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Relations of Kin-state and Kin-minorities in the Shadow of the Schengen Regime

On the stakeholders

Since the early 1990's, eastward enlargement process has faced the Schengen Regime's shadow. Though a symbol of the better European integration in terms of both free movement and security, its possible effects on eastern EU member states have raised concerns. Discourses on the pros and cons of rigid border control, obtaining visas, and entry restrictions for non-EU nationals have greatly influenced *kin-state and kin-minority relations*, external and internal affairs of affected states or communities, as well as anti-European sentiments. This occurs without any reference to the minority situation.

EU enlargement creates a new external border in the eastern part of the continent. Beginning at the northern twin-town of Narva Ivangorod on the Estonian-Russian border, this new border stretches through the areas of Western Belarus that border Latvia, Lithuania and Poland to the Ukrainian borders with Poland, Slovakia, Hungary and continues towards the south along the Romanian borders with Moldova and Ukraine. There will also be the Russian enclave of Kaliningrad, surrounded by Poland and Lithuania. Other new external EU borders are being drawn between Hungary and Slovenia, on one hand, and Serbia-Macedonia and Croatia on the other.¹

¹ Judit Tóth: Connections of Kin-minorities to the Kin-state in the Extended Schengen Zone. *European Journal of Migration and Law*, Nr. 5, 2003. 201–227.

This borderline goes through areas inhabited by people of similar cultural and historical backgrounds, who are, in a way, socially and ethnically related. The EU border also divides communities that belonged to one country during the communist era and that have continued to preserve and foster social ties since that time. Areas on both sides of the new eastern border are characterized by their peripheral nature. Here, there are rural communities that in addition to lacking industrial centers and being under-subsidised also have high unemployment rates, poor infrastructure, and an aging population. While the set of tools for cross-border co-operation are able to influence “neighbourly” relations, the peripheral nature of these areas also greatly contributes to the mutual attraction for an *ad hoc development of cross-border contacts*, especially in regards to business. This means that the role of cross-border co-operation in the eastern regions has changed significantly from the time when its function was to strengthen EU member state integration and cohesion.

The *rate and absolute number of ethnic and national minorities* residing in the border zone of new and acceding EU member states is significant. Eastward enlargement means that 71 minority communities with a total population of at least 11.2 million – with 7.2 million in the ten new member states and at least 4 million persons in two acceding states – will be added to the 30 million people of 58 minority groups within the old member states. Because it is almost ten percent of the total population in the enlarging EU, minority issues have become an *organic part of internal policy and regional affairs*. The cessation of border control at internal borders and the possibility of free movement inside the Schengen zone is intended to inspire regional cooperation among kin-states and kin-minorities living in border areas. Almost all of the new member and acceding states have kin-minorities and diasporas in other member/candidate states or in several countries outside the enlargement perspective.

For both practical and symbolic reasons, the *management of these sensitive external borders* has a profound impact on the relations between EU and non-EU members. In order to prevent the arraignment from creating a new eastern wall in the post-cold war era, it is exceptionally important for the EU to take all possible measures to facilitate the crossing of these borders by third country nationals. The stability of those countries in Eastern and South-eastern Europe that remain outside of the EU is one of the crucial challenges of the enlargement process.

To summarize, the EU and its institutions, new and acceding states, kin-minorities and communities living in EU border zones are equally and directly invested in the management of border-crossing, and numerous European organisations – through their mediation, adopted legal opinions and documents, stability pacts and/or regional role – are *indirectly* involved into this still unequal fight. The EU has *three policies and instruments* that are most relevant to border-crossing management: European Area of Freedom, Security and Justice, European Neighbourhood Policy and the regional policy.

Freedom, Security and Justice

Although the Title IV of the Treaty of the European Community (Art. 61–69) intends to create a balanced European Area of liberty, legality and security, these aims are *not necessarily in harmony* with one another. Mr. Barroso confessed to this missing balance: “The Commission today adopted one of the most important components of its political priorities for 2006. Security is the number one issue of concern to our citizens. They want the European Union to be more effective, in particular in the fight against terrorism and organised crime, but also in management of migration flows and control of external borders. Freedom, security and justice are at the heart of the Commission reform agenda. In the first eighteen months of this Commission over 17% of all Commission proposals cover the area of justice, liberty and security. This is a key feature of our Europe of results agenda.”²

Reacting to this security agenda, public discourses in new member states and in neighbouring countries often refer to the Schengen Agreement (1985) and the Implementing Convention (1990) as a *syndrome that is afraid of new European divisions*. Because of the Amsterdam Treaty, the competencies of the EC law are stretching the intent of internal and external border management, free movement of persons, visa, asylum and additional security measures, which were originally outlined as being outside of EC law. Furthermore, the Title VI of the EU Treaty (Art. 29–42) regulates other components of police, customs and justice

² Joint Press Conference President Barroso / Vice-President Frattini (28 June 2006) on the “The Hague Programme” http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_2006/conference_en.htm

co-operation originally provided by the Schengen Implementing Convention. Thus we have to speak about the *Schengen acquis* that is no longer an option in any EU Accession Treaty but is rather a requirement.

The FSJ includes the following policies and instruments:³

1. In connection with fundamental components of the European Union that are based on free circulation of capital, products and services, the free movement of persons is provided for all lawfully-residing persons, EU nationals, and their family members inside the Union. This means that the *borderless “Schengen Area” is replaced by the FSJ* that covers the whole territory of the Union with certain temporary exceptions (7 year restriction until 2011 for workers of new member states moving to old member states for employment purposes).
2. Visa policy includes a joint list of visa waivers and obligations towards each country outside the EU. The nationals of candidate states enjoy visa-free travel up to 90 days. The EU external-border policy coupled with the visa and free movement of persons guarantees simplified formulas for EU nationals, harmonized entry conditions for non-EU nationals and improved document security. Member state sovereignty is greatly limited by these unified rules that screen for the poor, irregular, dangerous and improperly documented migrants *irrespective of their cultural or ethnic ties to a destination country*.⁴
3. Although officially in harmony with the Geneva Convention on refugee status (1951), security rational dominates the asylum policy. The external aspects of asylum immediately excluded applicants from candidate or acceding countries regardless of individual circumstances. Non-EU neighbouring states are deemed safe (i.e. transit or origin) countries; as a result, their nationals or illegal emigrants must be returned and received without scrutinizing the terms of the readmission agreements. *Protection seekers*

³ The consolidated list of all binding and non-binding instruments of *acquis communautaire* in the field of Justice and Home Affairs puts together 48 pages divided into 16 chapters. Due to this up-to-date, exhaustive but changing list the text refers on only the legal basis in the treaties on which secondary EC law can be issued. (European Commission, DG JLS 07.10.2005 www.europe.eu/scadplus/leg/en/)

