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CHALLENGES OF SCHENGEN AREA ENLARGEMENT

Master's Thesis

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Master's Thesis

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Zagreb, September 2023

I hereby declare that I have written my master thesis „Challenges of Schengen Area Enlargement“ that I have submitted to my supervisor, Professor Igor Vidačak, for evaluation, independently and that it is entirely in my authorship. I also declare that the paper in question has not been published or used to fulfil teaching obligations at this or any other institution of higher education and that I did not obtain ECTS credits based on it. Furthermore, I declare that I have respected the ethical rules of scientific and academic work, particularly Articles 16-19 of the Code of Ethics of the University of Zagreb.

Lucia Radović

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1. INTRODUCTION

Article 2 of the Treaty on the European Union (TEU) states that the European Union was founded on respect for fundamental human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of members of minorities (TEU, 1992). The turning point in the establishment of the joint free passage zone can be attributed to the signing of the Agreement between the Governments of the Benelux Economic Union, the Federal Republic of Germany and the Republic of France regarding the gradual abolition of controls at their common borders from June 14, 1985 (cf. Ziller 171-183). Years of cooperation in the field of security led the signatory countries to eliminate all internal borders, enabling free passage. This agreement paved the way for the Schengen Area formalized in the 1990 Convention on Schengen Agreement Implementation. A decade after the Schengen Agreement, in March 1995, it finally entered into force and the conditions for the abolition of internal controls were met in the territory of 7 member states. Implementing Schengen Acquis led to unprecedented cooperation, harmonizing border control, police, visas, and migrant treatment. In this respect, the current 27 member states of the Schengen Area¹ are faced with a variety of challenges and issues today, some of which will be addressed in this thesis.

Namely, the main goal of the thesis is to understand the challenges that the European Union faced in the past and the challenges that arise during the Schengen Area expansion by analysing how these challenges impact various fields such as border security, immigration control, common visa policy and cooperation between the member states. This thesis aims to understand how the Schengen Area can maintain the core values that it was founded upon, while still including new member states. Considering the extraordinary situations in recent years and the measures that conflicted with the Schengen Acquis, the goal is to achieve a better understanding of the Schengen history and challenges to conclude whether the further expansion of the Schengen Area based on the already established fundamental values is even sustainable.

The main research question is what the challenges are that threaten the enlargement and the sustainability of the Schengen Area. More specifically, the aim is to expand on how various crises affected the ability of the European Union to effectively manage its borders and remain ready for the integration of potential candidates for admission into Schengen Area?

¹ https://european-union.europa.eu/principles-countries-history/country-profiles_en

By analysing the existing academic literature, official documents related to the Schengen Area, studying challenges of specific countries in the process of joining the Schengen Area and analysing the events such as the European migrant crisis, the COVID-19 pandemic and the war in Ukraine, I will try to assess the effectiveness of the measures taken in dealing with unpredictable challenges and, ultimately, the sustainability of Schengen Area in the future. In the second chapter, the course of events that led the countries of Western Europe to the establishment of Schengen is analysed, and the analysis of official agreements provides an insight into the fundamental values on which it was established. The third chapter deals with the processes of Schengen evaluations and the conditions that member states must comply with to either remain in the Schengen Area or join it, along with the focus on the challenges that Croatia had to fulfil in order to join the Schengen Area. The fourth chapter analyses the challenges from the last decade which have caused border closures and mistrust amongst member states and the measures taken by member states and the European Union itself to prevent violations of the Schengen Acquis. The fifth chapter will provide insight into the procedure and challenges for the accession of Romania, Bulgaria and Cyprus in the Schengen Area, while the sixth chapter will focus on examining the sustainability of the Schengen and the challenges related to future enlargements of the Schengen Area.

2. THE FOUNDING AND DEVELOPMENT OF SCHENGEN AREA

This chapter highlights the crucial developments in history leading to the creation of the Schengen Area, highlighting the core values and current policies. Firstly, as observed by Saša Šegvić, after World War II. Europe experienced significant changes in the definition of national borders, leading the countries of Western Europe to abandon previous concepts of national sovereignty and shape a common future characterized by economic and political unity (Šegvić, 2011).

The desire for such movement predates the Schengen Agreement and can be traced back to the Treaty of Brussels in 1948. This Treaty regulated military, economic, social and cultural cooperation between Belgium, France, Luxembourg, the Netherlands and the United Kingdom (Treaty of Brussels, 1948). Although the Treaty of Brussels established the mutual alliance and military assistance, the security of Western European countries is, according to Angelo Lombardi, commonly attributed to NATO because it included more co-signatories, notably the United States of America (Lombardi, 1987).

The Treaty of Brussels acted as a follow-up to the Dunkirk Treaty, concluded between the United Kingdom and France, which ensured cooperation and assistance if Germany was to renew the aggression and attack the co-signatories after the World War II (Dunkirk Treaty, 1947).

