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Evolution of Schengen: an Example of Enhanced Cooperation and Differentiated Integration Model within the Area of Freedom Security and Justice

Abstract: The Amsterdam Treaty has established the Area of Freedom, Security and Justice (AFSJ). Since then, it is an example of a policy-making area creating its way quickly and comprehensively. However, in this paper the main dilemma is to what extent the Schengen development has modified the framework of AFSJ and how it adapts in this policy while being an example of enhanced cooperation and differentiated integration model. Developments in this area are part of a realisation that European states need to act together to better face new challenges to peace and internal security, while ensuring respect for democracy and human rights. It is important to add, that cooperation in the Area of Freedom Security and Justice has been driven by forces different from that seen in other policy areas.

Key words: *Schengen; European integration; internal security; area of freedom; security and justice; smart borders.*

Introduction

The European Union is making strong inroads into areas of security traditionally reserved to states (Cierco & Tavares de Silva, 2016, pp. 2–3), especially into internal security. The Area of Freedom, Security and Justice (AFSJ) has seen significant policy developments since the late 1990s (Kaunert & Leonard, 2010, p. 143). Some scholars underline the fact that there has been no other example of a policy-making area

creating its way so quickly and comprehensively to the centre of the treaties and to the top of the EU's policy making agenda (Monar, 2000).

However, such dynamism seems justifiable and might be explained by the theory. In this case, the „spillover-enlargement effect”¹ refers to the real and perceived criminal justice challenges presented by the Common Market and the Schengen area that have been magnified by the expectation of the widening membership of the EU. Here, „spillover” refers to how cooperation in one area of EU public policy can contribute to more integration in another. In this regard, EU cooperation on free movement has helped shape the perceived need for more cooperation to manage borders and fight transnational organised crime. This has been intensified by the constant prospect in the last decades of expanding the Common Market and widening the passport-free Schengen area (Kaunert et al., 2013, p. 274).

Therefore, the subject of the analysis is the Schengen cooperation and its development. In order to define the research problem we must consider the Schengen system modifications to the framework of Area of Freedom, Security and Justice. Accordingly, the research question is: to what extent the Schengen cooperation is an example of AFSJ's enhanced cooperation? The main hypothesis is formulated as follow: the more advanced is Schengen cooperation within the AFSJ, the more differentiated integration model it represents.

Area of Freedom, Security and Justice

Subsequently, it was the Amsterdam Treaty that established the Area of Freedom, Security and Justice, which replaced the policy area of Justice and Home Affairs (JHA). While the Maastricht Treaty had only described common areas of interest in which cooperation could happen in order to attain other EU objectives, the Amsterdam Treaty made the concept of „Freedom, Security and Justice” an objective in itself for the EU. In addition, the notable achievement of the Amsterdam Treaty was the inclusion of Schengen into the framework of the EU (Kaunert & Leonard, 2010, p. 145).

Moving forward, over the past decade, increased emphasis has focused on a dimension of European cooperation also designed to contribute to the goals lauded by the Nobel Committee in 2012 – cooperation in the field of Justice and Home Affairs with the aim of preserving the Area of Freedom, Security and Justice. Developments in this sphere are part of a realisation that states within Europe need to act together to better face new challenges to peace and internal security, while ensuring respect for democracy and human rights when confronting these challenges collectively

¹ For more: (Rosenbaum, 2010, pp. 287–292); (Zito & Schout, 2009, pp. 1103–1123).

(Holzhacker & Luif, 2014, p. 1). EU Member States have thus decided to enhance their cooperation in a process driven by national bureaucracies. These state-centred accounts emphasise the resilience of nation-states, which is the EU as a device for attaining policy objectives that are unlikely to be achieved at the domestic level alone (Kaunert & Leonard, 2010, p. 144).

To continue to preserve the continent's security and stability pressure will increase on cooperation in policing, border security, immigration and judicial matters. The challenge is to create policies, institutions and implementation mechanisms in the policy area, both at intergovernmental and supranational level, which are not only effective and efficient but also uphold the continent's democratic principles and respect for human rights (Holzhacker & Luif, 2014, p. 3). The practical approach to such assumptions is Schengen cooperation which might be comprehended as an enhanced cooperation within the EU.

