

# The sharp edges of Europe: extending Schengen eastwards

HEATHER GRABBE\*

## Multi-functional frontiers: their uses and abuses

A tension is growing between the internal and external security policies of the European Union (EU) as it extends its border regimes to the central and east European (CEE) applicants for membership.<sup>1</sup> A central aim of eastern policy since 1989 has been to stabilize the region on the EU's eastern periphery by using the same methods applied so successfully in western Europe over the past half-century: regional integration to reduce socio-economic disparities and knit populations together. The second prong of this approach is to sponsor peaceful resolution of bilateral disputes, both through its conditions for accession and by providing financial and political support. However, although these goals are still present in EU policy documents, they have not predominated over other concerns in setting specific conditions for the CEE applicants. Both EU institutions and member states have used their power in the accession process to put pressure on CEE countries over issues of special concern to them (such as border policies, nuclear safety and treatment of minorities). This opportunistic use of the leverage provided by accession conditionality has given rise to inconsistencies in the messages sent to the applicants, and in the agenda set for the applicants by the EU. This article is about one such inconsistency: that between the priorities for external security and those for internal security.

The opening of east-west borders has coincided with a burgeoning internal security agenda within the EU. A policy area that could be called 'micro-security' is growing fast as policy-makers respond to myriad threats to the security of their citizens by developing new instruments at both national and EU levels. Unlike the 'macro-security' concerns of the Cold War—which primarily involved state-controlled and politically driven threats from national militaries—the new

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<sup>1</sup> There are ten CEE applicants for membership, and two Mediterranean ones. Six of the applicants (the Czech Republic, Estonia, Hungary, Poland and Slovenia, plus Cyprus) began accession negotiations with the EU in March 1998, and three of them (the Czech Republic, Hungary and Poland) joined NATO in 1999. Bulgaria, Latvia, Lithuania, Romania and Slovakia (plus Malta) opened EU accession negotiations on 15 February 2000.

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micro-level risks are from private individuals. This privatization of security threats from the east presents a complex dilemma because the movements of autonomous citizens are much more difficult to deal with in the international security framework than are those of state-governed forces. For western Europe, the fear of tanks and missiles arriving from across the Iron Curtain has been supplanted by anxiety about uncontrolled immigration and cross-border crime.

Border policies lie at the centre of security debates as our perceptions of security threats move beyond a focus on traditional, 'hard' security concerns such as military attack to encompass a range of new risks. Frontier controls have come to be seen as the EU's first line of defence against instability and its consequences—such as refugees, crime, and the breakdown of law and order. Distinctions between defence, security and internal affairs have become increasingly blurred, as border policies become a new armoury to supplement military means of defence.

However, the function of borders in security has changed. No longer used primarily to deter military attack and to keep unwilling populations under the sway of communist regimes, borders have become multi-functional. They are seen as a discriminatory division between peoples (in visa policy), but also as something to be overcome (through cross-border cooperation, for example). After all, the Treaty of Rome resolved 'to eliminate the barriers which divide Europe' and aspired to 'an ever closer union among the peoples of Europe', an aim that has been extended to include east European peoples following the collapse of communism in 1989.<sup>2</sup>

#### *Crime, migration and post-Cold War angst*

The dismantling of frontiers after the Cold War is often blamed for a proliferation of transnational crime, because greater liberty to travel coincided with a lessening of social control and law enforcement. Frontier-crossing offers numerous possibilities for hard-pressed populations to earn money through both legal and illegal means. The two main anxieties in the EU are migration and cross-border crime (the latter covering a vast range of problems including smuggling, trafficking in human beings, the narcotics trade and terrorism). These two issues are often talked about in the same breath in public discourse, although they should not be causally linked: migration does not necessarily cause cross-border crime. Moreover, the migration issue is multi-faceted: there is the question of migration motivated by economic opportunities, and there is also transit migration across CEE by third-country nationals. Most complex of all is the movement of the Roma minority populations, who represent some of the most visible migrants from the region; the Roma claim discrimination in CEE as justification for seeking asylum in the EU, in turn raising various civil liberties and human rights issues.<sup>3</sup>

<sup>2</sup> Treaty Establishing the European Economic Community, Rome, 25 March 1957, Preamble.

<sup>3</sup> Migration of Roma populations is a long-term issue that merits much greater discussion about a joint EU-CEE strategy. Its complexities are beyond the scope of this article, but see Michal Vaečka, *The Roma*, IPA Working Paper (Bratislava: Institute for Public Affairs, Nov. 1999) and Giuliano Amato and Judy Batt, *The long-term implications of EU enlargement: the nature of the new border*, Final report of the Reflection Group (San Domenico di Fiesole (FI): European University Institute, 1999).

**Table 1: Permanent and temporary emigration flows from selected CEE countries to Germany, including returning ethnic Germans (1990–1996)**

	1990	1991	1992	1993	1994	1995	1996
Bulgaria	11,193	17,420	31,523	27,350	10,478	8,165	6,300
(Former) CSFR	16,948	24,438	37,295	22,078	18,316	20,285	
Hungary	16,708	25,676	28,652	24,853	19,803	18,800	16,600
Poland	300,693	145,663	131,709	81,740	88,132	99,706	87,400
Romania	174,388	84,165	121,291	86,559	34,567	27,217	20,100
<b>Total</b>	<b>519,930</b>	<b>297,362</b>	<b>362,470</b>	<b>242,580</b>	<b>171,296</b>	<b>174,860</b>	

*Note:* These figures do not include temporary labour migrants benefiting from bilateral labour migration agreements.

*Sources:* *ICMPD Annual Questionnaires; OECD Sopemi Annual Reports*. Table reproduced with permission from International Organization for Migration and International Centre for Migration Policy Development, *Migration in central and eastern Europe: 1999 review* (Geneva: International Organization for Migration, 1999), p. 138.