Studying the preamble of the Treaty of Brussels gives us an insight into the common values of all the countries involved and establishes the fundamental values on which future treaties and the European Union itself are built. The common values of the co-signatories are based on respecting fundamental human rights defined by the Charter of the United Nations and cooperation regarding the preservation of these rights, strengthening personal and political freedoms and preserving democracy, improving economic, social and cultural cooperation in Western Europe as a basis for recovery after the German aggression as well as providing assistance in preserving the peace and taking necessary steps if there is ever a renewal of the German aggression and the gradual integration of any other country that shares the same ideals and persistence in their preservation (Treaty of Brussels, 1948).

After the establishment of NATO, the establishment of the Organisation for Economic Co-operation and Development (OECD), the Council of Europe and the European Coal and Steel Community, which all defined in more detail the conditions and principles regarding the cooperation formerly defined by the Treaty of Brussels, the co-signatories decided to amend the Treaty on 23 October 1954 (Modified Brussels Treaty, 1954). Subsequently, The Western

Union was succeeded by the Western European Union lasting until 2011, and the forming of the European Union that we know today.

Following the close relations between the countries of West Europe and the need for greater cooperation in economic recovery after World War II, on March 25, 1957, two treaties were signed in Rome. Namely, the Treaty establishing the European Economic Community (EEC) initiated the creation of a single market based on the freedom of movement of goods, people, services and capital (Hix, Hoyland, 2011). The Treaty on the European Atomic Energy Community (Euratom) emphasized the importance of nuclear energy research, the establishment of safety measures and standards for the protection of people, and the urgent need to prevent nuclear energy from being used for military purposes (Treaty establishing the European Atomic Energy Community, 1957). Although the aforementioned agreements represented a significant step forward towards greater cooperation between the co-signatories, according to Šegvić, they regulated freedom of movement only in the context of the workforce, i.e. crossing the border for the purpose of employment (Šegvić 2011).

Given that the Treaty of Rome achieved the free movement of people and the exchange of goods, services and capital on an unprecedented scale, the need for additional regulation began to emerge (Šegvić 2011). In 1986, the Single European Act was concluded with the aim of further regulating the freedoms established by the Treaty of Rome (Single European Act, 1986). Considering that by 1986 the European community had grown from 6 to 12 members, it was necessary to approach deeper integration to achieve better regulation in the field of the internal market². With the Single European Act, the states of the European Union, among other things, facilitated the decision-making process by defining the structure of qualified majority voting, increased the powers of the European Parliament and ultimately established the foundations for a common European foreign and domestic policy (Single European Act, 1986). For the member states, terminating the internal borders had primarily economic significance ensuring a faster and more efficient flow of goods (Šegvić, 2011).

2.1 The Schengen Agreement

Multiannual mutual cooperation in the field of free movement of goods, services, capital and people ultimately led to negotiations on the establishment of the Schengen Area, that is, an area of Europe in which physical borders would be eliminated and complete freedom of movement would be achieved. At the Session of the European Council in Fontainebleau, June 1984,

² See publication 'From 6 to 27 Members' (https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/6-27-members_en)

member states recognized the need to abolish police and customs procedures for persons crossing the internal borders of the European Community, and accordingly, the European Council and the member states undertook to implement all necessary measures to facilitate free passage by the middle of 1985 (Conclusions of the Presidency, 1984). Thus, on June 14, 1985, the Schengen Agreement was signed between the leaders of the Netherlands, Belgium, France, Luxembourg and the Federal Republic of Germany in the small town of Schengen, Luxembourg (Schengen Agreement, 1985).

With the Schengen Agreement, the European Union granted its citizens the fundamental right of unrestricted movement within internal borders and the ability to reside and work anywhere within the European Union without any special procedures (Behrle, 2017). The member states agreed to begin reducing internal border controls, with the ultimate goal of allowing free movement of persons between countries within the Schengen Area. The Agreement outlined both short-term and long-term measures for establishing a free passage zone within the Schengen Area, including the transfer of internal controls to external borders, the adoption of a common visa policy with a uniform visa issuance procedure, and the enhancement of judicial and police cooperation to ensure security (Schengen Agreement, 1985).

Moreover, with respect to the Schengen Agreement, as part of short-term measures, the member states agreed to simplify police controls at internal borders as early as June 15, 1985, in such a way that the control of persons and vehicles will be carried out only visually without stopping the normal flow of traffic. In order to facilitate visual checks, citizens of the European Union were given the opportunity to mark vehicles with green stickers with a diameter of at least 8 centimetres, which would then serve as a sign that all regulations and laws related to border control and the transport of permitted goods have been complied with. The member states also agreed to adapt and harmonize the procedures for issuing visas as soon as possible in order to prevent possible negative consequences of the establishment of a free movement zone, such as increased drug smuggling, terrorism and illegal migration. Furthermore, member states agreed that they will implement measures to reduce the time required for border control of railway traffic, i.e. establish procedures to enable the free movement of goods as soon as possible. In line with that, the Agreement also determines the obligation to reduce the time of customs controls for maritime transport (Schengen Agreement, 1985).