⁴ Tóth, Judit: *The Application of Justice and Home Affairs and the Position of Minorities: The Case of Hungary. CEPS Policy Brief*, Nr. 18, 2002. Centre for European Political Studies, Brussels, 2002. 1–17.

from among the Roma or ethnic minorities have been rejected since the 1990s. The influx of victims from the *Balkan wars* improved the coherence of temporary protection rules for cases of mass influx and readmission agreements for all regions adjacent to the EU. The return policy (for migrants who are not-admitted) and cooperation with neighbouring states (Aeneas programme aiming at the capacity and expertise building) endorse reintegration of returnees into unstable democratic and constitutional societies. Humanitarian efforts coupled with strong instruments of exclusion (e.g. Dublin Convention, regulation on competent member state of asylum investigation, Eurodac system of migrants' fingerprints, etc.) have also been supported by pan-European organisations aimed at curbing illegal migration.

4. Other aspects of the immigration regime attempt to establish a common legal framework for addressing the conditions of admission and settlement of third country nationals (such as labourers, family members for unification, long-term residents and students). Although these rules contain important guarantees for third country nationals in member states, *the cultural proximity and ethnic ties of migrants are completely neglected in directives regardless of numerous member states' colonial pasts or multicultural policies*. The primary legal instrument is a directive that provides a minimal amount of manoeuvring room for national legislation, but this is only allowed after migrants are able to meet the EC law requirements. Thus, national regulation takes language, cultural and personal background of third country nationals into account only during the social and cultural integration process. Because of this, members of divided communities and minorities distort the intention behind family unification or tourism in order to lawfully enter and reside within the EU. In the future, open coordination procedure will endeavour to create a gradual convergence of integration policies that have not been previously addressed by European legislation on migration management, return policy, partnership with countries of origin and integration pilot projects.
5. *Judicial cooperation in civil and criminal matters*, drugs policy co-ordination, police and customs co-operation, crime prevention, the battles against organized crime and terrorism have become leading aims of the FSJ. In 2004, the Hague Programme shifted

the emphasis from liberty and the emancipation of migrants and their status – as defined by the 1999 Tampere Summit – to public order. Transnational organised crime, evolution of counter-terrorism, trafficking in human beings, combating sexual exploitation of migrants, money laundering, corruption are new headlines that encapsulate a set of legal instruments. European arrest warrants, Europol, the Task Force of Police Chiefs, Eurojust, retention of telecommunications traffic data, enhanced law enforcement, intelligence and customs collaboration can be considered as milestones of this new trajectory. This provides the *momentum necessary for the fight against Bask, Irish or Chechen separatism to find a common platform* between the EU and its neighbours. The information exchange among law enforcement agencies, cross-border surveillance and pursuit of suspects and liaison officers' network were originally compensatory measures in a borderless Schengen Area, but they have all become tools for counter-terrorism and external border control. This is because they combat illegal movements across frontiers and the black market by bringing together the visa, customs and identification databases.

6. *EU citizenship, citizens' rights* should be understood as an important achievement that includes the protection of fundamental rights and personal data. Although the Charter of Fundamental Rights inside the European Constitutional Treaty is pending ratification, the Treaty's Preamble's respect for the individual rights of minorities and its catalogue of fundamental rights may indicate how the EU's rule-of-law might function beyond the constitutional system of each member state. The extended competence of the European Court of Justice, the direct reference on ECHR, sanctions for violation of (TEU Art.6–7) and monitoring on fundamental rights make *external borders serve not only as physical check point but also as lines of demarcation between the different realms of rule-of-law in both a strict and tenuous sense*. Moreover, the term of *third country national* differs from persons under the EC law. As it evidenced by the old textbooks "*Graeci, qui alios barbaros nominabant, se tantum humanos et doctos putabant,*"⁵ the non-preferential and preferential treatment received by EU nationals, family members, lawfully resided long

⁵ The Greeks, who considered themselves educated and humane, thought of all other races as barbarians.

term migrants or students represents a historical cleavage between the “Civilized” and “Barbarian” worlds.

7. Anti-discrimination legislation that is intended to combat racism and xenophobia demonstrates the progressiveness of the EU’s minority protection programs. Directives for equal treatment, EUMC as monitoring agency, and other measures that are necessary at the European level (TEU Art.29) may *indirectly promote effective minority protection as they attempt to execute the EC law* regardless race, gender, ethnical origin, religious, conviction, age, disability and sexual orientation (TEC Art.13). Respect for national and regional diversity as well as cultural heritage (TEC Art.151) accompany economic and social cohesion as well as member states’ solidarity and commitment to common. Minorities that act as representative of cultural heritage, an ethnic community, a religion or regional peculiarity would be protected, but those communities based on common language or ethnic ties – in particular, those outside the EC law’s functional approach – would receive little to no protection. While minority groups are defined by their language, religion and regional position that cumulatively creates cultural heritage and internal cohesion, Roma communities or numerous minorities in new and acceding member states that are loosing their language, institutional ties to churches, and are located in scattered and ill-defined regions.
8. *Co-operation with third countries in the field of justice and home affairs has become a crucial element of external relations and of the enlargement process.* External relations’ security priorities have determined the institutional collaboration and support capacity for combating organised crime, terrorism, and illegal migration affecting the EU. For instance, the Ministerial Conference on the “Role of Internal Security in Relations between the EU and its Neighbours” (4–5 May 2006) adopted the Vienna Declaration. About 50 countries and international organisations declared their common desire to develop a Partnership for Security in the FSJ area that would work in conjunction with the USA, Russia and Arab states adjacent to the EU. Looking at this mixture of states and organisations, it is difficult to determine where their common values and interests would lie. Moreover, while internal and external security is invariable in the borderless EU, it

is not transparent outside the EU's borders. Despite this, the Declaration is based on the following principles and priorities:

- a. Strict distinctions between internal and external security are no longer useful;
- b. JHA co-ordination on the basis of the definition of common interests;
- c. Co-operation with UN, COE, OSCE;
- d. Action-oriented activities, flexibility and multi-disciplinary;
- e. "Promoting rule of law, democracy, fundamental rights, good governance" as a means of bolstering security;
- f. Mobilisation of political and financial resources in each party;
- g. Use of the European Neighbourhood Policy as a coherent framework for co-operation regarding security-related matters within the EU;
- h. Supports partners in combating terrorism, prevention, identification of potential criminals, implementation of international conventions, protection of critical infrastructure;
- i. Takes measures against organised crime and corruption through the law-enforcement training, capacity building, protection of victims and use of expertise (Europol, Eurojust);
- j. Co-operation in the field of migration and asylum through protection of human rights of (lawful) migrants; co-operation to improve security standards (biometrics in travel documents); functional border control and staffing, concluding readmission agreements; collaboration with sending, transit and destination countries in asylum management; and promotion of public awareness about the opportunities and limits of individuals' rights in migratory movement.