What is the real scale of potential east–west economic migration? This is hard to estimate, but it is linked to socio-economic discrepancies between east and west. Gaps between the respective income levels and living standards of the CEE countries and the EU are being reduced by economic growth, but they will be there for several decades yet for most of the applicant countries.<sup>4</sup> Although relative income levels are converging quickly with EU levels for candidates like Slovenia and the Czech Republic, the process will be much slower for the Balkan countries. Nevertheless, flows of people seeking to reside in the EU long-term are small, with most migrants taking up short-term employment in western Europe. In fact, permanent emigration from CEE has fallen substantially over the last decade, while short-term and transit migration are increasing.<sup>5</sup> Moreover, as shown in table 1, flows into the main recipient country in the EU—Germany—have declined considerably since 1993, following a surge in 1990 (more than half of which was accounted for by returning ethnic Germans).

Academic surveys and estimations suggest that allowing free movement of labour after EU accession is unlikely to provoke large migratory flows from the new member states.<sup>6</sup> Previous EU enlargements generated only relatively limited

<sup>4</sup> See estimations of catch-up periods in World Bank, *World development report 1996: from plan to market* (New York: Oxford University Press, 1996).

<sup>5</sup> According to latest figures on east–west migration recorded in International Organization for Migration and International Centre for Migration Policy Development *Migration in central and eastern Europe: 1999 review* (Geneva: International Organization for Migration, 1999).

<sup>6</sup> See Sándor Richter, *EU eastern enlargement: challenge and opportunity*, Research Report no. 249 (Vienna: WIIW, July 1998).

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migration, despite wide disparities in employment and income between the poorer Mediterranean states and richer northern Europe. Increasing political stability in CEE, steady economic growth among the front-runners, and foreign direct investment are already discouraging any large-scale movement of unskilled workers. Future east–west migration is not expected to cause problems for EU labour markets, even where unemployment is high.<sup>7</sup> By the time of accession, new CEE members will by definition have been judged to have met the Copenhagen conditions—stable democratic institutions, a functioning market economy, and the capacity to cope with competitive pressure in the single market—criteria that remove the main incentives to migrate. Indeed, the consequence of liberalizing labour markets is more likely to be a ‘brain drain’ of the highly skilled to western Europe than any large-scale movement of unskilled workers.

However, even if economically motivated migration is likely to remain relatively small-scale and largely short-term, there is the separate issue of crime-related movement of people. The west–east traffic in goods (such as stolen cars and drugs) that burgeoned after 1989 is now accompanied by an east–west traffic in human beings, which is often safer and more profitable for the traffickers. This traffic in people (often coercive in the case of women) involves transit migration, that is, flows of people across CEE from other countries, particularly the former Soviet Union and Asia. Transit migration is more likely to be illegal and linked to organized criminality than flows of people from CEE to the EU, and there are questions about the willingness and ability of poorly paid CEE police forces and frontier guards to combat a trade that often gives them some share in the profits.

Fears about transnational crime raised in public debate are not necessarily informed by assessments of the real scale of the problem and potential solutions, as media coverage of cross-border crime in the borderlands of Europe has often been alarmist. It is undeniable that dismantling the barbed wire has allowed more crime across Europe’s borders. However, it is extremely difficult to estimate exactly by how much crime has increased; moreover, something of a fortress mentality has developed as well, with the campaign against organized crime serving as a surrogate for the Cold War enemy which vanished with the fall of the Wall.<sup>8</sup>

Populist politicians in the regions along the EU’s eastern frontier have been quick to exploit public fears about migration, in turn driving their countries’ positions in EU debates towards limiting the free movement of people from CEE. In Germany, the Christian Democrats (CDU/CSU) have demanded that free movement of people from CEE should not be allowed until 2015 at the

<sup>7</sup> See Thomas Bauer and Klaus F. Zimmerman, ‘Integrating the east: the labor market effects of immigration’, in Stanley W. Black, ed., *Europe’s economy looks east: implications for Germany and the European Union* (Cambridge: Cambridge University Press 1997), pp. 269–314.

<sup>8</sup> An observation made by Eberhard Bort in ‘The frontiers of Mitteleuropa: problems and opportunities at the eastern frontier of the European Union’, in Monika den Boer, ed, *Schengen still going strong: evaluation and update* (Maastricht: EIPA, 2000), p. 13.

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earliest.<sup>9</sup> The extent of Austrian public support for Jörg Haider's anti-enlargement and anti-immigrant stance was made clear in the 1999 election campaign. The subsequent reaction from other EU governments against the entry of Haider's Freiheitlichen Partei Österreichs into the coalition government is likely to make it harder for Austria to stall the enlargement process. On the other hand, the politics of fear will remain a potent force, pushing mainstream parties towards increasingly restrictive border policies and more stringent conditions for eastward enlargement.

Some of the exaggerated claims about immigration are motivated by a concern about economic competition as well as by sheer xenophobia. Fears of migratory flows of cheap labour from eastern Europe have generated pressure from Austria and Germany to restrict CEE citizens' ability to work in the EU for many years after accession. The German economy in particular would probably benefit considerably from the immigration of skilled workers from CEE,<sup>10</sup> and sectors such as construction and domestic services are already dependent on cheaper east European labour; however, organized labour and other interest groups have objected loudly to larger inflows. Furthermore, there is already sensitivity in Germany about what is seen as the country's assumption of an unfair share of the refugee burden from south-eastern Europe; this affects German views on overall levels of migration, although in fact in 1997 (before the Kosovo crisis) more foreigners left Germany than entered.<sup>11</sup>

In the face of these political pressures, the EU's immediate response has been to try to reduce the overall size of cross-border flows in order to reduce overall migration. Aside from the question of crime, arguments are voiced that restrictions on migration in advance of accession are needed in order to prevent opposition to eastward enlargement. At supranational level, there is also concern that the status of legal migrants resident in the EU should not be jeopardized by public perceptions that illegal migration is out of control. Yet the extent to which border checks are actually an effective way to reduce different forms of criminal activity is questionable, given that transnational criminal networks have sophisticated means of evading such controls. Practitioners often claim that frontier controls alone are of limited use in detecting crime, suggesting that the link between crime prevention and border control needs to be questioned, and even decoupled.<sup>12</sup> However, it is more politically expedient—not to mention cheaper—to announce more visas than to deal with the complexities of intelligence-led policing, negotiation of multinational coordination between law enforcement agencies and investment in the infrastructure necessary for EU-wide crime management strategies.