Following the prescribed short-term measures that decreased the time of border control procedures, long-term measures were focused on the complete abolition of border controls in the Schengen Area, and their relocation to the external borders of the member states. In order to completely abolish internal border control, member states agreed to improve the existing

laws and procedures that regulate border control and harmonize them with other member states. The measures also envisaged steps to combat the illegal migration of third-country citizens. A plan for regular dialogues between member states was established in order to improve police cooperation and examine problems that may arise in the area of application of the Agreement on International Legal Assistance and Extradition, along with measures for a joint fight against crime. In the context of joint measures, the member states also committed to harmonising the laws and regulations related to drugs, weapons, explosives and the registration of travellers staying in hotels. Furthermore, the measures necessary to harmonize the regulations related to the Law on Foreigners, measures enabling the issuance of duty-free permits, as well as measures harmonizing the charging of VAT on tourist transport and fuel are being prepared. Ultimately, in order to expedite customs procedures, the member states agreed to establish a data exchange mechanism, which would allow them to collect the information by using one unique document at the level of all member states (Schengen Agreement, 1985). In the following years, the need to establish mutual cooperation gained increased political backing from other European states, who began recognizing the advantages of practical cooperation in border management (Bertozzi, 2008).

2.1.1. Convention Implementing the Schengen Agreement of 14 June 1985

On June 19, 1990, the member states concluded the Convention Implementing the Schengen Agreement, which supplements the Schengen Agreement and defines in detail the measures established by it. Increased security was achieved through closer cooperation between police, customs and consular staff and other additional strategies to counter external security threats such as terrorism and cross-border organized crime (Bertozzi, 2008). Article 2 of the Convention clearly defines the rules regarding the crossing of internal borders, fully enabling free crossing without any checks and at any place within the Schengen zone. In case of emergency situations in which public policy or national security is called into question, member states still have the option of introducing temporary border controls, a measure that will become extremely important in the future. Legal crossing of the external borders of the European Union is still possible only at official border crossings, and it is up to each member state to introduce penalties for illegal crossings outside of official border crossings. Taking into account the large scope of the proposed measures and the resources required for their implementation, the Convention defines airports as an external border until 1993, after which the border control is carried out only on citizens of third countries at the first airport they arrive at (Convention Implementing the Schengen Agreement, 1990).

The Convention defines entry conditions and stays for third-country citizens, enforces a unified visa policy, obliges asylum request processing, fosters crime-fighting cooperation, and lays the groundwork for the Schengen Information System (SIS) to boost information exchange and security in the Schengen Area. The Convention also establishes an Executive Committee which will consist of 1 representative of each member state in charge of implementing the powers set by the Convention in order to ensure the successful implementation of all provisions (Convention Implementing the Schengen Agreement, 1990).

Given the extensive measures that had to be taken to ensure successful implementation, the Convention Implementing Schengen Agreement entered into force in March 1995.

2.1.2. Maastricht Treaty

In 1992, 12 member states concluded the Maastricht Treaty, i.e. the Treaty on the European Union, which, after years of discussion about the need for greater cooperation in the field of foreign and internal politics, established European citizenship and introduced a ‘justice and home affairs’ component (referred to as the EU's ‘third pillar’), encompassing matters such as free movement, immigration policies, and cooperation between police and judicial authorities (Hix, Hoyland, 2011). A plan was adopted for the gradual establishment of a common monetary policy and the establishment of a common currency defining the criteria that each member state must meet in order to use it without negative consequences for itself or others. With this Treaty, cooperation in areas crucial to the functioning of the European Community became concretely defined, establishing rules for the control of external borders, the fight against terrorism, organized crime, smuggling and drug abuse, suppression of international fraud, customs and police cooperation, and judicial cooperation in criminal and civil areas (TEU, 1992). The Treaty entered into force on November 1, 1993, and with it, the European Union was officially established.

