Chapter 24 of the Acquis Communautaire, this document was also communicated to Brussels. The Member States of the EU and the European Commission accepted it as a relevant document for preparing Slovenia to takeover commitments for a full enforcement of the Schengen Convention within the timescale provided. Based on the data known at the time, it could be foreseen that the implementation of the Schengen Convention for the new Member States could start already in 2006, but it was postponed until 2007 due to problems regarding the setting-up of the second-generation information system (SIS II).

At the 158th correspondence session on 14 August 2002, Slovenia's government addressed the report on the realization of the Schengen Implementation Plan for the establishment of the future external border of the EU and adopted the employment dynamics.

At the 34th regular session on 28 August 2003, the Government addressed the report on the evaluation of the implementation plan for the enforcement of the Schengen standards at the control of the future external border of the EU and adopted the report and some supplementations of the implementation plan. The report has also been addressed at the Government's 30th regular session on 23 June 2005 at which the Schengen Implementation Plan has been supplemented.

The plan envisaged in detail all measures, activities, holders of activities and deadlines in the following fields:

- alignment with the Acquis Communautaire;
- implementation of the organizational personnel conception for the control of the national border:
 - organizational personnel conception;
 - organizational changes;
 - systemization of workplaces;
 - employment and transfer;
- education and training;
- information and telecommunication system and the implementation and operation of the Schengen Information System;
- introduction and operation of SIRENE and other forms of international cooperation;
- other technical equipment;
- police units facilities for the control of national borders and accommodation facilities:
 - new constructions and adaptation of facilities;
 - provision of apartments and beds in single rooms;
- measures undertaken at the airports and in the harbours;
- measures undertaken at internal borders and in the inland of the state;
- realization of the Schengen Agreement provisions in the field of data protection;
- cost estimate;
- Schengen evaluation;
- activities of the police at the abolishment of the border control at the internal borders.

The plan referred to the activities in charge of which have been the Ministry of Internal Affairs and the Police, but special parts of the plan have been devoted to the activities of the Ministry of Public Administration, Ministry of Justice, Ministry of Traffic and the Ministry of External Affairs. At the same session, the Government decided that in order to provide a timely and effective establishment an effective control mechanism has to be set-up. The Government also set-up an inter-ministerial coordination for the establishment of security, customs and inspection control on the external EU border. Until Slovenia's entry into the Schengen Area the pace of changes and adjustments has not changed much. We have been running behind in some areas (adjustment of the Jože Pučnik Airport), but the preparations have been mostly carried as planned.

4 ENLARGEMENT OF THE SCHENGEN AREA

Even though since the Amsterdam Treaty, the enlargement of the Schengen Area is closely linked with enlargement of the EU for the new members, these enlargements should not be equated. It should be stressed that the Schengen Area is enlarging independently of the EU enlargements. This is the case of Switzerland, which is not an EU member and shows no signs of wanting to become one. Nonetheless, in 2008 Switzerland entered the Schengen Area and in the future we can expect Lichtenstein to enter as well. For the new EU members the entry into the Schengen Area is obligatory, but the process of full entry is conducted independently and separately.

The process of enlargement of the Schengen Area is demanding and is introducing numerous particularities for the old and the new members (Sie Dhian Ho, 2006).

Undoubtedly the first particularity is the EU's preparation for enlargement. Since the Amsterdam Treaty the entry into the Schengen area is connected to the entry into the EU, nonetheless it should be noted that the area of control of the external borders is rapidly developing and that this development causes problems to the old members. The legislation of the Community is developing exceptionally fast and causes quite some troubles in the implementation process. At the same time we witness great (if not existential) difficulties in the development of the Schengen Information System of the second generation.

The next particularity is that the new members start with the realization of a part of the Schengen Acquis with the entry into the EU and also start intensive preparations for the second part, which is connected with the abolishment of the border control at internal borders. As already described, extremely fast development presents a difficulty already for the old members and therefore the new members find the process of adjustment much more difficult because of rapid and comprehensive changes.

The process of integration into the Schengen Acquis is very demanding from the financial aspect. It is true that the EU contributes a part of the resources, but the enlargement of the Schengen area is a great financial burden also for the state, which is to enter this area.