Enhanced cooperation² is a procedure where a minimum of 9 EU countries are allowed to establish advanced integration in an area within EU structures but without the other EU countries being involved (at least at the first stage). This allows them to move at different speeds and towards different goals than those outside the enhanced cooperation areas. The procedure is designed to overcome paralysis, where a proposal is blocked by an individual country or a small group of countries who do not wish to be part of the initiative.³

Enhanced cooperation rules after the Treaty of Lisbon states that acts adopted under the framework of such cooperation scheme are binding only for the participants. Most importantly, the TFEU sets out uniform rules for the establishment of enhanced cooperation in all sectors that do not fall within the EU's exclusive competence. This is because all member states previously agreed on a complete transfer of sovereignty in those matters. Therefore, allowing a group of member states to move further ahead than the EU, could be detrimental for the unity of the system (Cantore, 2011, p. 7). Furthermore, enhanced cooperation was designed as a tool for future integration at the general EU level, thus its regulatory scheme provides guarantees for members which are not involved and gives the EU political institutions (mainly the Commission and the Parliament) a crucial role in the approval of those schemes (Cantore, 2011, p. 4).

² It is worth to add that it is decided by qualified majority or by unanimity only in foreign and security policy. The Lisbon Treaty, Article 20 TEU and Arts. 326–334 TFEU.

³ EUR-Lex Access to European Union Law. (n.d.). Glossary of summaries. Enhanced cooperation. Retrieved September 13, 2016, from http://eur-lex.europa.eu/summary/glossary/enhanced_cooperation.html.

However it is worth to note, that cooperation in the area of Justice and Home Affairs has been driven by forces different from that seen in other policy areas. It is a sphere where the Council has taken the lead and the position of states and their leaders is paramount. Issues of state security and criminal law strike at the very heart of the state. This is not a policy area like the creation of a single market, where, according to Andrew Moravcsik's realist-oriented argument (Moravcsik, 1993, p. 4), economic interest of states in the EU may predominate. Nor is it like industry regulation, such as the example of REACH Regulation on chemicals, where lobbying at EU and member state level by industry and NGOs representing a variety of interests plays a significant role⁴. It is an area where cooperation is driven more by a response to events and where states and their leaders see cooperation as fruitful. Of course some of the initial impetus for moving cooperation within AFSJ forward came from the completion of the single market and the lifting of border controls under the Schengen Treaty. It facilitated not only the trade in legal goods and the movement of tourists and workers across borders, but also the movement of those involved in cross-border criminal activity and the trade in illegal goods. Increased migration to Europe has also been an impetus for policy-making in this field. What is more, development in this area have also been driven by terrorist threats to peace and stability facing the European continent (Holzhacker & Luif, 2014, p. 8).

Referring to the research problem, Monar sets forth three challenges for European action in this area (Monar, 2010, pp. 24–26). It is noticed, that the Justice and Home Affairs domain involves core functions of the state providing citizens with internal security, controlling success to the national territory, and administering justice which belong to the basic justification and legitimacy of the state, and is thus an area where “national sovereignty” is highly valued. In response, the institutional framework for policy-making in this field has focused on facilitating cooperation and coordination between member states, and not on the communitarian approaches used and available in other policy areas. Thus, the establishment of the three major agencies⁵ in this policy area, Europol, Eurojust and Frontex, focus on cooperation and coordination functions without executive operational powers. It is also worth to add, that the outputs of the policy-making institutions (Council and Commission) have relied on “soft governance” instruments, because proposing directives has been on mutual evaluation, scoreboards and common threat assessments (Holzhacker & Luif, 2014, p. 8).

⁴ For more: (Haverland, 2009, pp. 1–14); (Selin, 2007, pp. 63–93).

⁵ For more: (Kaunert, Leonard, & Occhipinti, 2013, pp. 273–284).