It is obvious how *militarisation of law enforcement and foreign policy* is occurring. References to the rule-of law and respect for human rights become empty through security partnerships with unsafe sending countries. Regardless of the *absence of direct reference on minorities, the overall security context may indirectly support the utilitarian approach* by taking minorities into account as security issues on fringes of Europe.

European Neighbourhood Policy

On the eve of the eastward enlargement, the European Neighbourhood Policy (ENP) was developed in order to strengthen *stability, security and well-being for inhabitants in the “buffer zone” surrounding the European Union*. Without referencing the minority context, Ms. Solana outlined that an objective was to avoid the emergence of dividing lines between the enlarged EU and its neighbours in the European Security Strategy for 2003. This has been the basis for strategy papers and actions plans developed in recent years.

Since 2003, the ENP has been a growing circle of:

- a. aims of EU intentions that are to be reached through it
- b. documents regarding the various measures defined in co-ordination and as joint actions, and
- c. geographical scope. Originally it was intended to apply only to immediate neighbours of the EU (Algeria, Belarus, Egypt, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine), but it has been extended to Southern Caucasus countries (Armenia, Azerbaijan, Georgia). In addition, strategic partnership was offered as a plan for Russia TEC (Art.179 (1), 180 (1) and 181a) outlines the possible legal basis for ENP regulation in a wider domain:
 - a. economic, financial and technical *cooperative measures* between third countries and the Council that must be adopted by a qualified majority in order to be implemented in these cooperative fields;
 - b. *association agreements* (with full consent);
 - c. various *agreements to be concluded with the states* that are EU accession candidates (with full consent);
 - d. measures that are necessary to fulfil cooperative-development aims (in the process of Art.251), and that may take the form of *multi-annual programmes* or joint actions;
 - e. program agreements with third countries, communications, Council strategy-decisions, methods, financial consequences, geographical scope of ENP, multi-annual programmes that are conducive to the above-mentioned entitlements;
 - f. number of these documents increases;
 - g. ENP has no individual or specific legal instrument because of the cross-section impacts and co-ordination profile.

Some problematic aspects of ENP can be enumerated. Despite association agreements that include the goal of accession, ENP partner countries are not inspired to become Member States. There is a combination of development, capacity building, and economic liberalisation goals that may destabilize the cooperative mechanism's competencies, legislative, constitutional and democratic control in less developed, less democratic and not necessarily constitutional rule-of-law countries. The proposal for an ENP regulation⁶ of European Neighbourhood and Partnership Instrument means a further amalgamation of association, developing development and co-operation agreements, programmes, and binding actions that include but are not limited to cross-border cooperation (CBC), allocation of funds, and thematic programmes. How would target countries react to this instrumental mixture? Unless they continue to be inefficient in development cooperation, they would react by centralising decision-making structures.

The ENP influences legislative efforts in FSJ as well as for accession and external relations. "With its historic enlargement, the European Union has taken a big step forward in promoting *security and prosperity* on the European continent." This comment by the Communication of the Commission⁷ may express ENP's *prioritization of providing security* in almost all Community policies inside and out of the EU. ENP is concerned with security approaches, and it inspires, upgrade and hastens legislation in the fields of Freedom, Security and Justice, JHA and CFS in the light of enlargement. Neighbourhood *Prosperity* requires *economic relations* balanced by investments and the movement of products, workers and ideas. The proposed measures should enhance cross-border cooperation and the development of new economic regions by creating new opportunities for growth and employment *on both sides of the border*. In regards to subsidization, this Action needs to be complemented by – and coordinated with – appropriate measures at the national, regional and local levels. "The Commission in conjunction with the Member States will continue *to monitor* the social and economic impact of enlargement in the border regions with a view to further improve this Community

⁶ COM (2004) 628 final

⁷ COM (2004) 373 final

Action.” This comprehensive approach to Communication⁸ is empty in its intentions.

The *fear of migration* as a security challenge explains the block on the workers’ movement. This is in spite of the fact that “no reliable methodology exists for predicting future population movements and for coping with the many variables which influence such a decision (income differentials, labour market situation, cultural factors, etc.) Thus the degree of uncertainty regarding future labour movements and the level of real sensitivities and fears in some sections of the population militated in favour of transitional arrangements in order to facilitate the smooth liberalisation of the *movement of workers*.” In this way, the *ENP cannot compensate for real and supposed negative effects of enlargement in adjacent countries*.

What are the consequences of ENP at national legislative level? It means that the neighbourhood policy intends a one-sided export of rule-of-law and values of democracy. While there have been recent developments in FSJ due to the readmission agreements, safe country rule (e.g. in Dublin Convention and Dublin II regulation), minimum procedural and qualification directives on asylum), extra-EU transit-zone for protection seekers, the common return policy and SIS, VIS and other databases systems regarding its execution, this extraterritorial effect of the Community law must contend with *undemocratic traditions, weak respect for human rights, and less developed judicial capacity*.

In this context, the *reaction of adjacent and candidate states (including the Schengen candidates)* requires specificity. They also developed one-sided legislative, administrative measures to limit the negative effects of return, border and visa regimes, such as:⁹

- a. ethnic preferences in migration regulation (e.g. in naturalisation, trans-border nationality status for minorities, dual citizenship)¹⁰
- b. liberal visa practice that results in the continual irregular migratory movements of visitors, labourers, suitcase traders, students, or

⁸ COM (2001) 437 final

⁹ Judit Tóth: Kin-minority, Kin-state and Neighbourhood Policy in the Enlarged Europe. *Central European Political Science Review*, Nr. 17. 2004. 14–25.

¹⁰ Kántor, Zoltán et al. (eds.): *The Hungarian Status Law: Nation Building and/or Minority Protection*. Sapporo: Slavic Research Centre, Hokkaido University, 2004.

- c. withdrawal of passport of overstayed or other illegal nationals in Member States (as occurred in Bulgaria and Romania).¹¹

It is highly controversial: extraterritorial effect of the EC law provokes illiberal, unconstitutional laws and practices in acceding countries.