<sup>9</sup> Proposal reported in *Die Welt*, 8 July 1998.

<sup>10</sup> See Bauer and Zimmerman, 'Integrating the east'.

<sup>11</sup> Bort, 'The frontiers of Mitteleuropa'.

<sup>12</sup> See Amato and Batt, *The long-term implications of EU enlargement*.

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### EU policies for new eastern frontiers

The EU's internal security agenda for CEE has been proliferating rapidly to comprise a wide range of policies, from migration to transnational crime to asylum policies and police cooperation. The EU has already been actively exporting its border control technology and practices to CEE, and also its emerging common methods for handling asylum claims and refugees. The next item on the EU's agenda is export of its visa policies, but these are much more controversial because they will inevitably break socio-economic and political ties across borders between applicants and non-applicants.

Behind EU accession policy on borders lies a dual motivation: to bring the applicants' frontier controls progressively into line with the Schengen *acquis*, and also to address immediate EU concerns about threats perceived by its member states. Interior ministries in EU states have pressed for accession conditions to deal with the immediate migration pressures and crime threats by extending EU policies to the applicants' eastern borders, to ensure that third-country nationals cannot travel through these countries to the EU. By contrast, their counterparts in EU foreign ministries are (to greater or lesser degrees) concerned about promoting good relations between applicants and their neighbours in order to stabilize the region in the long term. These different sets of policy-makers have thus tended to push eastern accession policy in divergent directions. Meanwhile, the hyperactivity of policy-makers in creating an internal security agenda has caused the border-tightening side of the equation to run ahead of the trade- and travel-liberalizing side.

#### *Defining the border acquis: EU accession conditionality*

EU border policies are themselves fragmented and inconsistently developed, following a chequered history of European integration in justice and home affairs. They have been driven by concerns as diverse as external security, social cohesion and the single market, but a central concern has been stemming migratory flows; more than seventy immigration and asylum measures were adopted by the Council of Ministers between 1993 and 1998 with this aim.<sup>13</sup>

Defining border policies for the applicants is complicated by rapid changes in the internal security *acquis* and the rebuilding of the policy-making infrastructure in this area under the Amsterdam Treaty, which has moved much of the justice and home affairs remit from intergovernmental cooperation into the jurisdiction of Community institutions.<sup>14</sup> The EU's institutional framework for 'justice and home affairs'—a portmanteau phrase for issues ranging from refugee

<sup>13</sup> Alan Travis in *Guardian*, 20 Oct. 1998.

<sup>14</sup> *Acquis communautaire* is the term used to refer to all the real and potential rights and obligations of the EU system and its institutional framework; the accession *acquis* is the whole body of EU law and practice. See Heather Grabbe, *A partnership for accession? The implications of EU conditionality for the central and east European applicants*, EUI Working Paper RSC no. 99/12 (San Domenico di Fiesole (FI): European University Institute, 1999).

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protection to organized crime to citizens' rights—has changed enormously over the past decade. It developed from intergovernmental negotiations in the 1980s to the 'third pillar' plus a Schengen Agreement that remained outside the EU institutional framework (after the 1992 Maastricht Treaty). A new *acquis* was created on migration and asylum in the Amsterdam Treaty in 1999, with all matters relating to movement of persons (border controls, asylum, visas, immigration and cooperation on civil justice) placed in the EU's 'first pillar', leaving the 'third pillar' containing police cooperation and criminal justice. The EU's aim is now to create an 'Area of Freedom, Security and Justice', which will mean the emergence of new regimes for dealing with refugees and asylum-seekers that the CEE applicants will have to adopt prior to membership.<sup>15</sup> The integration of Schengen into the institutional framework has resulted in special arrangements for three EU member states (Denmark, Ireland and the UK), while Norway and Iceland are associated despite not being members of the Union.<sup>16</sup> However, candidate states are not being offered the opportunity to negotiate similarly flexible arrangements; the European Council has made it clear on several occasions that new members will not be allowed opt-outs or other forms of flexible integration.

Schengen has developed into a system both for abolishing internal border controls and for regulating controls at external frontiers, including a common visa regime, common regulations for procedures at land and coastal borders and airports, and extensive police cooperation that includes the 'Schengen Information System' (SIS) database. The tasks set for the CEE applicants in implementing this regime consist both of specific measures with a clear timetable—for example, setting up new reception centres for asylum-seekers<sup>17</sup>—and also of general exhortations, such as 'improve border management'. A large number of measures concerned with reinforcing border controls has so far made up both the bulk of EU demands in justice and home affairs, and also the targets of its aid to CEE in this area through the Phare programme. There are thus incentives as well as constraints encouraging the applicants to concentrate their energies on reinforcing border controls: transfer of the redistributive system for asylum claims has been accompanied by considerable funds and technology to combat illegal immigration and to deal with refugees. In addition to EU aid, there are bilateral assistance programmes (most notably from Germany) to transfer member states' own border regimes to the frontiers of their eastern neighbours.