Schengen cooperation

Besides this collaboration on Justice and Home Affairs the Schengen cooperation, dealing with the removal of personal controls at the internal borders, was initiated in 1985 by five EC countries. This fragmented situation was somewhat simplified by the Maastricht Treaty which introduced a „Third Pillar”, dealing with all matters of Justice and Home Affairs. With the Amsterdam Treaty some parts of Justice and Home Affairs were moved into the supranational „First Pillar”: visas, asylum, immigration and other policies related to free movement of persons. Provisions on police and judicial cooperation in criminal matters were left in the intergovernmental Third Pillar. A Protocol integrating the Schengen⁶ *acquis* into the framework of the EU was annexed to the Amsterdam Treaty (Holzhacker & Luif, 2014, p. 4).

With the Lisbon Treaty (Treaty on the Functioning of the European Union – TFUE), all matters concerning the AFSJ are grouped together in Title V of Part Three.⁷ Most decisions in this area are now made according to the ordinary legislative procedure, with the Commission proposing legislation, the Council (by qualified majority) as well as the European Parliament (by simple majority) deciding on the legislation and the Court of Justice of the EU ruling on the legality of the acts (Holzhacker & Luif, 2014, p. 4).

Nevertheless, Schengen governance after the Lisbon Treaty required a revision⁸. It was notably necessary to take into account the new role of the European Parliament as co-legislator as well for the measures which had formerly been under the “third pillar” regime and the new role of the Commission. It was also necessary to limit the risk of national measures which could jeopardise the abolition of the internal borders checks by preparing at the same time an emergency procedure at EU level in case of problems at the external borders putting the overall functioning of Schengen cooperation at risk (De Capitani, 2014, p. 115).

The “Schengen area” now covers more than 4,300,000 km², stretching from the Arctic to the shores of the Mediterranean. In a world where, according to international law, an individual has the right to leave and to be readmitted into the territory of his or her country but another country is not obliged to give anyone access to its territory,

⁶ For more: (Zaiotti, 2011, pp. 19–46).

⁷ EUR-Lex Access to European Union Law. (2012, October 12). Treaty on the Functioning of the European Union: Consolidated version. Title V. Official Journal of the EU. C 326. Retrieved September 19, 2016, from <http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=celex%3A-12012E%2FTXT>.

⁸ For more: (Zaiotti, R., 2013, pp.161–176).

the existence of freedom of movement without internal border checks in the Schengen area is a quantum leap (De Capitani, 2014, p. 102). Implementation of four great freedoms of movement (Florica et al., 2010, pp. 367–378), including in particular the free movement of people and abolition of border controls at the internal borders of the Schengen area, as well as a simplified way of crossing the external borders of the EU are certainly one of the most important part of EU integration process. The abolition of border controls at the internal borders of the EU, i.e. the free movement of workers, goods and services are considered as crucial for the success of the single market or economic union of the countries members of the EU (Mahmutovic, 2015, p. 4).

The rise of freedom of movement rights in Europe now codified with the legal category of European Union citizenship represents a startling reversal of the historical tradition of state sovereignty. States have historically been defined in terms of insiders (citizens) and outsiders (foreigners). The new supranational rights supersede this traditional distinction by reducing or even removing the ability of European states to discriminate between their own citizens and those of other EU member states. Borders within the European Union still matter, but the remaining barriers to freedom of movement within ‘fortress Europe’ are practical rather than legal, and even they are rapidly disappearing (Maas, 2012, p. 233). Furthermore, necessity for common approach to the management of external borders arise among other things, from the fact that the abolition of internal border controls have increased security deficit within the Schengen area and therefore tried to find a solution that will compensate for this problem (Mahmutovic, 2015, p. 6).

However, two aspects of the freedom of movement of people showed largely difficulties in implementation. The first relates to the immigration aspect, i.e. the free movement of nationals of third countries and it involves the harmonization of national legislations in the field of immigration and asylum. The second is a classic police aspect (Occhipinti, 2015, pp. 234–258) relating to the harmonization of national criminal law provisions. Given that both aspects are associated with sensitive national interests, the implementation of freedom of movement would require one more precondition – to reduce the impact of nation-state concept, or inter-governmental approach in the governance of European integration (Thwaites, 2003, pp. 253–262).