For instance, though initially tolerant, Bulgaria's dual citizenship policy has tended more frequently towards selectivity and exclusivity in its perception of Bulgarian and non-Bulgarian dual citizens' participation in local political culture. In contrast to Turkey's model of kin minority protection, dual citizenship status has tended to mean a type of nation building tool for post-communist Bulgaria. As in other Balkan countries, Bulgarian citizenship continues to preserve its deep ethnic content and serves to strengthen the spirit of the ethnic majority by emphasizing a sense of national belonging and solidarity. From this point of view, it is an important subject for domestic politics as well as an impediment for the development of a successful model for kin-minority protection that could later be employed by Turkey. Further research must deal with the ramifications of dual citizens' political participation and cross-border exercise of political (voting) rights. After 1989, cross-border developments between Bulgaria and Turkey demonstrated that interactions between cross-border actors – such as migrant associations, twin municipalities, minority parties and local governments involved in cross-border elections and economic relations – may extend into a new kind of extraterritorial social-space that is linked to dual-citizenship rights and responsibilities. This dual structure could also serve as a basis for further development of cross-border relations, economic and cultural cooperation, modernisation, and a permanent interdependency between two states in the accession process.¹²

¹¹ Angelina Tchordadjijyska: "Irregular Migration and Borders in the Process towards Accession: The Bulgarian Experience" conference paper on Challenge – Changing Face of Liberty and Security in Europe, Malta 10–11 December 2005.

¹² Nurcan Özgür-Baklacioglu: Dual Citizenship, Extraterritorial Elections and National Policies: Turkish Dual Citizen sin the Bulgarian-Turkish Political Sphere. In Osamu Ieada et al. (eds.): *Beyond Sovereignty: From Status Law to Transnational Citizenship?* Sapporo: Slavic Research Centre, Hokkaido University, 2006. 319–358.

Regional Policy

As early as 1957, the need to promote balanced development was recognized. In the preamble to the Treaty of Rome, it was recognized that balanced development could only be achieved by reducing the economic gap between regions and assisting the most backward states alleviate their structural imbalances. Art.2-3 of the Treaty states that its tasks include the promotion of harmonious, balanced and sustainable economic development, high levels of employment and of social protection, improvements in the standard of living and quality of life, and economic and social cohesion and solidarity among member states. Disparities between the development of various regions (Art.158-162) are challenging solidarity, Community support systems, and budgets, *particularly for those states in the peripheries of the Europe's external borders*. The European Regional Development Fund, Social Fund, Agricultural Guidance and Guarantee Fund, Cohesion Fund are instruments designed to accomplish a tangible regional policy and may offset developmental gaps. Enlargement is expanding to countries whose economic and social conditions are often worse than in the least developed regions of the old member states. In 2003, their GDP's ranged from 41% of the EU average in Latvia to 215% in Luxemburg. In all the new member states, per capita GDP is less than 90% of the average in the 25 EU member states; it is only half of this figure in Poland, Latvia, Lithuania, Estonia, Romania and Bulgaria it is only half of that.¹³ As the political centre of gravity is shifting to the east towards the major support users, this fact urges policy makers to rethink the whole cohesion policy.

More than 5% of the Structural Fund is for cross-border, interregional cooperation (Interreg III), sustainable development of urban areas in depression (Urban II), regional development (Leader+) and anti-discrimination measures in the labour market (Equal). All of them are required to account for *local needs and initiatives*.

Despite public perception – for instance, in Romania – *the EU's Regional development system has never served for framework of minority issues*. Regional development structure and regulation are *unstable* inasmuch as eight developing regions are founded upon the optional participation of local authorities and/or settlements. Even though participating

¹³ <http://europa.eu/scadplus/leg/en>

settlements were finally enlisted in the Act passed in 2004 in order to avoid ad hoc regionalisation, absence of a regional constitutional position and a doctrine of state unity that centers around the concepts of state power and fiscal centralisation but is *without genuine local self-governance* significantly influences the future of border zones – even including those well defined areas populated by ethnic minorities.¹⁴ For this reason *cross-border cooperation and euro-regions are considered as a means to prevent territorial isolationism*, to promote cultural reconstruction, and – finally – to enhance economic development for peripheral areas.¹⁵

Other compensatory measures in the borderless area

Enlargement has improved in direct relation to the FSJ and ENP and indirectly through the remapping of regional and cohesion policies previously based upon security rationale. Most of these instruments and their consequences must be accepted by new member states. This includes the acceptance of the primary expectation: no reduction in the existing level of EU security after its further enlargement. In addition to the aforementioned changes, *how would EC law contribute to minority protection* in the face of restrictive external border control, visa policy and immigration regime?

Inside the EU, anti-discrimination legislation and a newly outlined monitoring and sanction system is commonly accepted but has yet to prove itself in this context. The Constitutional Treaty¹⁶ contains a reference to the rights of minority persons that shall be respected as common value of the Union (Art. I-2); however, the Council is not entitled to adopt measures for its execution. This was received in Hungary as a mark of its success in regards to its commitment to national minorities' rights. While this adopted plain term of minority is open to interpretive speculation, it is intended to mean the internalisation of an external norm.¹⁷ Furthermore,

¹⁴ Veress Emőd: A regionális fejlesztés szabályozását meghatározó tényezők Romániában. *Kisebbségkutatás*, Vol. 15, Nr. 1, 2006. 14.

¹⁵ Alexandru Illies and Marius Tatar: Euroregions with territorial Romanian participation. In Süli-Zakar István (ed.): *Tájak, régiók, települések – Tisztelegés a 75 éves Enyedi György akadémikus előtt*. Debrecen: RKK, 2005. 51–57.

¹⁶ Treaty establishing a Constitution for Europe, OJ C310, 16 December 2004.

¹⁷ Balázs Vizi: The Unintended Legal Backlash of Enlargement? The inclusion of the rights of minorities in the EU Constitution. *Regio. Minorities, Politics, Society*, Vol. 8, 2005. 87–108.

the *Art II-81 of the Constitutional Treaty* has a wider scope than Art.13 of the Treaty, insofar as it mentions grounds for discrimination – namely colour, social origin, genetic features, languages, political or any other opinion, membership of a national minority, property and birth – which are omitted from Art.13. Regrettably, this broader concept has not been translated into a legally-binding, practical application.

Outside the EU, accession criteria – including the handling minority issues – most directly influence candidate states but have not structurally affected certain minority communities, especially Roma communities.¹⁸ From the recent compensatory measures there are two that appear as if they will be highly influential in the long term.