Justice and home affairs is a policy area renowned for its obscurity and lack of transparency in public debate. Moreover, the EU's institutional framework has

<sup>15</sup> On the emergence of the regime to harmonize refugee and asylum policies, see Sandra Lavenex, *Safe third countries: extending the EU asylum and immigration policies to central and eastern Europe* (Budapest: Central European University Press, 1999).

<sup>16</sup> The UK and Ireland have opt-outs from Schengen that include a 'selective opt-in', whereby they do not normally participate in migration policy measures. Denmark is a member of Schengen, but has a special arrangement whereby it has opted out of the third pillar (although with extensive opt-in possibilities): see Jörg Monar, *Flexibility and closer cooperation in an emerging European migration policy: opportunities and risks*, Laboratorio CeSPI, no. 1 (Rome: CeSPI, 1999).

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tended to discourage coordination among policy-makers concerned with different aspects of CEE relations (such as internal versus external security); the creation of a Directorate-General for Enlargement within the Prodi Commission should improve coordination, but there remain divergences between member states' foreign and interior ministries. The institutional structure of emerging EU border policies covering sensitive areas such as refugees and asylum is a legacy of the intergovernmental origins of the policy area: new policy fields are superimposed on existing arenas for cooperation, resulting in a plethora of policy-making bodies dealing with border policies, including intergovernmental and EU institutions as well as extra-EU fora such as the Budapest Process. It is thus hardly surprising that the implications for regional development of eastward extension have so far been little discussed.

Compliance with Schengen norms has been accompanied by increasing unease among CEE governments about their implications for bilateral relations. While they remain applicants, the CEE countries are subject to an asymmetrical relationship whereby they are merely consumers of EU policies, and cannot influence them. EU visa policies have been presented as non-negotiable (because they are part of the first pillar), so the applicants will have to abolish the visa-free regimes currently operating with their eastern and southern neighbours.

Timing remains a critical question. The Schengen *acquis* (its legal base and the body of law comprising it) was finally published in July 1999,<sup>17</sup> but there remains uncertainty for the applicants about what has to be applied before accession and what will occur afterwards. Bringing Schengen into force has occurred in two stages for most EU countries: first came accession to the Schengen Accord, and then at a later point frontier controls were lifted once other Schengen members were confident about the ability of their neighbours to control external frontiers effectively. It is not clear how this procedure will apply to CEE, and there are different views in Brussels and across the member states on whether accession to the EU will result in an immediate lifting of border controls with member states. Lifting internal border controls depends on a Council decision—i.e. it is entirely up to the member states, which have to vote unanimously that they have sufficient confidence in the CEE members' external frontier controls. When exactly Schengen is brought into force determines whether the applicants start to gain the benefits of Schengen immediately on accession, or only after years of suffering the costs in terms of disrupted integration with their eastern neighbours.

<sup>17</sup> European Commission's Accession Partnership for Hungary, published on web page <[http://www.europa.eu.int/comm/enlargement/ac\\_part\\_10\\_99/intro/index.htm](http://www.europa.eu.int/comm/enlargement/ac_part_10_99/intro/index.htm)>, Oct. 1999.

<sup>18</sup> 'Council Decision of 20 May 1999 concerning the definition of the Schengen *acquis*', *Official Journal of the European Communities*, L 176/1, 1999/435/EC, 10/7/99.

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#### *The Schengen bargain: soft borders for hard*

A new distinction between hard and soft borders has grown up in EU migration policy since 1996. The idea behind softening borders in the Schengen zone is that internal frontiers become soft, while external ones are hard, effectively creating a larger zone of free movement, but one with sharper edges that are harder to penetrate from the outside. Once inside the Schengen area, people can move without frontier checks,<sup>19</sup> so entry to the area is strictly controlled. In theory, borders with Schengen countries become more porous as CEE countries become part of the common frontier zone, but these concessions on their western borders are made only if they apply harder controls on their eastern borders. Extending Schengen eastwards thus implies a bargain: freer movement westwards at the price of not allowing free movement from the east.

This is not a simple trade-off between types of frontier control, however, because becoming the external frontier for the EU has much wider legal and financial implications. The countries on the outer rim of the Schengen zone not only have to control traffic through these frontiers more carefully, but they also have to develop a sophisticated infrastructure for keeping data on who and what is crossing their borders, and a legal apparatus to deal with asylum claims and refugees. The countries forming the new external border thus take on major responsibilities, both economic and legal, as they become the EU's front line dealing with transnational population movement. They have to apply the border policy restrictions placed on them by the EU, and also take on international responsibilities for people in transit across their territory, largely with the aim of stopping westward migrants from reaching the old EU member states. For central and east European countries, this has meant a change in status from being countries of transit for international migrants to being countries of destination. The CEE are becoming a new form of buffer zone for the EU: one for immigration.

#### **On the sharp edges of Europe: border dilemmas**

EU-imposed border policies have major security implications for eastern Europe. For Ukraine and other countries on the periphery of the expanding EU zone, Schengen is foreign policy. Even if the EU sees it as a matter of internal affairs, visa and border policies have a direct impact on perceptions of European integration and on the circles of inclusion and exclusion being drawn by the enlargement process. Disruption of bilateral relationships and regional economic integration has important implications for security in the region. In particular, EU-driven border-tightening and visa regimes inhibit the ability of local and regional actors to cooperate on a range of sensitive issues, including minority relations, migration, local economic infrastructure and institution-building.

<sup>19</sup> However, they are still subject to checks by police within each country, and police have additional powers in border areas; see Bort, 'The frontiers of Mitteleuropa'.