Regardless of the sovereignty of individual states, the enlargement of the Schengen border signifies changes in both the quantity and the quality on the future external border. This is related to a variety of problems, which the enlargement of the Schengen area brings to the borders between the member and non-member states.

Finally, the enlargement of the Schengen area is a very sensitive political question. At the last enlargement this could be noted mainly in Austria and in Germany, since their right-oriented political parties associated the enlargement with the collapse of internal security.

4.1 System of Enlargement

For new Member States of the EU the adoption of the Schengen system is carried-out in two phases. Since the Amsterdam Treaty, more precisely, since the integration of the Schengen Acquis into the Acquis Communautaire, a part of the Schengen Acquis is implemented at the entry into the EU and the second part after evaluation is concluded.²⁴ A special horizontal working group named SCH-EVAL²⁵ is organized in the EU Council. The group is in charge of monitoring the implementation of the Schengen Acquis in the Member States. Appointed to this group are the representatives of all EU Member States as well as representatives of Iceland and Norway and since 2008 also of Switzerland. Among other things this working group prepares and deals with the Schengen evaluations. On the proposal of the state, which wants to enter the Schengen area it prepares and approves a questionnaire, it addresses and aligns the schedule and the places of the evaluation groups visits and discusses the report after the evaluation is finished. The end report is discussed by the Justice and Home Affairs Council, which makes decisions regarding the enlargement.

4.2 Evaluations

As I have already mentioned, evaluation has several stages:

1. First of all, the state, which claims to fulfil and assesses that it fulfils all conditions for the entry into the Schengen area, declares this by a special statement, which acts as a basis for the beginning of the procedure.
2. After political decision to start the evaluation, the SCH-EVAL questionnaire for this state is confirmed. The questionnaire is a very comprehensive document, providing the experts initial and rather accurate information regarding an individual state, its system and its current situation. With the help of the questionnaire the experts can later prepare themselves for field evaluation. I should stress that all questions are very precise and comprehensive. The questionnaire for Slovenia had over 200 questions written on 30 pages and has been published in June 2005.

²⁴ *The Conclusion of the Executive Committee dated 16 September 1998 on the establishment of the Committee for evaluation and implementation of the Convention (SCH/Com-Ex (98) 26 def).*

²⁵ *The name of the working group is not an abbreviation, but derives from group's basic activity – the Schengen evaluation (SCH-EVAL).*

3. A state prepares the answers to the questionnaire, and if necessary, defends its position also at the group's session. Slovenia presented its answers (without the SIS field, because at the time the decision for the Schengen Information System has not yet been adopted) on 182 pages.
4. After a detailed examination of the answers, concrete evaluations of individual fields are planned, namely for:
 - a. land borders;
 - b. air borders;
 - c. sea borders;
 - d. visas;
 - e. police cooperation;
 - f. data protection;
 - g. information technology (IT) – mainly the inclusion into the Schengen Information System (SIS).

A group of experts is determined for each field. It should be noted that all states are allowed to send one expert to each mission. This does not happen in practice, but the missions are nonetheless quite strong in number. However, it is even more important that the mission members are exceptionally experienced and trained high officials.

5. Evaluation missions visit each state, where they closely examine how the state is prepared and how it implements the Schengen Acquis. Evaluations are very accurate. The experts also ask very unpleasant questions, perform a variety of field inspections, interview randomly selected discussion partners etc.
6. The draft of the report is starting to take form already during the evaluation. When the proposal for a report is finished, the state that was being examined can suggest certain changes, which are or are not included in the report after the discussion. Afterwards the report is discussed at the working group and at the Justice and Home Affairs Council.

4.3 Enlargement of the Schengen Area in the Years 2007 and 2008

The process of evaluation and the process of entry into the Schengen area seem relatively simple, but at the last enlargement this was not the case. Because this has been the biggest enlargement of the Schengen area so far, the number of difficulties has been correspondingly larger. The greatest and the most complicated difficulty was the Schengen Information System. The project of its renovation or the construction of the second-generation system is lasting for over a decade. At first the position of the EU has been that the project will undoubtedly be finished before 2005 and that enlargement will be possible at that time. Already in 2002 and 2003 it became evident that the SIS II project is accompanied by bad luck and that it would probably be finished no sooner than by 2007. In 2006, it became evident that the project will not be finished in 2007 either. Despite numerous oppositions during the overall rush of pessimism, Portugal presented a solution - the upgrading of its own system. At first the European Commission believed it to be impossible, but Portugal itself developed a test system and proved to all sceptics that the enlargement is possible and that the upgrading of the SIS – SISone4all will be prepared during its presidency.