1. Proposed European Parliament and Council Regulation stipulating rules *for local border traffic at member states' external land borders* intends to amend the Schengen Convention and the Common Consular Instructions.¹⁹ Despite the Commission's proposal, the European Parliament supported more flexible legislation that was *aimed at the social, cultural and economic or family visits by neighbours*.²⁰ Accordingly border residents may cross the border, if they
 - a. have a unified crossing permit with a photo of the holder; this is valid only in the border area (determined by the name of settlements, administrative units by the bilateral agreement within 50 km radius around the borderline) for one to five years;
 - b. have documents proving that they are registered border residents who have lived at least one year in the border area and have provided reasons for frequent border crossings. These documents must also demonstrate that they have a sufficient means of subsistence;
 - c. are not persons for whom the Schengen Information System (SIS) has been alerted (*persona non grata*); and

¹⁸ Ernő Kállai and Erika Törzsök (eds.): *A Roma's life in Hungary – Report*. Budapest: Public Foundation for European Comparative Minority Research (2000, 2002, 2003) www.eokik.hu, EUMAP (2001, 2002) *Minority Protection in the EU Accession Process*. Report of the EU Monitoring and Advocacy Program of the Open Society Institute, Budapest (2001, 2002)

¹⁹ COM(2005)56 final

²⁰ 16 February 2006. www.bruxinfo.hu

- d. are not deemed to be a threat to public order, security, public health or international relations.

They may stay in the border area for up to three consecutive months (without entry and exit stamps), but the precise duration shall be defined in bilateral agreements. Unless a bilateral agreement indicates that the responsible belongs to another local body, consular offices shall issue the crossing permit. Its fee will be equivalent to those of a short-term multiple-entry visa; however, member states may reduce or even waive it. Member states may *conclude agreements on local border traffic* with neighbouring third countries or maintain existing agreements provided that these agreements comply with the Regulation. Furthermore, they must ensure that third countries apply *reciprocity* and, thereby, grant equivalent treatment for EU citizens wishing to travel within its border area. What would be the advantage of these bilateral agreements for border residents? They can cross at the border crossing points open only to border residents, at ordinary border crossing points in special locals, or outside the crossing points during fixed hours if they are not subjected to a visa obligation.

On the other side, member states shall enforce effective, proportionate and dissuasive penalties in case of misuse of local border traffic regimes – for instance, through keeping up regular second-line, in-depth country checks on external borders or frequent usage of readmission agreements.

To summarize, border-crossing for border-zone residents would be more flexible than the original Commission proposal of 2003 and late, under the influence of enlargement, in 2005. For this reason MPs from Hungary warmly welcomed the *“beneficial regulation of local border traffic as a new instrument of kin-state and kin-minority relations that compensated for the rigidity of the Schengen acquis.”*²¹

Still, flexibility of border crossing has never been interpreted as a reduction in the attained level of security. For this reason, a compromise between Russia and the EU was difficult to reach. Finally, after a five year negotiation period,²² Mr. Frattini and Mr. Ivanov signed an Agreement on visa facilitation and readmission in October 2005. Drivers,

²¹ Gál Kinga, 16 February 2006. www.bruxinfo.hu

²² 13 October 2005. www.bruxinfo.hu

businessmen, diplomats, students or journalist benefit from the issuing of multi-entry visas, and other Russian citizens enjoy a more simplified and expedited visa procedure for 35 euro fee. Visas are free for disabled persons, relatives of EU nationals and pupils. Readmission provisions by Russia for illegal migrants (citizens and third country nationals) may come into force in 2008 as a price for facilitated movement from Russia to the EU. This will also provide adequate time to conclude similar agreements with southern neighbours. This is just another example of the extraterritorial impact of EC law through a deportation chain.

2. The *European Parliament actively supports the protection of minorities and anti-discrimination policies in an enlarged Europe*. Although the definition of minorities and standards for minority rights are neither exhaustively listed nor accepted, two recent documents²³ summarise how to proceed.
 - a. There is a difference between the protection of minorities and anti-discrimination policies. Equal treatment is not a basic right or a privilege while all forms of unlawful distinction violate dignity, human rights and equality before the law. For this reason national minorities' protection is based on the preservation of richness and diversity of Europe;
 - b. Art.18 of the Treaty, which deals with freedom of movement and the right of residence, could be a substantial basis for facilitating the movement of people who are member of minority groups, thereby, avoiding isolation, the creation of new *ghettos* or forced assimilation;
 - c. Political parties and NGOs play a key role for social, political and cultural integration of minorities – including their adequate representation in decision-making process at local, regional and national levels. Although it is necessary to clearly distinguish between national minorities, immigrants and asylum seekers, a tolerant attitude in society and inclusive, coherent minority and integration policies that are based on dialogue is needed. Effective participation in the decision-mak-

²³ EP resolution on the protection of minorities and anti-discrimination politics in an enlarged Europe, 8 June 2005. (OJC 124 E/25 May 2006) and on non-discrimination and equal opportunities for all – a framework strategy, 14 June 2006. www.euparl.europa.eu/sides/

- ing process that is based on the principles of subsidization and self-governance – or autonomy – of minorities follows the best practices in the EU. This would overcome double standards established by the Copenhagen criteria, on one hand, and the lack of any rules in member states on the other;
- d. Minority issues must be better emphasised and provide greater attention to public opinion and authorities. In other words, the issue must remain an organic component of the accession and negotiation process;
 - e. To prevent segregation, social exclusion, and the under-representation of minorities in certain jobs an affirmative action plan that focuses on training, education and employment instruments should be implemented;
 - f. As there is evidence that ethnic minorities are five to six times more likely to be the target of the police action and identity checks, the European Parliament warns against the possible discriminatory side-effects of measures against crime and terrorism,. Moreover, the pending Framework Decision proposition, which is intended to combat racism and xenophobia, would penalise violence motivated by racism and xenophobia in each member state;
 - g. There is an urgent need for migrating minorities to acquire citizenship while ensuring that integration process does not become forced assimilation or undermine group identity. Principle of *jus soli* and genuine contact (i.e. living in the territory of the receiving country) of migrants in the process of acquiring citizenship is underlined;
 - h. Without official statistics on ethnic and national origins, language or religion a true insight into discrimination and the success of policies aimed at preventing it cannot be successfully evaluated. If it is in harmony with data protection directive, anonym and sensitive personal data can be collected for statistics;
 - i. Proper transposition of the two directives on equal treatment will be enforced in each member state that are subject to infringement proceedings for violating EC law, regardless of being an old or new member state;

- j. To raise awareness of the various forms of discrimination through positive actions and programmes, 2007 and 2008 will be the European Years of Equal Opportunities and of Intercultural Dialogue respectively.

This summary attempts to prove how *lawfully residing migrants and EU citizens are subjects of anti-discrimination and equal treatment policies that are isolated from external affairs*. In terms of enlargement, neighbourhood relation and border-crossing in practice or action plans, the radiation of EU values has not been recognised as being a too sensitive or security-based topic.