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The EU is having a major impact on border regimes in CEE partly because of the limited development of migration policies prior to 1989. Warsaw Pact countries did not have immigration policies as such, because the focus was on preventing or regulating emigration by their inhabitants; there was little pressure from third-country nationals trying to enter in significant numbers. Wholesale transfer of EU border policies has thus filled institutional lacunae left by the legacy of communism. Border guards have had to adapt to a new task: to keep foreigners out rather than to keep their own citizens in.

EU internal security policies affect many highly sensitive issues in CEE regional relations. Erecting Schengen borders with difficult neighbours like Ukraine, Kaliningrad (part of Russia) and Croatia could upset delicately balanced relationships and stall cross-border economic integration. CEE political leaders have repeatedly expressed their concern that measures such as introducing entry visas should not raise new barriers between their populations, but the priority given to EU demands has caused acute dilemmas for domestic policy-makers. Behind the rhetoric of 'not putting up a new Iron Curtain' lies a complex set of compromises whereby each country has tried to navigate between EU pressures and other policy concerns, both domestic and external.

*The impact of EU border policies so far*

Harmonization under Schengen has eliminated differences in visa policies between the CEE countries, so that by 1 July 1999 all ten countries of the Schengen group had signed bilateral visa-free agreements with the eight applicants on the EU's visa 'white-list'. However, treatment of the nationals of the different applicant countries is not uniform, with Bulgaria and Romania remaining on the EU's visa 'black-list'.<sup>20</sup> In addition, some EU countries maintain different regimes; the UK and Ireland have required visas of Slovaks since 1998, following an influx into Britain of Slovak citizens of Roma ethnic origin seeking asylum, while Finland imposed a visa requirement in late 1999 following a similar influx.

Export of EU border policies is affecting intra-CEE relations through its impact on trade and investment patterns between the applicants and with CIS countries. Applying EU visa policies will inevitably inhibit economic integration and bilateral cooperation between countries that are 'ins' and 'outs' in the EU accession process. Because it has led to export of border policies, Schengen casts a shadow well beyond its present membership, covering the applicants and their neighbours as well. One phenomenon driving the erection of Schengen-inspired frontier controls in CEE has been anticipatory adjustment towards EU norms in the face of bilateral pressures from neighbouring member states.

<sup>20</sup> The European Commission recommended on 26 January 2000 that visa restrictions on Bulgarians and Romanians be removed, but the Council of Ministers had not yet agreed as of July 2000.

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*Predicaments of history and geography: Hungary and Poland*

Hungary and Poland illustrate the range of dilemmas faced by the applicants owing to the history and geography of the CEE region. They have long frontiers, bordering on countries that are far from the prospect of EU accession, and the drastic and traumatic shifts in the location of borders over the last century has left a complex legacy of ethnically mixed populations and sensitive issues.

Poland has borders with three countries that are not affiliated to the enlargement process: Belarus, Ukraine and Russia (Kaliningrad). Implementing Schengen-type external controls along these frontiers is a mammoth task, and could have far-reaching implications for Poland's relations with the rest of a troubled region. Much of this long border is 'green', running through open country and mountains; it is difficult and costly to patrol the green borders with Belarus (407 kilometres) and Ukraine (526 kilometres). The border with Kaliningrad is still more sensitive; the question of how to manage Russian military transit to the enclave is becoming an issue for the EU, particularly now that Lithuania has started negotiations, encircling Kaliningrad with EU-oriented countries. As yet, there is no coordinated EU policy on how to deal with Kaliningrad.

The EU has supplied considerable financial and technical assistance to upgrade Poland's border infrastructure, both from the Union's Phare programme and from bilateral funds. Germany has provided a major aid programme to increase border policing and there is close cooperation between German and Polish border guards, including joint operations and training. German influence has considerably speeded up the process of developing mechanisms for migration control, ensuring that would-be migrants heading for Germany are stopped and held in Poland. It is now impossible to gain asylum in Germany once migrants have arrived in Poland, owing to the 1993 bilateral Readmission Agreement,<sup>21</sup> so the whole migration issue once pertaining to Germany has been shifted eastward. For migrants from the former Soviet Union and from Asia, Poland has thus become a country of settlement rather than a country of transit.

Erecting an external Schengen border presents a major challenge to Poland's eastern policies. Polish leaders have consistently presented their country as a bridge to Ukraine, Belarus and Russia, and Warsaw has pursued very active bilateral political engagement with these countries. Policy statements by President Aleksander Kwaśniewski, Foreign Minister Bronisław Geremek and the various ministers for European integration have stressed stabilization of the states emerging from the former Soviet Union as a key foreign policy goal. In particular, Poland has strongly advocated extending links between the EU and Ukraine.<sup>22</sup>

<sup>21</sup> In addition to the bilateral agreements, there was a prior multilateral readmission agreement between Poland and the Schengen countries (including Germany) signed in March 1991; on the development of the readmission treaty system, see Ferruccio Pastore, 'L'obbligo di riammissione in diritto internazionale: sviluppi recenti', *Rivista di Diritto Internazionale* 81: 4, 1998, pp. 968–1021.

<sup>22</sup> Relations with Ukraine are explicitly mentioned in the annual 'exposés' of Polish foreign policy: 'Expose Pana Ministra Bronisława Geremka, Sejm, 8 Kwietnia 1999' (Exposé of Minister Bronisław Geremek, Plenary session of the parliament, 8 April 1999) and other foreign policy documents: 'Prioritytety polskiej polityki zagranicznej' (Priorities of Polish foreign policy), both from <www.msz.gov.pl>.

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Integration with these markets and constructive engagement with their political leaders are Poland's major contribution to European security, providing both NATO and the EU with a stable link in a troubled region. Poland also provides markets for CIS goods and jobs for migrant workers. Hard estimates of economic dependence are difficult to provide, but it is clear that many Ukrainian families depend on the earnings of family members working in Poland as their main source of income. This will have a dramatic impact on the cross-border trade and short-term pendulum employment in Poland that sustains more than 100,000 people in the western Ukrainian region of Transcarpathia.<sup>23</sup> The new measures to seal the border with Ukraine had a dramatic effect on the regional economies both sides of the border when introduced in late 1997, causing a fall of about 30 per cent in trading.

