

FRI-2B.313-1-L-08

---

## SCHENGEN LAW AND THE AREA OF FREEDOM, SECURITY AND JUSTICE IN THE EUROPEAN UNION

---

**Assoc. Prof. Emanuil Kolarov, Dr.iur., Mag.Eur.St.**

Department of Public Law

Angel Kanchev University of Ruse, Bulgaria

Tel.: +359 82 888 434

E-mail: [ekolarov@uni-ruse.bg](mailto:ekolarov@uni-ruse.bg)

**Abstract:** *The Maastricht Treaty (signed on February 7<sup>th</sup>, 1992) provides that the Member States are resolved to facilitate freedom for movement of persons while providing higher level of security and safety for their people. This is a step further for opening common borders between the states and, thus, establishing the internal market as an area without frontiers where freedoms for movement for persons, goods, services and capital is ensured. First attempts were made in 1984 by signing the Saarbruecken Agreement between France and West Germany for gradual abolition of border checks on the common Franco-German border, and – above all – Schengen Agreement from 1985 between France, West Germany, and BeNeLux on the gradual abolition of checks at their common borders. The efforts toward more freedom in cross-border movement are related to necessary measure to safeguard public order and public security. This is why the above mentioned agreements provide cooperation between competent authorities in the fields of visa and immigration policy, and combat of transfrontier criminality. So, all further acts to these goals are later called “Schengen acquis”, and they establish the Schengen area as a symbol for free movement in crossing common borders and compensatory control on external borders, as well as approximated national policies in certain fields – e.g. visa, asylum. To the beginning of 2000s the accession of majority of EU Member States to these legal acts is a fact.*

*The Amsterdam Treaty (from 1997) integrates these achievements into the European Community competences and makes significant reform to the third EU pillar. Visa, asylum and immigration policies are moved to the first pillar (integration) and within the third pillar remain police and judicial cooperation in criminal matters. Till the time of entry into force of this treaty most of the old Member States of the Union have been accessed to the Schengen agreement and the Convention for its application.*

*Finally, the Treaty of Lisbon revokes the three pillar system of the EU and proclaims the area of freedom, security and justice as an integral part of the Union’s policies defined and developed via rules of the Treaty for the functioning of the Union – Art. 67-89. The area is now based on the policies of free movement of persons (where lack of internal border control is provided to the citizens), immigration and visa and asylum (oriented to third countries nationals) and police and judicial cooperation in criminal matters (with the aim to combat criminality that affects the interests of more countries), and civil justice cooperation (where access to justice and mutual recognition of judicial acts on civil matters is provided).*

**Keywords:** *European integration, European Community, Area of Freedom, Security and Justice, Schengen Agreement, Maastricht Treaty, Amsterdam Treaty, Lisbon Treaty*

**JEL Codes:** *L10, L11*

The European integration is phenomenon in relations between European states and shows the efforts and ideas for better standard of life that governments are obliged to achieve for their people. It is a new way of thinking, new approach to government and – of course – new challenge to all political parties and factors that influence over national governance. Results achieved through all these seven decades of actively adapting each national economy, policy and social life to this challenging idea of common living, of shared values of high standards to individual freedoms and liberty, and in the same time securing stability of social integrity and order, appear now to face new resistance – centrifugal trends (like Brexit), nationalistic waves and radical movements gaining more

popularity (like Le Pen's National Front/Rally and second place of Marine Le Pen on the presidential elections in France). So, we enter new time when rethinking European Union and European integration is necessary, restructuring of national and supranational institutions is needed, and reformulation of fundamental political manners is due in order to meet all these challenges and to benefit people, to strengthen individual freedoms, while maintaining public security.

One of the most significant achievements of European integration is the freedom for movement of persons that throughout last decades has raised to an area of freedom, security and justice.

The first step undertaken juridically is the Agreement between France and West Germany for gradual abolition of border checks on the common border signed on July 18<sup>th</sup>, 1984, at the border crossing point in Saarbrücken.

The good sample of French-German relations is followed by neighbouring states the Netherlands, Belgium and Luxembourg, and all these states signed on June 14<sup>th</sup>, 1985, in the Luxembourgish town of Schengen an Agreement (known as Schengen Agreement) with the same subject matter – gradual abolition of border checks on their common borders. Thus, the so called 'Schengen area' was formed. The border checks were practically abolished by January 1<sup>st</sup>, 1993, when another legal document – the Convention Implementing the Schengen Agreement (signed on June 19<sup>th</sup>, 1990) entered into force.

While the Saarbrücken and Schengen agreements are more general and seem to be like program setting goals the Convention goes into details.

Schengen agreement comprises of two main groups of rules – short term and long term. In short term it provides that:

- simple visual surveillance on private vehicles is to be carried out by border officers while automobiles run at reduced speed (Art. 2) and thus securing free movement of persons;
- police and customs cooperation is maintained to combat crime, traffic of arms and drugs, illegal entry and residence (Art. 8);
- waiver of systematic border check on driving and rest times, and dimensions and weight, and the technical state for vehicles of commercial use (Art. 11)

In long term perspective the states seek to achieve:

- abolition of cross-border checks for their nationals after harmonization of law regarding the checks;
- to harmonise national rules on safeguarding internal security and to prevent illegal immigration of third country nationals (Art. 17);
- to harmonise rules on narcotic drugs, arms and munitions (and explosives) (Art. 19);
- to harmonise their entry visa regulations (Art. 20).