What is more, integration of the Schengen acquis into the EU framework was successful even if it required two trade-offs, which are related to the main hypothesis. The first one was the need to split the Schengen acquis by applying the Community method to policies linked with borders, immigration, asylum and judicial cooperation in civil matters and by preserving the “intergovernmental” method for policies in the field on public security and judicial cooperation in criminal matters (formerly the “third pillar”). With these two dimensions being present at the same time in

real-life politics for several years, it was necessary to deal with the same political objective with parallel complementary measures adopted by different majorities in different institutional frameworks (the “first and third pillar”). Thankfully, this sort of resolutions drew to an end with the entry into force of the Lisbon Treaty and the merger of the so called third pillar with the ordinary regime. However, the measures adopted before the entry into force the Treaty in the context of the so-called “third pillar”, including those that were part of the Schengen acquis until December 2014 remained excluded from the “ordinary” legal regime, in particular from the control of the Commission and the Court⁹ unless changes occurred in the modified legislative framework of Lisbon. This raised the question of whether those measures, which were designed in a different historical moment, were truly compatible with the post-Lisbon institutional context (de Capitani, 2014, p. 110).

The second trade-off related to the research question was to define the Schengen system as “enhanced cooperation” between some EU Member States. It was an elegant solution designed, as the United Kingdom and Ireland would not be obliged to opt out from it. However, this definition, even if formally correct, has become somehow extravagant because, since the Treaty of Amsterdam, all new EU Member States have to accept all the Schengen acquis. But if an “enhanced cooperation” will exclude just a few of EU Member States, what would at the end be the exact scope of an “ordinary” cooperation? (de Capitani, 2014, p. 110).

Moving to the judicial sphere, even the Court of Justice of the EU jurisprudence shows increasing sympathy with this strange “enhanced cooperation”, the Court has rejected United Kingdom request to take advantage of new measures built on the Schengen acquis (such as the Visa Information System or Frontex) without accepting its basic rules (de Capitani, 2014, p. 110). The Court of Justice of the EU stated that the coherence of the Schengen acquis and of future developments thereof means that the States which take part in that acquis are not obliged, when they develop it and deepen the closer cooperation which they have been authorised to establish by article 1 of the Schengen Protocol, to provide for special adaptation measures for the other Member States which have not taken part in the adoption of the measures relating to earlier stages of the acquis evolution¹⁰.

This two trade-offs moved this consideration smoothly to the papers’ hypothesis related issue which is reflection on asymmetry as an instrument of differentiated

⁹ For more: (Stone Sweet, 2010).

¹⁰ EUR-Lex Access to European Union Law. (2010, October 26). Case C-482/08: United Kingdom vs Council. ECR 2010 I-10413. Retrieved September 15, 2016, from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0482>.

integration (Fossum, 2015, p. 800) in the current phase of the EU integration process also in the AFSJ sphere. Leuffen, Rittberger and Schimmelfennig (2013) have also defined the EU as a system of differentiated integration and have argued that differentiation is an essential and, most likely, enduring characteristic of the EU (pp. 1–13). Moreover, differentiation has been a concomitant of deepening and widening, gaining in importance as the EU's tasks, competencies and membership have grown" (Schimmelfennig et al., 2015, pp. 764–782). Against this background, asymmetry can be conceptualised as an instrument of differentiated integration useful to guarantee unity without jeopardising the constitutional diversity that inspires the European project (in light of what now Art. 4.2 TEU provides for concerning the duty to "respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government"). Indeed, differentiated integration has frequently been seen as "a challenge to the authority of the Union, to its telos, to the unity of its policies, laws and institutions, and to any prospect of it developing into a political community based on shared rights and obligations of membership" (Martinico, 2015, pp. 2–3). In such an understanding some of Schengen regime achievements that were already discussed in this paper are examples of the EU differentiated integration within the AFSJ sphere. They prove that Schengen regime is a complex model of integration, where the more advanced this polity is, the more differentiated integration within the AFSJ it represents.

Smart borders

Within years, the Schengen practice reveals that the more advanced is open-border policy within the EU, the more intense should be protection of its external borders. So in more practical aspect of current EU border management strategy, it follows that the Schengen implied the establishment of two different approaches. The first is immigration that is being consumed in strengthening the integrity of the external borders through adherence to uniform principles of border management, while the second one represents a classic police aspect relating to activities across internal borders (Colombeau, 2015, pp. 1–14) aiming at preventing criminals and criminal groups to take advantage of the abolition of internal border controls by committing unlawful acts (Hobbing, 2006).