2.1.3. Treaty of Amsterdam

In 1997, as a result of years of negotiations between member states, The Treaty of Amsterdam was concluded, which introduced significant changes in the field of justice and internal affairs. The Treaty of Amsterdam, in force since 1999, incorporated the Schengen Agreement and the Convention Implementing Schengen Agreement, previously outside the European Union institutional framework, into the legal system of European institutions (Mikac, Dragović, 2017). The importance of Schengen for the development of the European Union was recognized and

accordingly, certain powers in the field borders, asylum, immigration and visa policy were transferred from the "third pillar" to the "first pillar", i.e. mostly under the jurisdiction of the European Commission while the "third pillar" focused on police and judicial cooperation in criminal areas in order to ultimately guarantee a high level of security and freedom of the citizens of the European Union (Mikac, Dragović, 2012). The Executive Committee, established for the implementation of the Schengen Acquis, was replaced by the Council of the EU. By integrating the Schengen Acquis into the legal framework of the European Union, the freedom of movement of people was realized and became one of the fundamental values of the European Union. Opt-outs were provided for two member states of the European Union that had remained outside the Schengen Area; Ireland and the United Kingdom, the latter which subsequently withdrew from the European Union in 2020 (Treaty of Amsterdam, 1997). In the coming period, even countries that were not part of the European Union became part of the Schengen Area (Zeko, Vrbanec, 2022). The following chapters will focus more on put-in-place measures for the coordinated implementation of the Schengen Acquis and ultimately the protection of the Schengen Area.

2.2. Internal and external borders

The internal borders of the European Union are the borders between the Schengen Area member states, including airports when it comes to domestic flights from one member state to another, and seaports when it comes to regular lines. As determined by the Schengen Acquis, border control is no longer carried out at internal borders and it is possible to cross them at any place without being stopped. One of the more important provisions of The Schengen Borders Code (SBC) used by many member states during the European migration crisis and the COVID-19 pandemic is the possibility of introducing extraordinary border controls in the event of a threat to public policy or national security (Schengen Borders Code, 2016), although the introduction of internal controls can only be a temporary solution, and the member state that introduces internal border controls is obliged to consult other member states before doing so.

The role of the Schengen external border is often likened to an impermeable membrane, aiming to prevent the entry and stay of individuals not meeting the stipulated conditions (Šegvić, 2011). Control of the external borders of the European Union is one of the most important provisions on which the Schengen Area is based. In fact, external borders include all borders of member states with third countries that are not part of the Schengen Agreement, as well as airports where flights from third countries arrive, along with seaports where traffic of passengers and goods from third countries takes place. As defined by the Convention Implementing the Schengen

Agreement, external borders can be legally crossed only at official border crossings and only during the official working hours of these border crossings. If the member states detect illegal border crossings, they are obliged, in accordance with the Schengen Acquis, to determine penalties for unauthorized entry into the territory of the European Union. At airports with foreign flights, passengers arriving from third countries are processed by border control, and the same applies to passengers leaving the Schengen Area. Furthermore, in order to enter or stay in the Schengen territory, citizens of third countries must fulfil pre-determined conditions. For a stay of up to three months in the Schengen territory, citizens of third countries must possess valid documents for border crossing, a valid visa if applicable, proof for the purpose of the trip, sufficient funds for the stay for a certain period of time, and a plan to exit to a non-Schengen country. Additionally, upon entry, citizens of third countries must prove that they are not subject to an entry ban and that they pose no security threat to any member state (Convention Implementing the Schengen Agreement, 1990). If a citizen of a third country does not meet all applicable conditions, member states are obliged to refuse them entry into the Schengen Area, except in cases where entry is permitted for humanitarian reasons, international obligations and national interest. When allowing entry in such cases, the member state must inform all other member states about its intentions and the citizen in question may only stay in the member state in which he entered the Schengen zone (Ivanda, 2001). By abolishing controls at the internal borders of the Schengen Area, it is important to enhance checks at the external borders to ensure effective control over everyone entering the area of free movement (Britvec, 2018). The member states at the external borders thus undertook to carry out border control for all other member states, respecting the principles of the European Union and using uniform procedures and regulations at the level of the entire Schengen Area. On May 1, 2004 in the largest European enlargement to this day, European Union was joined by 10 new member states, thus increasing the amount of resources needed to secure the Schengen Area.³ Becoming a part of the European Union is not automatically followed by being admitted into the Schengen Area and most of these countries had to spend years trying to ensure a uniform implementation of the Schengen Acquis, finally joining the Schengen Area in 2007.

2.3. Common Visa Policy

With the Schengen Agreement, the member states have committed themselves to agree on a common visa policy. This means that instead of each country having its own rules on who can