An important long-term measure laid down in Schengen agreement that sounds very actual for Bulgaria in the current period is to reduce time for stopping (Art. 23).

These activities and intentions are more detailed provided in the Convention of 1990:

- uniform visa conditions and asylum provisions;
- police cooperation and mutual assistance in criminal matters;
- harmonization of national criminal law concerning certain offences;
- extradition and enforcement transfers of criminal judgements between contracting states;
- special measures in the fields of narcotic drugs, and firearms and ammunition;
- establishment of joint information system for the purposes of border check and police and customs operation (Schengen Information System).

The Executive Committee established by the Convention (Art. 131-133) had decision-making power to adopt measures for implementation. The committee consisted of one minister from each Member State and took its decisions unanimously.

Accession to the Schengen Agreement and the Convention on its application follows in the early 1990s:

- on November 27<sup>th</sup>, 1990, Agreement on accession of Italy was signed;
- on June 25<sup>th</sup>, 1991, acceded Spain and Portugal;
- on November 6<sup>th</sup>, 1992, Greece joined to these documents;
- on April 28<sup>th</sup>, 1995, acceded Austria;

- on December 19<sup>th</sup>, 1996, joined Denmark, Finland and Sweden.

So until signing of the Amsterdam Treaty (October 2<sup>nd</sup>, 1997) 13 of then 15 Member States of the European Union formed the Schengen area. Having regard to introduction of European citizenship and establishment of the internal market as area without internal borders to the end of 1990s the Schengen area covered almost the whole European Union. One of the aims of the Amsterdam Treaty was to provide to EU citizens an area of freedom, security and justice. Such an impetus had been made to that moment by the joint actions and initiatives through application of the Schengen legal acts. And by protocol annexed to the founding European treaties (at that time Treaty on the EU and Treaty establishing the European Community) the Schengen documents (referred to as Schengen acquis) were integrated to the legal framework of the European Union. This was with desire to develop the European Union 'more rapidly into an area of freedom, security and justice'. As it is mentioned in that protocol (Art. 2) the Council substituted the Executive Committee.

After the Treaty of Lisbon (signed on December 13<sup>th</sup>, 2007) the three pillar system of the EU is revoked and it is restructured as monolite (although Common Foreign and Security Policy remains apart from the other integrated policies). The police and judicial matters become part of the EU competence shared with the Member States. The following policies form the area of freedom, security and justice since the entry into force of that treaty:

- external border control (and the functions of Frontex);
- common immigration policy;
- common visa policy;
- common asylum policy (and the application of Eurodac);
- police cooperation (and the Agency for Law Enforcement Cooperation);
- judicial cooperation in criminal matters (and the Agency for Criminal Justice Cooperation, and the European Prosecutor's Office);
- judicial cooperation in civil matters.

With the Treaty of Accession of Bulgaria and Romania to the European Union both states legally become parties of the Schengen Agreement and the acts on its implementation (the Convention of 1990 and the decisions of the Executive Committee), and the Council decisions within the third pillar (police and judicial cooperation in criminal matters) became applicable to these states (Art. 4 of the Act on Conditions for Accession). According to par. 3 of the same art. 4 the Council acting unanimously after consulting the European Parliament is to make decision to put into effect acts of the Schengen acquis after evaluation whether certain conditions are met by each of these two States.

Since that, we face a situation with three groups of Member States as regards participation in and application of the Schengen area in the European Union:

- The 'core' states – they apply effectively the whole Schengen acquis;
  - The 'periphery' states – Bulgaria and Romania to which a decision of the Council is necessary to give effect of certain Schengen acts;
  - Ireland – it does not participate to the Schengen area.

This tripartite situation does not serve the general idea of an area of freedom, security and justice. It leaves internal frontiers in the European Union while Art. 26 define the internal market as an area without internal borders. In the process of accession of new states (for example West Balkan states) problems of crossing borders will become more challenging which will bring together the question of treatment of those states in regard to application of Schengen acquis. And what – we shall keep borders within the European Union?! Such an idea undermines the idealistic view and emblematic achievement of the area of freedom, security and justice.

## REFERENCES

Craig, P., Gr. de Búrca (2003, 2006, 2011). *EU Law. Text, Cases and Materials*. Oxford University Press.

Chalmers, D., Chr. Hadjiemmanuil, G. Monti, A. Tomkins (2006). *European Union Law. Text and Materials*. Cambridge University Press.

Oppermann, Th. (2011). *Europarecht*. Ein Studienbuch. Juristische Kurz-Lehrbuecher, C.H.Beck.

Streinz, R. (2008). *Europarecht*. Mit Lissaboner Reformsvertrag. C.F.Mueller. Heidelberg.

*Consolidated versions of the Treaty for the European Union and the Treaty for the Functioning of the European Union*, Official Journal of the European Union, C 202, 7.6.2016.

*Schengen Agreement and Convention implementing the Schengen Agreement*, Official Journal of the European Communities, L 239, 22.9.2000.

*Treaty of Amsterdam*, Official Journal of the European Communities, C 340, 10.11.1997.

*The Schengen acquis*, Official Journal of the European Communities, L 239, 22.9.2000.

*Treaty concerning the Accession of the Republic of Bulgaria and Romania to the European Union*, Official Journal of the European Union, L 157, 21.6.2005.

The report signifies the results of the activities of project No. 2022-UF-01, financed by the Scientific Research Fund of the University of Ruse.