Concern about the impact of EU border policies is widespread in the Polish political elite, but it has not stopped the adoption of a large number of measures to control cross-border movements, some of which have caused tensions with neighbouring countries. Poland came under pressure to tighten its eastern borders from late 1997, when Schengen was being brought into force prior to its full operation from 1 April 1998. New laws on aliens have been introduced since late 1998, causing major protests from Russia and the withdrawal of the Belarusian ambassador from Warsaw. Fifteen new border crossings are to be built on the eastern frontier by 2001, the number of border guards has been increased, and new equipment to read passports electronically is being installed at border checkpoints, using EU Phare aid.

Poland is seeking to maintain a very delicate balance between its EU obligations and its relations with its eastern neighbours.<sup>24</sup> Domestic discussion of practical responses to the dilemma is heated. The government's official position paper on negotiations in the JHA chapter (delivered to the European Commission in April 2000) proposes introducing visas for Ukrainians only just before the accession date. Behind this position lies an active debate about whether Poland has to choose between EU links and eastern links, or whether it would serve both Polish and Ukrainian interests better for Poland to join the EU quickly and to try to change EU eastern policy from the inside. Kwaśniewski has made promises to Ukraine on several occasions that Poland will not introduce visas for Ukrainians prior to its accession to the EU, and Geremek recently made a similar commitment. However, this stance may not be sustainable in the face of pressure from Germany and other EU states.

One response to the dilemma of how to maintain good regional relations in the east while imposing these new barriers is to stress cross-border cooperation. The German–Polish border has provided a model for initiatives such as 'Euro-regions' to try to overcome the legacies of history by encouraging confidence-building at multiple levels: local, regional, civilian, military, public and private

<sup>23</sup> Estimate by *The Economist*, 2 Oct. 1999.

<sup>24</sup> On Polish approaches to border management, see Klaus Bachmann, *Polska kaczka—europejski staw: szanse i pułapki polskiej polityki europejskiej* (Warsaw: Centrum Stosunków Międzynarodowych, 1999).

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sector.<sup>25</sup> In contrast with the Oder–Neisse region, the Polish–Ukrainian border lacks the favourable circumstances of economic transition and European integration to nurture such cooperation. Poland’s ability to replicate these positive models along the Bug (the river that separates Poland and Ukraine) is limited not just by the socio-economic disparities and political problems on either side, but also because the EU accession framework inhibits it. In particular, EU pressure led to a tightening of frontier controls from late 1997 that has cut down the number of crossings, reducing economic, political and civic interactions alike.

For Hungary, the main concern about Schengen is the impact of EU visa policies on the access of the ethnic Hungarians living in surrounding countries. These ‘external minorities’ total up to 3 million people,<sup>26</sup> a significant number in relation to the 10 million living in Hungary. At present, ethnic Hungarians who are citizens of Romania, Slovakia, Ukraine or one of the former Yugoslav countries can travel to and work in Hungary without visas. Ensuring the welfare of these communities is a main tenet of Hungarian foreign policy and is a central issue in bilateral relations with its neighbours. Moreover, much cross-border trade and investment depends on family and cultural ties with diaspora communities, and pendulum migration into Hungary provides jobs that support many families in poorer neighbouring countries.

Hungary has so far resisted pressure from EU member states to introduce a travel-visa regime for neighbouring countries. However, there is growing awareness that Austria (the only EU member sharing a border with Hungary) will not abolish controls on its frontier with Hungary unless it has a guarantee that third-country citizens—particularly from poorer countries to Hungary’s east—cannot travel freely through Hungary. There is domestic consensus within Hungary that a solution must be found to this issue, but not on what that solution might be.

A number of proposals have been put forward to deal with the problem of admitting ethnic Hungarians without visas. One is a ‘national visa’ permitting a stay of over ninety days for citizens of neighbouring countries, but in Hungary alone;<sup>27</sup> however, this would presuppose a system of checks on Hungary’s Austrian border too. Another much-discussed possibility is long-term visas, for ten years or so, to be given to ethnic Hungarians. The Independent Smallholders’ Party—the government’s junior coalition partner—has called for ethnic Hungarians to be given dual citizenship, but the ruling FIDESZ–MPP party has rejected that option for the time being.<sup>28</sup> The government is concerned that offering statutory dual citizenship to millions of ethnic Hungarians

<sup>25</sup> For a critical comparison of Polish and Czech cross-border cooperation policies with Germany, see Vladimír Handl, and Marcin Zaborowski, ‘Comparative Czech and Polish perspectives and policies on the eastern enlargement of the EU and the prominence of the “German factor”’, report prepared for the Research Support Scheme of the Open Society Foundation, grant no. 113/1998 (Birmingham: 23 Aug. 1999).

<sup>26</sup> On the difficulties of estimating minority populations in CEE, see André Liebich’s appendix to Amato and Batt, *The long-term implications of EU enlargement*.

<sup>27</sup> Proposal made by Zsolt Németh, Political State Secretary, Hungarian Foreign Ministry, reported on Hungarian radio, 3 June 1999 (BBC Monitoring Service).

<sup>28</sup> Hungarian radio report, 20 Feb. 1999 (BBC Monitoring Service).