³ See publication 'The 2004 enlargement: the challenge of a 25-member EU' (<https://eur-lex.europa.eu/EN/legal-content/summary/the-2004-enlargement-the-challenge-of-a-25-member-eu.html>)

visit its territory, they have to agree on a common set of rules that will be applied in every Schengen Area member state. According to the Convention Implementing the Schengen Agreement, the common visa policy established the unified criteria that determine visa eligibility, taking into account factors such as the purpose of the visit, financial stability and intention to return home. This allowed the third-country nationals to enter the territory of a member state for a period of up to three months. Because the harmonization of the visa policy represented a great challenge, the member states agreed that until a uniform visa is agreed upon, to recognize all national visas. A visa issued by a member state can be an entry visa, allowing one or more entries into the Schengen Area, or a transit visa, which allows the owner to travel through the Schengen Area on the condition that he must leave it after 5 days (Convention Implementing the Schengen Agreement, 1990). Visas are issued by the diplomatic-consular missions of each member state, which are subject to common rules for issuing and applying for visas determined by the Executive Committee (Ivanda, 2001). The common visa policy facilitated the process for all applicants from third-world countries, allowing the usage of standardized information and enabling easy identification and verification by border officials. Accordingly, a visa issued by one member state thus becomes valid in all member states implementing the common visa policy. Furthermore, if one member state refuses entry into its territory, this is also considered a ban on entry into any of the member states (Convention Implementing the Schengen Agreement, 1990).

The Schengen Convention also establishes the rules for processing asylum requests. In accordance with the Geneva Convention of 1951 and the Protocol of 1967, member states have set down the rules for the process of determining responsibility for processing asylum applications. Each asylum application within the member state territory must undergo a swift and effective procedure and the Schengen Agreement outlines criteria determining which member state is responsible for handling each specific procedure (Šegvić, 2011). Furthermore, measures have been established according to which member states are obliged to exchange information and statistical data on asylum requests (Convention Implementing the Schengen Agreement, 1990).

The common visa policy within the Schengen Area poses unique challenges, particularly in the context of its expansion. Member states are required to balance their diverse legal, security and administrative procedures without jeopardizing the safety of the Schengen Area, and the ascension of the new members to the common visa policy while maintaining the policy's original objectives poses a significant challenge.

2.4. Cooperation in police and security matters

Member states agreed to offer assistance and cooperation between their police authorities, in line with their laws and competencies. The primary aim of this cooperation was to prevent and detect criminal activities through information exchange, officer training and legal assistance (Convention Implementing the Schengen Agreement, 1990).

Member states are responsible for initiating requests for police cooperation, which can be further defined by concluding additional agreements between member states. To combat criminal activity, measures have been established to monitor persons of interest in other member states. When it comes to arresting such individuals, the member state in which the arrest is taking place retains authority based on its national regulations (Šegvić, 2011).

In addition to the above, cooperation among member states judicial authorities, the transfer of judgments, the extradition of illegal aliens to the country of origin and the collaborative crime-fighting efforts are established (Convention Implementing the Schengen Agreement, 1990). However, by establishing this type of cooperation, the member states faced challenges in coordinating activities, given the diversity of laws and methods used to preserve the territory. Therefore, Schengen Information System - SIS was established, to ensure compliance with the Convention, maintain public order, safeguard public and national security, and enhance member state security (Šegvić, 2011). Furthermore, to enhance the cooperation among member states' competent authorities, the Schengen Borders Code was adopted, and Frontex (European Agency for border management) was established (Šegvić, 2011).

2.5. The Schengen Information System – SIS

The Schengen Agreement established the Schengen Information System - SIS, which enabled the timely exchange of information between member states and became an irreplaceable tool in preserving the internal security of the European Union. The objective of this system is to safeguard public order and security across all member states and in line with the Schengen Acquis.⁴ This system provided compensation for the elimination of internal borders within the Schengen Area, serving as a significant measure to counterbalance the removal of border controls (Šegvić, 2011). As stated in the Convention, the SIS system contains various databases accessed and routinely updated by the member states. By utilizing the SIS, member states are enabled to enter and view data at the level of the entire Schengen Area, including arrest warrants, entry bans, individuals of interest, residences of individuals, surveillance of

⁴ See, for instance, the relevant publications by the Directorate-General for Migration and Home Affairs: https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-information-system_en

individuals and case records. Thanks to this system, member states can access information about wanted individuals, enabling their identification and potential arrest if found in any of the Schengen Area member countries (Convention Implementing the Schengen Agreement, 1990). Considering the large amount of data stored in the system, a new version – SIS II was established in 2013 (European Commission - SIS II - Second Generation Schengen Information System, 2022). This upgraded version enabled more comprehensive surveillance within the Schengen Area, with new functionalities such as fingerprint and photo input (Bertozzi, 2008). The second generation of this extensive information system enabled member states to exchange information between border, customs and police authorities in order to ensure the free movement of persons within the Schengen Area. Moreover, this system contains reports on missing persons, weapons, vehicles, official documents and more (European Commission - SIS II - Second Generation Schengen Information System, 2022). Considering the large amount of information that is exchanged, member states have also committed themselves to the protection of processed data. In order to enable constant progress in the field of information exchange, the European Union finances the development of the SIS II system at the European level and at the level of the member states, through special Migration and Home Affairs Funds.