The Hungarian case

Hungary's Schengen preparation began six-seven years ago. As the Amsterdam Treaty and its Protocol (1999) prepared to launch Schengen measures into the EC law structure, the "*patchwork of the Schengen regime*" has been underscored because of its focus on rather varied fields. Among the main measures of the Schengen acquis are:

1. the removal of checks at common borders and their appearance at external border checks;
2. a common definition of the rules for crossing external borders as well as uniform rules and procedures for controls there;
3. separation in air terminals and ports for people travelling within the Schengen area and for those arriving from countries outside the area;
4. harmonisation of the rules regarding conditions of entry and visas for short stays;
5. coordination between administrations on the surveillance of borders (liaison officers and harmonisation of instructions and staff training);
6. a definition for carriers in the measures proposed to combat illegal immigration;
7. requirement for all non-EU nationals moving from one country to another to declare themselves;
8. the development of rules for asylum seekers;
9. introduction of cross-border rights for police force surveillance and pursuit in the Schengen States;

10. the strengthening of legal cooperation through a more expedient extradition system and a more rapid distribution of information about the implementation of criminal judgments;
11. the creation of a Schengen Information System (SIS) that allows all border posts, police stations and consular agents from Schengen group Member States to access data on specific individuals (e.g. persons under the expulsion order or on the list of *persona non grata*) or on vehicles or objects which have been lost or stolen.

*Beyond this, broad substantive, legal and geographical fragmentation of measures continue unabated because of differences in legal foundations, various decision-making processes, and competencies of the ECJ and other participating states (observers: Island, Norway, actual and acceding member states; outsiders: Ireland, UK; partial participants: Denmark and Switzerland as EEA member). While the Schengen *acquis* (Executive Committee's measures and instruments) had to be transplanted into the EC law's legal foundations and the information system had to be enlarged to account for absorption of ten new member states in the EU's infrastructure, the *coordinating body of preparatory work* had to be developed in Hungary. The Ministry of the Interior was responsible for this legal harmonisation and adaptation to transformation in rules and infrastructural development.²⁴ *This had to be done without impacting the ability to assess kin-state and kin-minority relations or any kind of border-crossing scenario.**

The Accession Treaty (2004) defined certain rules of *acquis* that had to be immediately implemented after accession; the others could be left until after an evaluation test and Council consent (Art. 3–6). In other words, Hungary had to accept unreleased, unknown secondary rules, measures and ECJ's case laws during the accession (ratification) period. While pre-accession funds – such the Schengen Fund (2004–2006) – require precise development aims, there has been a constant game of “shooting at a mobile target” that has made the harmonisation and infrastructure planning more difficult. In 2005, the *avis* on horizontal and other Schengen related fields had to be completed, and local assessment of the implementation of Schengen *acquis* started in 2006. Because of technical problems, full membership cannot occur before late 2007, and

²⁴ Ministerial orders determine division of work and action plan of the preparatory Nr. 20 of 2000, Nr. 17 of 2001, Nr. 33 of 2005 and Nr. 10 of 2006.

the Council will determine this after it finally assesses the preparation and EU's readiness to absorb new Schengen members. The delayed IT capacity building in the EU, changing rules for harmonisation, and absence of practical Schengen advantages – which has been caused by partial implementation of *acquis* in the period between transition and full membership – may explain general public's disappointment.

Furthermore, there is no relationship between the temporary limitation on free employment in old member states and the introduction of Schengen *acquis*. Frustration over limited manoeuvrability in the old member states' labour markets and within neighbouring EU states has become apparent among Hungarian nationals and minorities across the borders. Because the deadline of full membership of Romania and Bulgaria in the Schengen regime has not been known, *the disappointment of border-zone inhabitants* both within and outside of Hungary will continue for an indeterminate period of time. It means a longer transitory period for the development of external border surveillance along Romanian and Bulgarian frontiers. For instance, when the *length of land-border, low number of crossing points and their relatively bad location* is taken into account, Romania's gradual integration may hinder border-crossing into Hungary.

Table 1: Characteristics of Hungarian Border Sections and Border Stations, 2005²⁵

Border Sections	Length of border section (km)	Waterway border crossing points	Railway border crossing points	Highway		Average distance between highway border crossing-points (km)
				international (permanent)	Local (temporary)	
Austrian	356.2	1	4	10	6	22.3
Slovak	681.0	1	6	14	3	40.1
Ukrainian	136.7	–	1	5	1	27.3
Romanian	447.8	–	6	10	–	44.8
Serb	174.4	1	2	4	1	34.9
Croatian	344.6	1	3	6	–	57.4
Slovenian	102.0	–	1	6	1	14.6
Total	2242.7	4	22	55	11	34.0

²⁵ Source: www.b-m.hu/horweb/hor_szerv.nsf/atkelo_viszonylat

The Interregional, cross-border development and cooperation is supported in Hungary, Slovenia and Slovakia by the Interreg IIIa, in Romania by the Phare CBC, and in Ukraine by the Tacis. In 2004, Hungary participated in eight Interreg programmes with the surrounding countries, regions; between 2004 and 2006, Hungary received 68.7 million euro in support from the Interreg.²⁶ The euro-regions involved in this cooperation are large enough not to affect ordinary people. Micro-regional collaboration should have been replaced by euro-regions, but settlement structures, local administrative units, and their competence are different – for instance, micro-regional units in Hungary have no partners in Ukraine and Romania. Although the existence of euro-regional collaboration, structure and activities are not well known, this gap can be bridged by cultural co-operations that dominate on the external CBC. According to surveys in 2002 and 2004²⁷ *perceptions of and expectations towards regional, cross-border co-operations on both sides of the border differ greatly*. In Ukraine, these attitudes are determined by employment opportunities, well-being of inhabitants that is influenced by the openness of borders, and – in times of economic recession and high unemployment – the advantage of border proximity. Why do Ukraine passengers travel to Hungary? Common answers have been in order to secure a living, (illegal) employment, suit-case trading, or “living off the borders.” Those in Hungary have a different perception: Ukraine symbolizes refugees, increasing traffic and pollution, dense masses congregated at crossing points, and an absence of Ukrainian national investments in these border-zones. In Romania, the name of the CBC is accompanied by conceptions of a kin-state, gasoline tourism and employment. This positive outlook is valid for only 30% of Hungarian respondents as they discuss their attitudes about the Romanian border area. Assessment of CBC is greatly influenced by ethnic-composition of twin-settlement’s inhabitants of twin-settlement in Romania. Migratory movement is directed by seasonal work and the acquisition of Hungarian settlement permits.