The problems related to the SIS were not the only problems. Some countries were less well prepared, for which reason new evaluations had to be made. But as all new countries envisaged the abolishment of the border checks on internal borders, the Slovenians were treated within the same framework. On one side there were Estonia, Latvia and Lithuania and on the other side there were Poland, Czech, Slovakia, Hungary and Slovenia. The Portugal Minister of Internal Affairs and his Slovenian colleague Dragutin Mate have taken the initiative for the coordination of preparations. All candidate states for the entry into the Schengen area have obliged themselves to do their best and to mutually help each other. Portugal also offered all available help at the implementation of the system. There are a lot of anecdotes and interesting stories on behind-the-scenes activity, which has been very lively during the last preparations for the enlargement. Regardless of the difficulties, success has been expected. On 21 December 2007 Slovenia and seven other states (Lithuania, Latvia, Estonia, Czech, Slovakia, Hungary and Poland) entered the Schengen area. The border control on internal land borders has been abolished. From this day forward Slovenians too can travel freely, without border controls anywhere around Europe in road and rail traffic. On 30 March 2008 (when the flight schedule has been changed) the border controls in air traffic have also been abolished.²⁶ And so after ten years the Schengen external border once again moved towards the south and the east (Brozina, 2008).

The Schengen area is very attractive to everyone. At a referendum the inhabitants of Swiss Confederation voted for Switzerland, which is not a member of the EU, to enter the Schengen area. During the Slovenian EU presidency evaluations have been performed also in Switzerland and were conducted by Slovenian experts. There were some minor irregularities, which Switzerland eliminated and is therefore today also a part of the Schengen area. The evaluations of Romania and Bulgaria are also under way.

Even though the Schengen area enables free movement of persons and is an area without border control, the latter can be temporarily reintroduced at certain events, which would be demanding in security. The states reintroduce the border control at large sports events (Olympic Games in Italy, football world championship in Austria and Switzerland) or at large economic and political events (G8 summit in Italy.) Special and very strict rules apply for all such events and the reintroduction of border control on internal borders, and usually the states consistently adhere to these rules.

²⁶ *The Conclusion of the Council dated 6 December 2007 on the full implementation of the Schengen legal order provisions in the Czech Republic, Republic of Estonia, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia and the Republic of Slovakia (2007/801/EC).*

Conclusion

As I have already mentioned in the Introduction, the entry into the Schengen area brings certain advantages and certain disadvantages. The inhabitants living along the border are for the time being definitely in a disadvantage due to the introduction of a more severe regime of control on the external border, since there are as much as seven times more policemen in this areas as there are in others. The police checks are more frequent and sometimes disturbing. The transit of the external border is no longer as simple as it used to be. Many points of transit, where the local inhabitants used to illegally cross the border are closed, the control of the green border is much stricter and the control at the border crossing points is much more thorough. Despite the strong support of the EU the entry into the Schengen area has been a considerable expenditure for the taxpayers. In spite of certain negative consequences, I am convinced that there are a lot more of positive consequences. In a way we have already got used to the fact that we no longer have to show our passports on the border crossing points in order to travel around the EU (except in air traffic for purposes of insolvency assessment). Entry into the Schengen area has brought quite a few new workplaces and employments as well as considerable progress. I am convinced that we have become a safer state and a more appealing state for tourism in the eyes of foreigners, for we are now a part of the same area. At the present, we probably cannot foresee all consequences of the entry and we can not foresee them through superficial examination. In time many positive sides will come into view and when we will get completely used to this system, we will find it foreign, unpleasant and unappealing to have to show our passports at border crossing points.

Regardless of the advantages and the disadvantages brought by the enlargement of the Schengen environment, we expect more enlargements to come (the entry of Romania, Bulgaria and the Western Balkan states). Only through enlargement will Europe become an area in which the free movement of persons will be possible.

The enlargement of the Schengen area brings numerous changes to everyone. A lot of them are positive, but there are certainly some negative changes. Regretfully, due to the limitations in length of the article I was not able to present the advantages or disadvantages that the enlargement will bring.

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