In such differentiation, border management is currently going through significant transformation. Proposals for a smart borders system first formally came to light in a 2008 Commission paper, but received renewed momentum with the increased number of people travelling to Europe in the aftermath of revolutions and civil wars in

Mediterranean mainly since 2011 (Jones, p. 2). To address the need for the Schengen Area to move towards more modern and efficient border management by using newest technology, the European Commission proposed the ‘Smart Borders package’¹¹ on February 2013. This package contained legal proposals for establishing two systems that should help to speed up, facilitate and reinforce border-check procedures for third-country nationals (TCNs) travelling into the Schengen Area¹².

At first, the Entry/Exit System (EES), which is a central system to record the time and place of entry and exit of all third-country nationals travelling to/from the Schengen Area. It might extend biometric ID checks, currently reserved for those requiring visas, to all non-EU nationals seeking to enter the EU, with the intention of helping the authorities identify those who have stayed longer than permitted - “overstayers” (Jones, p. 1). The information collected for the EES will include alphanumeric data (names, type and number of travel document(s), date and time of entry and exit, and, after a three year “transitional period to allow for Member States’ adapting processes at the border crossing points” also fingerprints (Jones, p. 2).

Because the collection of this data would lead to longer waiting times at border crossing points, a counterpart system – the Registered Traveller Programme (RTP)¹³, has also been proposed. It is supposed to be a uniform programme to allow pre-vetted and frequent travellers from third countries to enter (and exit) the Schengen Area with minimal border checks¹⁴. Those not deemed a security risk would be allowed to enter the EU through Automated Border Control gates (ABC), already a growing feature of many European airports. The Commission argues that as a result, “border checks of Registered Travellers would be much faster than nowadays,” although these claims have been disputed. The proposals are considered by the Commission “as part of the continuous development of the Integrated Border Management Strategy of the European Union”, and there will apparently be numerous “synergies” between the

¹¹ For more: European Commission - Migration and Home Affairs. (2016, April 26). Smart Borders. Retrieved October 10, 2016, from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/index_en.htm.

¹² EUR-Lex Access to European Union Law. (2016, March 9). Regulation (EC) No 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Border Code). Official Journal of the EU. L 77. Retrieved September 17, 2016, from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016R0399>.

¹³ COM (2013) 96 final.

¹⁴ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. (2015). Smart Borders Pilot Project Report on the technical conclusions of the Pilot, p. 5. Retrieved September 10, 2016, from <http://www.eulisa.europa.eu/Publications/Reports/Smart%20Borders%20-%20Technical%20Report.pdf>.

new systems and existing ones. For instance, The EES will share the same Biometric Matching System as the Visa Information System (VIS) (Jones, p. 2).

This approach aimed at improving the level of management and control of passengers flow in a way of technological refreshment and strengthening of the existing system of border checks which should provide greater security and faster throughput of passengers¹⁵. The proposals for implementation of Smart Borders Package and its operational use are supported also with Stockholm Program¹⁶. The legal basis for the introduction of these systems represent articles 74, 77 of the TFEU on the basis of which the European Parliament and the Council under the ordinary legislative procedure will enact implementing legislation – Regulation¹⁷.

However, introduction of Smart Borders requires certain amendments of existing Schengen Borders Code. Such modifications are already known, and it is emphasized that these issues should be considered separately¹⁸. Besides, some changes have legal and technical character like those in Article 2, which stand about the introduction of additional definitions of EES and RTP. Changes to Article 5(2) relating to the general obligation of data entry of third country nationals in the EES and exceptions from that could be also placed in previous category. Mandatory authentication of electronic media with data (chip) which is located in the traveller documents should be introduced in Article 7(2).

The pilot programme of this system examined the main architectural options for the EES and RTP, and their potential impacts on related systems such as the VIS, Biometric Matching System (BMS), national entry and exit systems and existing

¹⁵ COM (2008) 69 final.

¹⁶ See: EUR-Lex Access to European Union Law. (2010, May 4). The Stockholm Programme – an open and secure Europe serving and protecting citizens. Official Journal of the European Union. C115/1. Retrieved September 17, 2016, from <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AC%3A2010%3A115%3ATOC>.