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would cause both legal and political complications (establishing criteria for determining who is an ethnic Hungarian is legally difficult, for example), and such favourable treatment could also result in resentment against ethnic Hungarians in Romania.<sup>29</sup>

Even if Hungary does not have to introduce visas for its neighbours prior to accession, EU-inspired tightening of frontier controls is already having an impact on cross-border trade and investment. Since 1 September 1999, all people (whether Hungarian or foreign) crossing borders in either direction have had to be registered (and the data stored for ninety days), causing significant queues at Hungary's border posts.<sup>30</sup> Moreover, this caused unwanted complications in Hungarian–Romanian relations months before critical elections in Romania.

In autumn 1999 the Hungarian government committed itself to adopting the EU's visa policy and to introducing a Schengen-type system of controls at its borders, but the timescale for doing this was left vague.<sup>31</sup> External border controls with fellow applicants Slovakia and Slovenia are to be erected only if the EU says they are necessary,<sup>32</sup> which is unlikely while the EU itself has bilateral visa-free travel regimes with these countries; however, Romania's and Hungary's non-applicant neighbours are another matter. Romania is home to the largest external minority (more than 1.6 million ethnic Hungarians), and the main solution sought by Budapest is for the EU to abolish visas for Romanians before Hungary joins the EU. However, such a solution is not possible for Ukraine and the other non-applicant neighbours, leaving a problem for the longer term when Hungary eventually accedes.

Imposing a visa regime will also affect EU-sponsored regional cooperation initiatives. The Carpathian Euro-region (which covers the borders of Hungary, Moldova, Poland, Romania, Slovakia and Ukraine) is an example of successful regional cooperation in an area of considerable ethnic diversity and potential tension that has been given substantial financial support and political encouragement by the EU. Currently, nationals of the Euro-region's member countries can travel within it without passports, but this regime will soon have to end when EU applicants—starting with Hungary and Poland—have to introduce Schengen controls on their borders.

#### *Visa regimes for Bulgaria and Romania*

Although they are much further away from accession than Hungary or Poland, Bulgaria and Romania have also introduced measures to tighten border controls and impose visa regimes on third countries. Their motivations for adjusting to

<sup>29</sup> János Martonyi, Hungarian Foreign Minister, interviewed on Hungarian radio, 5 Jan. 1999 (BBC Monitoring Service).

<sup>30</sup> Reported in the Hungarian economics weekly *HVG*, no. 99/35, 4 Sept. 1999.

<sup>31</sup> Commitment made in the Hungarian position paper for the last five chapters of negotiations submitted to the EU on 29 November 1999, reported in *HVG*, no. 99/42, 6 Dec. 1999.

<sup>32</sup> János Martonyi, Hungarian Foreign Minister, press conference in Budapest, 26 Nov. 1999, reported by *Bridge News*, same date.

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EU norms are not confined to anticipation of EU entry requirements, but are rooted in their desire to leave the EU's 'black-list' of countries whose nationals require a visa to enter the EU.<sup>33</sup> The EU's invitation to Romania and Bulgaria to start negotiations in December 1999 raised hopes that the visa black-list might be revised, and the European Commission recommended to the Council of Ministers on 26 January 2000 that visa restrictions on these two countries be removed. However, it is not clear that the Council will agree to this step, despite the symbolic importance of demonstrating inclusiveness in opening negotiations with all the countries in February 2000. It is possible that the proposal will be taken up under the French presidency of the EU in the second half of 2000, but several member states remain strongly opposed to changing the visa regime.

The EU's visa policy towards Bulgaria and Romania is causing a major dilemma for CEE policy-makers, who want to avoid having to impose a similar visa regime on neighbouring countries. There was a clash in the Czech Republic when foreign minister Jan Kavan publicly criticized an interior ministry proposal to introduce visas for Bulgarians and Romanians in June 1999.<sup>34</sup> This discriminatory visa policy is also having unintended consequences in the region. In Bulgaria and Romania there is a widespread perception that the only reason why their nationals are subject to visa restrictions is that the EU fears a flood of Roma minority populations from the east, exciting accusations of double standards when the EU demands better treatment of the Roma in eastern Europe. Similarly, the UK's introduction of visas for Slovaks because of an influx of Roma asylum-seekers has led to resentment towards the Roma in Slovakia.<sup>35</sup> Where visa restrictions are blamed on the Roma and this causes even more discrimination against them, it can in turn create greater pressures for them to emigrate, causing such restrictive policies to be counterproductive.

### **Conclusions: the EU's need for a 'neighbourhood policy' on borders**

Following the current enlargement process, some future EU Member States will share an external border with Ukraine. The enlargement of the Union will further enhance economic dynamism and political stability in the region, thus increasing the possibilities for cooperation with Ukraine. (Presidency Conclusions, Helsinki European Council, 10–11 December 1999)

The EU is replacing the Iron Curtain with a paper curtain across Europe. (Leonid Kuchma, President of Ukraine, Baltic–Black Sea Cooperation Conference, Yalta, 10–11 September 1999)

These two statements embody the tension inherent in extending the borders of Schengen eastwards. Mitigating the negative consequences of EU border policies is essential for European security. The 'paper curtain' of visas and

<sup>33</sup> Council Regulation 2317/95.

<sup>34</sup> Reported in the Czech daily *Hospodarske Noviny*, 1/6/99.

<sup>35</sup> See reports in the Slovak daily *SME*, 6 Oct. 1999 and editorial in *Neue Zürcher Zeitung*, 6 Oct. 1999.

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frontier controls will certainly inhibit the economic integration and political cooperation between the applicants and their neighbours that have been advocated by the EU; however, its impact could be softened by flanking measures to promote bilateral cooperation and sub-regional integration. Such flanking measures could be developed in four areas:

1 A less restrictive approach to migration control. Imposing restrictive policies on east–west movement while there is relatively little migratory pressure seems short-sighted, particularly so early in the accession process. To allow short-term alarmism over migration pressures to jeopardize long-term stabilization of CEE would run counter to EU interests, and closing the vice on legal migration tends to provoke a growth in illegal migration as would-be migrants fear that legal channels will be closed off entirely. Restrictive stances also encourage the development of a trade in human trafficking that is very difficult to control. More sophisticated frontier controls of the kind advocated by the EU should aim at keeping disruption to legitimate trade and legal movement of persons to an absolute minimum, rather than relying on repressive measures to restrict overall flows as a crude method of reducing the criminal activity that they might carry.