²⁶ A határokon túli (Kárpát medencében élő) magyarság gazdasági alapjainak és társadalmi kohéziójának támogatását célzó lépések előkészítése, valamint ezek lehetséges kapcsolódási pontjainak bemutatása (2004). www.eokik.hu

²⁷ Baranyi Béla (ed.): *Az Európai Unió külső határán – Együttműködések Magyarország keleti határai mentén*. Debrecen: MTA Regionális Kutatások Központja, 2005.

According to Hungarian experiences on the Romanian and Ukraine border regions, the following circumstances have either hampered or supported the CBC's position.²⁸

It is obvious from the aforementioned plan that negative factors and concerns are much stronger than support for and positive aspects of cross-border cooperation in this peripheral and depressed region. Naturally, perceptions do not necessarily have strong correlations with statistical data, but public discourses are partially independent from hard facts and figures. Hungarian border-zone residents have more concerns; however, they live in a supported area. The absence of common competencies and low foreign capital investment in border zones results in only ad hoc, less institutionalised or cultural cooperation. Finally, there is *severe assessment inconsistency in regards to border checks*: rude border guards, difficulty reaching and using crossing points, or corruption may be more demanding obstacles in CBC than visa requirements, migration restrictions, and border-checks for passengers or professionals.

However, border-checks will implement the recently adopted Code of Border Crossing²⁹ as a “*common corpus of rules on external border control*” no later than 13 October 2006. Although “Member States should ensure that control procedures at external borders *do not constitute a major barrier to trade and social and cultural interchange*,” the preamble indicates makes *no reference to a lawful distinction* among third-country nationals with cultural or social ties to a destination country. As defined in Art 5. for stays not exceeding three months per six-month period, the entry conditions for third-country national shall meet the following requirements:

1. s/he is in possession of a valid travel document or documents authorizing him/her to cross the border (e.g. residence permit);
2. s/he is in possession of a valid visa, if it is required by the relevant Council Regulation;
3. s/he justifies the purpose and conditions of the intended stay;
4. s/he has sufficient means of subsistence, both for the duration of the intended stay and for the return to the country of origin or transit to a third country into which s/he is certain to be

²⁸ Süli-Zakar István (ed.): *Cross-border Co-operations – Schengen Challenges*. Debrecen: MTA RKKI, 2004.

²⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

Table 2: Perception on CBC between Hungary, Romania and Ukraine (2002–2004)

<i>Hampering conditions</i>	<i>Supporting conditions</i>	<i>Concerns by local residents</i>	<i>Winners in CBC</i>
Poor conditions of roads and railways	Kin-minority communities living in border zone	“Schengen as wall would exclude the developed world”	State, organisations at national level, big cities
Less developed telecommunication system (in Ukraine)	Twin-settlements led by kin-minorities	Immigration of more labour force, further workers (to Hungary)	Deserted, empty settlements (aging) are re-inhabited by immigrants (in Hungary)
Behaviour of officers of customs and border guards	Joint history	Environment pollution in growth (from Ukraine, Romania)	Civil organisations obtaining extra money from the CBC supports
Low number of crossing points, neck of the bottle effect and hardship in crossing	Existing inter-governmental (bilateral) relations	Growing rate of inter-ethnic marriages	Rich/upper society
Visa requirement (for Ukraine citizens)	Positive bias relating to inhabitants living in neighbourhood (e.g. they work hard, they are honest, friendly)	Increase of offences due to porous borders and superficial visa procedure	Entrepreneurs, managers, economic partners
Corruption, missing transparency in authorisation, political instability	Joint fight against organised crime by authorities	Growing import from neighbours to the border zone (competition to local entrepreneurs)	Public order and its fans+
Knotty procedure of exporting	Intensity of cultural relations (instead of economic co-operation)	Restrictive migration regulation of the Union	Border zone in limited extent
Quotas, customs and duties (for Ukraine)	Policy on trust building and awareness raising		EU
Frequent changes of economic rules	Supposed reintroduction of local border traffic (in Ukraine the price of passport is high)		
Low spending power Small competence, manoeuvring room and financial power of local settlements Deficit of (highly) qualified experts Less developed, absence of civil sphere			

- admitted; or is in a position to acquire such means lawfully taking into account the average prices in the member states concerned for board and lodging in budget accommodation, multiplied by the number of days stayed; declaration of sponsorship or invitation letter may also constitute indication of sufficient means of subsistence;
5. s/he is not person for who an alert has been issued in the SIS for the purposes of refusing entry;
 6. s/he is not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds;
 7. s/he can verify through supporting documents the fulfilment of the above-mentioned mentioned conditions.

Third-country nationals who do not fulfil one or more of the aforementioned conditions may be authorized by a Member State to enter *on humanitarian grounds, in the name of national interest or because of international obligations*. Ethnic minorities or cultural proximity of passengers is not included in this series. Cross-border movement at external borders shall be subject to border-guard checks that demonstrate respect for human dignity and occur without discrimination. Entry and exit checks may also cover the means of transport and objects in the possession of the persons crossing the border, where appropriate, by using technical devices and by consulting, in relevant databases, information exclusively about stolen, misappropriated, lost and invalidated documents; the validity of the document authorizing the legitimate holder to cross the border; and of the presence of signs of falsification or counterfeiting. Third-country nationals subject to a thorough, second-line check shall be given information on the purpose for, and procedure of, such a check. The second line check” means a more extensive check that may be carried out in location that is removed from the location of the first-line check.

Provisions should be made for easing external-border checks in the event of *exceptional and unforeseeable circumstances in order to avoid excessive waiting time at borders crossing-points* (Art.8). The systematic stamping of documents of third-country nationals will remain an obligation

when border-checks are relaxed. Such easing of checks shall be *temporary*, adapted to the circumstances justifying it and introduced gradually.

Avoiding a major barrier to social and cultural interchange, perhaps this summary may cause friction between the preamble and absence of lawful distinction among visitors and passengers. Once *common visa fees* are upgraded and *the minimum amount of required material coverage* per day per capita is determined for third country nationals, a *social iron curtain will be in place*.

In favour of kin minorities living in third countries, Hungary *voted against the Code on Border Crossing*. Although adopted by the Council with a Slovenian abstention, the Hungarian refusal could draw attention to the regulation on minimal financial cover required per capita at entry that depends on the duration and purpose of a third-country nationals stay. Today, its threshold is four euros per person because of kin minorities' lower standards of life. The state secretary of the Ministry of the Interior expressed Hungary's interest in introducing the Code as slowly as possible, even stretching the introduction past the deadline. "The risk of EC law infringement procedure is not a high price, it takes at least one year, and Hungary would finally implement its provisions at the moment of accession of Romania."³⁰ Moreover, its introduction would be overlap with commencement of local border traffic regulation providing facilitated entry for Ukrainian and Serbian border-area inhabitants.