¹⁷ The applicable regulations in this are: Regulation of the European Parliament and of the Council (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); Regulation of the European Parliament and of the Council (EC) No 1931/2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention; Regulation of the European Parliament and of the Council (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay visas (VIS Regulation); Regulation of the European Parliament and of the Council (EC) No 810/2009 establishing a Community Code on Visas; Regulation of the European Parliament and of the Council (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. COM (2013) 97 final; (Mahmutovic, 2015).

¹⁸ COM(2011) 118 final.

border management systems. The study assessed the pros and cons of two main possible architecture options – developing the EES and RTP as two separate systems (option A) or as a single system (option B). It appears that option A would reduce the complexity of the systems' development and implementation. However, it would generate a significant risk of functionality and data overlap. This could lead to a much bigger development effort and a duplication of hardware and software, negatively impacting investment and maintenance costs. On a contrary, option B is in line with the process and minimal dataset approach for both the EES and RTP. While infrastructure and development costs would be lower, there would be a risk of added complexity in the systems' development and implementation, which should be managed carefully¹⁹.

The pilot also confirms that it is feasible to enrol fingerprints at all types of borders in various set-ups. However, in practice, enrolling four fingerprints is faster than enrolling eight or ten, although a higher number of fingerprints will deliver better accuracy for subsequent use. The quality of the fingerprints enrolled is generally fit for purpose. Enrolling fingerprints in controlled conditions is seen as the biometric identifier that is the least intrusive to travellers, according to both travellers' and border guards' feedback.

Furthermore, desk research proves that time can be saved if some processes are better streamlined (e.g. by searching the VIS using the passport number). The deployment of accelerators such as ABC gates and supportive kiosks could further decrease border-crossing times. It was observed that the technology set-up and integration, as well travellers' interaction with it, influences the results much more than the type of border.²⁰

However critiques of the civil liberties implications and proposed costs (currently approx. €1.1 billion) have come from academics, data protection experts, civil society groups and European political parties (notably the Greens or the European Free Alliance). Given the lack of a European policy on 'overstayers', the ability of an EES to effectively address the issue has been questioned, as has the system's compatibility with the Charter of Fundamental Rights in light of the Court of Justice's ruling on the Data Retention Directive. The EES has come in for particular criticism, with the

¹⁹ European Commission – Directorate General for Home Affairs. (2014, October). Technical Study on Smart Borders – Final Report, pp. 10–11. Retrieved September 13, 2016, from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/docs/smart_borders_executive_summary_en.pdf.

²⁰ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. (2015). Smart Borders Pilot Project Report on the technical conclusions of the Pilot, pp. 5–14. Retrieved September 10, 2016, from <http://www.eulisa.europa.eu/Publications/Reports/Smart%20Borders%20-%20Technical%20Report.pdf>.

European Data Protection Supervisor arguing that it “should not be created before a thorough evaluation of existing systems can effectively be performed,” and calling the proposed system might be “costly, unproven and even intrusive” (Jones, p. 3).

Furthermore, some observers claim that such extensive knowledge of and potential control over individuals that “smart borders” appear to promise is no doubt tempting to governments and the state agencies responsible for border control. Critique of the smart borders proposals has been, and still is extensive. For some human rights activists ‘freedom’ in the EU’s ‘area of freedom, security and justice’ is little more than a buzzword when it comes to border control and policing (Jones, p. 9).

At the end it is also worth to add, that the so-called Schengen compensatory measures such as the Schengen Information System (Dragan, 2015, pp. 33–53) or the European Dactylographic System (Eurodac) have been the centre of much attention. However, the research on these security measures has focused almost solely on their effect on liberty, human rights, and the like (Parkin, 2011). Not much attention has been given to the actual effectiveness of the security remedies taken in the European Union (EU) to compensate for the abolition of border controls, despite effectiveness being an obvious source of legitimacy in the realm of security (Pedersen, 2015, pp. 541–559).