Further cooperation in the field of information exchange is expected through the establishment of new information systems such as the Entry/Exit System (EES), the European Travel Information and Authorization System (ETIAS), the European Criminal Records Information System for third-country nationals (ECRIS-TCN) and their connection with already existing European information systems through interoperability (New European Interoperability Framework, 2017).

2.6. Schengen Area members and candidates

Since its entry into force in 1995, the Schengen Area has experienced several rounds of expansion. In order not to endanger the other member states, joining states had to fulfil all the conditions outlined by the Schengen Agreement in order to ensure the successful application of principles and values of the Schengen Acquis. Moreover, considering the geographical positions of certain countries that did not want to join the European Union, the need to include these countries in the Schengen zone developed. Iceland, Norway, Switzerland and Liechtenstein are members of the European Free Trade Association (EFTA) and through special agreements included in the implementation of the Schengen Area (see the EFTA website, efta.int). Presently, the Schengen Area consists of 27 countries, 23 of which are members of the European Union (as mentioned in the introduction). Bulgaria, Cyprus, and Romania are

Schengen candidates expected to join upon meeting conditions and member state approval. Notably, these candidates have an obligation to join the Schengen Area, while Ireland still retains the opt-out option due to its geographical position and its border with the United Kingdom (Emerson, 2011).

3. CRITERIA FOR ACCESSION INTO SCHENGEN AREA

The Schengen evaluation process involves a verification mechanism aimed at determining if a specific member state is correctly applying the European Union policies in the area of freedom, security and justice, encompassing all aspects of the Schengen Acquis (Vulas, 2017).

During the Schengen evaluations, both member states and candidate states must prove that they successfully implement all Schengen Acquis policies. Evaluations are carried out in areas covered by the Schengen Convention, encompassing land border controls, air and sea border controls, police cooperation, return and admission procedures of individuals without legal residence, exchange and access to information in the Schengen Information System (SIS), implementation of the common visa policy, judicial cooperation of competent authorities, and protection of personal data (Council Regulation 2022/922). According to the Regulation, Schengen evaluation activities are conducted through two methods: universal questionnaires sent to the member states and on-site field checks. On-site visits can either be announced or unannounced. For announced visits, a questionnaire is sent to the member states to gather the information needed to carry out the visit. Unannounced Schengen evaluations occur when assessing Schengen Acquis implementation is required due to new or systemic problems that may threaten the Schengen Area or when there is a well-founded suspicion that a certain member state is neglecting its obligations under the Schengen Acquis and committing serious violations fundamental rights.

The Schengen Acquis ensures uniformity without leaving room for individual country exceptions. Schengen states are obliged to follow the same rules no matter their geographical position or national attributes. While some rules permit temporary adaptations based on factors like traffic flow or risk assessment, specific rules also enable permanent national laws to accommodate distinct policies or situations, but always within the defined framework of the Schengen Acquis (Ulrich, Nøkleberg and Gundhus, 2020).

3.1. Schengen evaluation and its origins

In 1990, when the member states concluded the Convention Implementing the Schengen Agreement, no evaluation of the countries participating in the Schengen Area or those wanting to join the future was planned (Convention Implementing the Schengen Agreement, 1990). While the Convention established an Executive Committee tasked with ensuring the correct implementation of its provisions, the current Schengen evaluation process was not included. Consequently, when the then-member states abolished the borders between them for the first time in 1995, none of them went through the Schengen evaluation process (Ulrich, Nøkleberg and Gundhus, 2020).

In 1998, the Executive committee made a decision to establish a Standing Committee on the evaluation and implementation of Schengen. This committee's primary task was to assess whether the candidate countries had met all the prerequisites outlined in the Convention. Additionally, the Standing Committee oversees the current situations in the Schengen member states, ensures that the Convention is properly applied and highlights any potential problems in implementation. Moreover, this decision enables the committee to engage experts in specific areas covered by the Schengen Convention in order to prepare detailed reports pinpointing deficiencies and proposing solutions. The evaluation process commenced with Greece shortly after Schengen's integration into the European Union (Ulrich, Nøkleberg and Gundhus, 2020). Following the establishment of the Standing committee (later known as SCH-EVAL), the evaluation process began with the adoption of the Schengen Manual on Checks at the External Borders in 1999, which outlined the procedures and standards that member states had to follow when conducting checks at their external borders (Ulrich, Nøkleberg and Gundhus, 2020).