Schengen needs to return to its original purpose of facilitating free circulation of goods, services and people. The EU should not put pressure on the applicants to introduce Schengen-like controls on their external frontiers before member states are ready to open borders on the EU side. If there is to be a two-stage application of the Schengen *acquis*, with internal frontier controls removed at some point after accession to the EU, then there should be matching flexibility from the EU side in applying Schengen controls on the new external border. At the least, timetables for tightening eastern borders should be reciprocated with binding commitments to loosening western ones.

A good start would be an end to discrimination between the applicants in EU visa policies, so that Bulgarians and Romanians are treated like all the other applicants. The symbolism of maintaining a visa regime for countries that are in negotiations for membership is highly significant in the domestic politics of these countries. Moreover, visa requirements alone do not combat transnational crime effectively; it would make much more sense to replace crude distinctions between countries in visa policies with closer cooperation to target criminal activity across and within countries, if combating transnational crime is really the object.

2 Supplementary financial aid and political support to the countries furthest from joining is an essential prerequisite to improving their ability to deal with the regional tensions resulting from EU border policies. Effective frontier policing requires cooperation between national forces; borders cannot be managed from one side only. As a recent report to the European Commission suggests, a constructive first step would be to establish a joint EU–CEE border and customs service along the external borders of the current EU.<sup>36</sup> A second

<sup>36</sup> Amato and Batt, *The long-term implications of EU enlargement*.

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step would be to boost EU programmes to assist border regions along the new frontiers of the enlarged EU, with greater financial and political support for sub-regional cooperation between the applicants and non-applicants.

3 Involving the applicants in external policies concerning their neighbours would bring them into EU policy-making structures, where they have a major contribution to make. In 1999 the EU developed new 'common strategies' for its external policy, the first two applying to Russia and Ukraine.<sup>37</sup> Prospective members have to sign up to these strategies, but they have no say in formulating them, despite the fact that they apply to the applicants' immediate neighbours. So far, the strategies have been relatively limited in their substantive content. However, their future development has the potential to limit the terms on which the candidates can forge bilateral links with these neighbouring countries. It is short-sighted for the EU not to use the expertise of countries like Poland that have pursued dynamic eastern policies and have long experience of managing open borders with problematic neighbours.

4 A more consistent regional strategy needs to be developed that does not treat accession issues as wholly separate from policies for the wider CEE region. An appropriate overall EU strategy for the region that unites macro- and micro-security concerns would bring together enlargement policies and integrate them with other elements of external policy. There is a clear need to build bridges across the EU's second and third pillars, and also with wider strategies such as the Stability Pact for the Balkans. Accession policy-making has tended to be driven by the task of legal harmonization and the immediate, short-term concerns of member states. There now needs to be greater effort at coordinating policies in CEE for the longer term; in particular, building bridges across the different pillars of EU policy-making is essential to ensuring the consistency and coherence of the messages sent to CEE.

The security threats facing Europe are interconnected and require a united and coherent policy to coordinate national and international approaches to them. This is most clear in south-eastern Europe, where the new strategies established after the Kosovo crisis provide an opportunity to bind regional security concerns together, and to consider how the different parts of the EU's agenda for CEE add up and how to deal with inherent tensions. For example, one of the conditions for starting negotiations on the new 'Stabilization and Association Agreements' proposed for Albania and former Yugoslav countries is 'proven readiness to promote good neighbourly relations'.<sup>38</sup> Inhibiting bilateral initiatives between applicants and non-applicants thus runs against the goals of the EU's own Stability Pact for the Balkans, which aims at economic cooperation and free trade throughout the region. At Helsinki, EU leaders reiterated

<sup>37</sup> 'Common strategy of the European Union of 4 June 1999 on Russia', *Official Journal of the European Communities*, L 157, 24 June 99; 'European Council Common Strategy 1999/CFSP', Annex V to the Presidency Conclusions of the Helsinki European Council, 10–11 Dec. 1999.

<sup>38</sup> Conditions for the Stabilization and Association Agreements, published on <<http://www.seerecon.org>>, 30 Sept. 1999.

this approach to stabilization of south-eastern Europe: ‘The European Council stresses the major importance of improving relations and removing trade barriers and barriers to the movement of people between the countries concerned.’<sup>39</sup> Yet at the same time as the EU countries were making this statement, they were also telling Bulgaria, Hungary and Romania to impose entry visa requirements on their southern and eastern neighbours. This contradiction is symptomatic of the need for the EU to find ways of encompassing both internal and external security goals in a coherent policy framework that addresses the long-term problems of the wider Europe, rather than resorting to crude differentiation between countries’ visa requirements on the basis of their status in the accession process.

The EU has an unprecedented opportunity to influence CEE through the accession process and its aid to the Balkans, but to use this influence effectively it has to unite its different external and internal security agendas relating to applicants and non-applicants. Now that all the candidates are in negotiations, it is time for the EU to face up to the problems created by phased accessions. Extending Schengen to the borders of the enlarged EU is not just an issue of internal affairs: how it is done matters deeply to the security of the wider Europe. Relationships are being shaped now—between the EU, its applicants and surrounding countries—that will have long-term effects on the EU’s ability to act as a stabilizing force in its neighbourhood.

<sup>39</sup> Presidency Conclusions of the Helsinki European Council, 10–11 Dec. 1999.