Conclusion

Nearly a decade after the entry into force of the Lisbon Treaty, Schengen cooperation has been one of the most active policy domain in the EU’s Area of Freedom, Security and Justice. The EU has tried to manage contemporaneously and consistently freedom of movement (human mobility) with security from external threats (combining human security with the avoidance of abusive interventions on individual freedoms). This has been possible also because even after transitions of the Lisbon Treaty, Schengen cooperation has preserved its specificities (de Capitani, 2014, pp. 117–118). Besides, Schengen cooperation has had to comply with the Community *acquis* by becoming more transparent and accountable. Also by preserving its specificity, Schengen cooperation will continue to overlap with traditionally sovereignty-related policies by requiring more efforts from Member States and, evidently, strong and sincere cooperation. The intervention of the European Union enhances Member States’ responsibilities as borders are no longer only “national” but have become an essential element in ensuring freedom of movement as an European common value. In the light of this, the new Schengen evaluation mechanism does not refer only to Member States’ territory but to a supranational area which requires an European approach. As opposed to the traditional internal market policies, Schengen and freedom, security and justice will

enhance Member States' obligation (de Capitani, 2014, p. 118) and will inevitably place national administrations and internal orders under strain.

It is also necessary to mention, that current political situation nearby the EU's borders clearly influences the European Union Member States approach on internal security matters (like issues of asylum and irregular immigration), and in particular, raises a number of pertinent questions regarding the nature of such cooperation. What is especially puzzling, however, is the emergence and stability of agreements, such as the Schengen and Dublin Conventions²¹, in light of what appears to be a highly inequitable distribution of costs and benefits among the participating states in this policy area (Thielemann & Armstrong, 2013, pp. 148–164).

Nevertheless, while the EU's central decision-making bodies exclude third countries' participation, the EU's transgovernmental layer is more open for (sector-specific) forms of organizational inclusion. In contrast to an EU based solely on the 'Community Method' of European integration, which would promote regulatory extension without opportunities for organizational inclusion, transgovernmental politics theoretically allow for the simultaneous extension of the EU's regulatory and organizational boundaries, thereby yielding hitherto understudied forms of external flexible integration (Lavenex, 2015, p. 839).

Considering the research problem, by controlling success to the national territory and administering justice within the AFSJ core functions of the state are involved. However institutional framework for policy-making in this field has focused on facilitating cooperation and coordination between member states on different rules than on other policy areas. Thus, the establishment of the three major agencies in this policy area, Europol, Eurojust and Frontex, focus on cooperation and coordination functions but without executive operational powers same as realisation of smart border strategy is essential. So Schengen cooperation with implementation of four great freedoms of movement, is certainly one of the most important part of EU integration process while being considered as crucial for the security issues, but also for success of the single market or economic union of the countries members of the EU.

Accordingly, answering the research question, Schengen appears to be an example of main objectives of enhanced cooperation. Involved member states within this area represent different speeds and engagement then other EU countries in border, police cooperation and control flows of migration. Their integration's engagement towards settled goals is more advanced that outside such cooperation. Furthermore, enhanced cooperation's Schengen rules states that acts adopted under the framework of this

²¹ For more: (Kasperek, 2016, pp. 59–78)

cooperation scheme are binding only for the participants, which is basic general assumption in such cases.

Considering the main hypothesis, to continue to preserve the continent's security and stability, pressure will increase on cooperation in policing, border security, immigration and judicial matters. In decision-making sphere, the first one was the need to split the Schengen *acquis* by applying the Community method to policies linked with borders, immigration, asylum and judicial cooperation in civil matters and by preserving the “intergovernmental” method for policies in the field on public security and judicial cooperation in criminal matters. Before the Lisbon Treaty that was main example of differentiated integration within the AFSJ. Nowadays, as it is proved in this paper, Schengen regime is a complex model of integration, where the more advanced this polity is, the more differentiated integration within the Area of Freedom and Justice it represents.

Summing up, Schengen might be defined as an attempt to establish it as a ‘myth’. However such assumption might be well founded, although is too narrow to capture the complex nature and implications of the process leading to the creation of Europe's new territorial regime. The existing conceptualisation of Schengen's myth-making, borrowed from the state-building experience, entails a formalist, static, and essentialist notion of this process. It is based on the assumption (shared by most EU officials) that myths are narratives supported by a pre-arranged set of symbols (Zaiotti, 2011b, pp. 537–556) that can be deployed at will to persuade a rather passive audience.

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