More detailed instructions for the implementation of the Schengen Acquis were developed, issuing Schengen catalogues covering all evaluation areas and while not legally binding, these catalogues contained best practices for the implementation of the Schengen Acquis and served as a template for evaluators carrying out Schengen evaluations (Ulrich, Nøkleberg and Gundhus, 2020). The adoption of the Schengen Borders Code (SBC) in 2006 marked a significant step, transforming recommendations into legally binding EU law and enhancing evaluation effectiveness (Ulrich, Nøkleberg and Gundhus, 2020). In 2013, the European Commission took over the role of the Executive committee, setting up new rules for drafting reports, recommendations and organization of evaluation teams. This framework introduced the assessment of the process of return and readmission as two new evaluation areas. With stricter rules and procedures, the evaluation itself became more than just a simple checklist that member

states had to fulfil. In order to ensure compliance with the Schengen Acquis, all member states were obliged to create a national border management strategy, which is based on Integrated Border Management (IBM), promoting joint coordination and cooperation between agencies and bodies responsible for border control, immigration, customs and other judicial areas (Ulrich, Nøkleberg and Gundhus, 2020). In 2022, the Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen Acquis was adopted, which established a new framework for conducting evaluations (Council Regulation 2022/922). This mechanism established a multi-year evaluation program, detailed implementation of unannounced thematic evaluations, strengthened cooperation with experts and European agencies, and expedited procedures for identifying non-compliance with Schengen Acquis.

3.2. Fulfilling the Schengen acquis requirements – experience of Croatia

Croatia joined the European Union in 2013, following a referendum where 66% of participants voted in favour of joining.⁵ A decade later, on January 1, 2023, Croatia officially became a part of the Schengen Area after years of negotiations and evaluations conducted by the European Union. Just two years after joining the European Union, Croatia expressed its readiness to start the implementation of the Schengen evaluation process across all relevant fields, marking the first application of the new 2013 evaluation mechanism (Zeko, Vrbanec 2022). Schengen evaluations were carried out in Croatia from 2016 to 2019 (Communication on the Verification of the Full Application of the Schengen Acquis by Croatia, 2022). According to the Communication, teams of evaluators carried out evaluations in the areas of data protection, police cooperation, common visa policy, management of the external borders of the European Union, return process, utilization of the Schengen information system, firearms and judicial cooperation in criminal proceedings. Furthermore, given that the European migrant crisis began in 2015 and that Croatia was faced with a large influx of migrants via the Balkan route, special attention was dedicated to respect for human rights. While trying to understand the duration of the evaluation process for Croatia, it is important to mention that the monitoring and evaluation procedure can be significantly influenced by evaluators' subjective impressions during the on-site visits, as well as political decisions (Vulas, 2017). As stated in the Communication, the necessary requirements for implementing Schengen Acquis were considered satisfactory. Moreover, in the evaluations conducted in February 2016 for data protection and June 2016 for police cooperation, Croatia received a general assessment of meeting the necessary conditions

⁵ See the European Commission website: https://neighbourhood-enlargement.ec.europa.eu/croatia_en

for applying Schengen regulations in both areas, with no non-compliance issues identified.⁶ However, recommendations for improvements were issued, particularly concerning the independence of the Data Protection Authority, strengthening the Data Protection Officer's position in the Ministry of Interior, modernizing police cooperation agreements with neighbouring states, improving international police cooperation organization, and improving information exchange. After the overall positive evaluation for data protection, Schengen information system (SIS) became operational in 2017 and was deemed satisfactory by the evaluation teams.

Evaluations in the common visa policy field were conducted in June 2016 through visits to Croatian Embassies in Kosovo and the Russian Federation. Although it was concluded that Croatia generally fulfils all of Schengen's requirements, it still needed to improve the workflow regarding visas. In June 2016, on Schengen's evaluation on return, Croatia's compliance in the field of return was assessed as positive, with some improvement to be made by aligning its Law on Foreigners with the Return Directive. Furthermore, in regard to the evaluations of legislation on firearms and in the field of judicial cooperation, the evaluation teams found no irregularities with only minor suggestions for firearms legislation. The most significant challenge in the evaluation process pertained to external border management (Communication on the Verification of the Full Application of the Schengen Acquis by Croatia, 2022).

As seen in the Communication, in the initial visit in May 2016, it was concluded that Croatia did not meet the Schengen standards, particularly emphasizing the need to improve external border control, address the lack of manpower to implement border controls, improve infrastructure at airports. Subsequently, a second evaluation was conducted, where airport infrastructure was assessed as satisfactory; however, there were still certain deficiencies in the implementation of external border control. The final evaluation was held in 2019, when the evaluators visited the external border of Croatia in order to evaluate progress compared to previous evaluations. While no new findings were made, there were still unresolved questions regarding the development of the land border surveillance concept, the procurement of technical equipment for surveillance, the use of service dogs and the lack of personnel. Ultimately, it was assessed that Croatia is taking all necessary measures to ensure proper implementation of Schengen Acquis.

It is safe to assume that the biggest challenges of Croatia have arisen from the lack of funding for equipment and activities at its external borders. As a member of the European Union with

⁶ See publication 'Schengen accession: Croatia on the way to join the Schengen Area' (<https://mup.gov.hr/news/schengen-accession-croatia-on-the-way-to-join-the-schengen-area/285814>)

one of the longest land borders with third countries, spanning over 1,350 kilometres,⁷ and with a population of less than 4 million, Croatia nonetheless makes significant efforts to safeguard the external border of the European Union.