Together with Greece and Sweden, Hungary also refused a *proposal raising the visa fee of short-term and transit Schengen visa*. In opposition to the French proposal – which references newly introduced biometric identification techniques and higher prices for the complicated visa procedure – Hungary, Greece, Poland, Czech Republic, Slovakia, Malta, Cyprus and the Baltic States emphasised from the outset the proposition's exclusive economic consequences and disruptive effects on neighbourhood policy. 60 euros, as opposed to 35, was denounced as *economic iron curtain and extreme burden for kin-minorities*. Additionally, the Russian visa-facilitation agreement as well as the one planned with Ukraine takes into account the poor conditions of these travellers; Hungary's refusal was accompanied by the intention to gain the time necessary to conclude

³⁰ Juhász Gábor state secretary (Ministry of the Interior) 23 February 2006. www.bruxinfo.hu

agreements on visa facilitation between the EU and third countries that will be based on the Declaration adopted in Thessaloniki on EU's perspective for West Balkan states and in order to reach a consensus about preferential groups in visa fee payments.³¹ Greece wanted each affected West Balkan country to be specified, the others urged enumeration of all exempted groups (such as minors, students and researchers).³² Although the final version of the proposal entitles the Commission to negotiate visa facilitation with West Balkan states in near future, Ukraine is exempted from increased visa fees, and children under 6, students, teachers and researchers are exempted from fee without having to obtain prior consent. The price of visa facilitation, or limited visa fees, is also common: Ukraine and West Balkan states have concluded readmission agreements with the EU. As was promised for reluctant Hungarian representatives, the Council will place the visa fee on the agenda in case of negotiation failures.³³

It was a confrontation solely between Hungary and the Union in regards to kin-minorities in a general election campaign in spring 2006. While kin-state and kin-minority relations have become an organic part of domestic and foreign policy since 1989, Hungary *at first tested the sensitivity and flexibility of old member states in border crossing issues* by referencing the EU's neighbourhood policy and external relations principles. The results have been modest in the short term, but when coupled with local border-traffic regulations, it is a promising perspective.

Conclusions

The Schengen regime is fundamentally about re-interpreting national borders and their meanings in regards to the movement of persons. As it does so, Schengen's philosophy has been that national sovereignty is no longer a controlling principle for the movement of persons across state borders. Instead, border-control has been designed around the absence of borders for some (i.e. those coming from other sovereign states which are part of the system) and has been reinforced for others (i.e. those coming from other sovereign states outside of the system). This underlying philosophy directly conflicts with a principle that has

³¹ *Népszabadság* daily newspaper 28 April 2006.

³² 24 April 2006. www.bruxinfo.hu

³³ 2 May 2006. www.bruxinfo.hu

motivated the border controls in many CEE countries: kin minorities and persons coming from kin states should have privileged access to the territory irrespective the state's Schengen status. The transformation of border controls from a system based on an individual's ethnicity to one based exclusively on the individual's provenance (i.e. where is he or she coming from) creates new frictions. This is what I have examined in this article.

EU enlargement places *pressure both on interpersonal and institution-ised kin-states/kin-minority relations*. While kin-minority and kin-state relations have become *strategic* topic for almost all stakeholders in nation-building, security and prosperity context including interstate relations, *new member states have the most at stake and can only have limited influence on EU policies and legislation*. Among the new member states, *a joint policy representing common interests* related to border crossing, flexible border crossing, local border traffic, visa requirement and other FSJ, ENP and regional development instruments *has not established*, but good neighbourly relations have strongly manifested themselves.³⁴ The EU has been forced to develop an understated minority policy through *securitization*, which attempts to avoid importing minority conflicts and the entry of poor migrants regardless of their social ties, cultural proximity or ethnic origin. Thus, accession criteria, reference on minority protection in the Constitutional Treaty, local border traffic rules and ENP have been developed as compensatory measures. Nevertheless, a flexible border crossing system has been postponed since the current security priority is stronger than kin-state and kin-minority relations. This may fuel *anti-European sentiment* in public discourses (for instance, in the form of Schengen syndrome); however, visa procedures are still rather inconvenient given that the screening process of member states results in a refusal rate that oscillates between 2% and 40%.³⁵

The *disruptive effects of improving border controls and migration management* systems at future external-borders should not be overestimated in regards to the relations between the EU and its neighbours. If there are more rigorous personal checks on every individual seeking entry to the

³⁴ Piotr Kazimierkiewicz et al.: *The Visegrad States on the EU's Eastern Frontier. Consular and Visa Co-operation in East Central Europe for Residents of Ukraine and Moldova*. Budapest: Centre for Policy Studies, Central European University, 2006.

³⁵ Jakub Boratinski et al.: *Visa Policies of the European Union Member States – Monitoring Report*. Warsaw: Stephan Bathory Foundation, 2006.

EU and if all goods crossing the external frontier are subject to detailed physical examination, the result would be disastrous. But if intelligence and the filtration of suspect individuals is enhanced, disruption would be kept to a minimum. All too frequently, the JHA aspect of the enlargement process – particularly the requirement for acceding states to adopt Schengen *acquis* – has been depicted in a completely negative manner.³⁶ Images are conjured of a *Fortress Europe* or of a *new Iron Curtain* dropping across Eastern Europe and *disrupting relationships between countries that have hitherto enjoyed close ties*. The reality is far from this. The Union's objective is to construct an area of peace, stability and prosperity that extends beyond the borders of the enlarged Union. However, unless flexible ways are introduced for handling local border traffic, citizens of the relatively poor states that are adjacent to the EU are not likely to believe in this benign vision. Despite pressure to upgrade the external-border management, progress must be made in regards to *trust, efficiency and improved co-operation is necessary*.

Inversely, *European identity* and regional, kin-minority, national identity has also been affected. European citizenship suffers from a deficit of individual rights including the rights of (national) minorities' to be different from the majority. Although cultural diversity is respectable value and aim in the EU, its instrumental reality urgently requires remaking European identity to be more multi-valence and flexible. Duality of rights and identity is, after all, a part of the future.³⁷

³⁶ Malcolm Anderson and Joanna Apap: *Striking a Balance between Freedom, Security and Justice in an Enlarged European Union*. Brussels: Centre for European Political Studies, 2002.

³⁷ Enikő Horváth: All things European: Citizenship and identity in search of meaning. *Regio. Minorities, Politics, Society*, Vol. 7. 2004. 37–61.