Croatia made significant progress largely attributed to European Union funding. In 2013, 120 million euros were made available to Croatia through the Schengen Facility,⁸ which was instrumental to financing measures at the external border of Croatia in order to achieve the full application of the Schengen Acquis. The Schengen Facility financed measures such as the Acquisition of technical equipment for the external border, modernization of existing equipment, improvement of information systems, construction of infrastructure necessary for the implementation of border control, training of police officers in the implementation of border control, and Acquisition of equipment necessary for the improvement of consulates and diplomatic missions (Commission Staff Working Document: Evaluation of the Temporary Schengen Facility of Croatia, 2020). Following the implementation of the Schengen Facility, within the Multiannual Financial Framework 2014-2020, Croatia has been allocated over 100 million euros for the implementation of measures regarding asylum, migration, integration, police cooperation, crime prevention, as well as strengthening external borders and visa management.⁹

Thanks to the significant efforts Croatia has invested in improving all the areas covered by the Schengen Acquis, on December 9, 2021, the Council of the European Union concluded with the abovementioned Communication that Croatia fulfilled all the requirements for the application of the Schengen Acquis. Subsequently, at the end of 2022, it was decided that Croatia would join the Schengen Area starting from January 1, 2023.

⁷ See document 'Schengen Facility Indicative Programme 2013-2014' (<https://home-affairs.ec.europa.eu/system/files/2019-08/evaluation-schengen-facility-croatia-indicative-programme.pdf>)

⁸ See publication 'Financijski okvir 2014. – 2020.' (<https://eufondovi.mup.hr/financijski-instrumenti-eu-82/financijski-okvir-2014-2020/87>)

⁹ See publication 'Schengenski instrument' (<https://eufondovi.mup.hr/eu-fondovi/schengenski-instrument/85>)

4. EXTERNAL THREATS AND CRISES AFFECTING THE SCHENGEN AREA ENLARGEMENT

4.1. 2015 EUROPEAN MIGRATION CRISIS

One of the largest crises that posed a risk to the Schengen Area happened to be the 2015 European migrant crisis when the flow of migrants dramatically increased mainly due to the growing number of Iraqis, Syrians, Afghans, Eritreans and Libyans fleeing war, ethnic conflict or economic hardship (Peters, L., Engelen, P. J., & Cassimon, 2023). According to Frontex reports for 2015, more than 1 million migrants crossed the border illegally, with over 1.8 million illegal border crossing between official border control points. The magnitude of this crisis proved to be too large to solve for individual member states. For instance, member states on the external border such as Greece and Italy bore a disproportionate responsibility for receiving new arrivals. Transit countries such as Hungary and Croatia suddenly faced enormous pressure at their borders while wealthier European Union countries such as Germany and Sweden coped with a significant influx of refugees, as they were considered to as a preferred destination for migrants (Peters, L., Engelen, P. J., & Cassimon, 2023). Therefore, member states were in dire need of a coordinated response from the European Union.

4.1.1. The beginning of a migrant crisis

In 2015, an unprecedented rise in the number of people seeking international protection in Europe proved a major test for the Common European Asylum System and the Schengen Area.¹⁰ This is evident in countries such as Syria, where conflicts have been going on since 2011, as well as Iraq, Afghanistan, Somalia, South Sudan and other countries where lives of millions of civilians are in danger (Orchard, Miller, 2014). According to the Frontex, two migrant routes formed the backbone of the influx of refugees, as well as illegal migrants to member states. The Mediterranean route dominated in 2014, but the backbone for the 2015 Migrant crisis was the Balkans route. The regions from which refugees arrived in Europe were predominantly engulfed in armed conflicts and civil unrest for which the international community lacks effective responses and fails to provide tangible solutions. Considerable number of people in these areas live in poverty, lacking basic necessities and security conditions, which prompts them to flee their countries in search of better living conditions

¹⁰ See publication 'Refugee crisis: Commission reviews 2015 actions and sets 2016 priorities' (https://ec.europa.eu/commission/presscorner/detail/en/IP_16_65)

(Mikac, Dragović, 2017). The crisis that started in 2015 came from various factors, including the emergence of the Islamic State and deteriorating relations among Middle Eastern countries. These factors led to the deterioration of the economic system in those countries. Initially, migrants originated from war-affected countries, but over time, economic migrants from other economically underdeveloped Asian and African joined them out of necessity. Schengen Area suddenly faced a large wave of refugees on its territory causing an enormous crisis which brought into question Schengen's function by crashing the security and legal order of the European Union. The development of events showed that there are no common mechanisms in place that could respond to the mass influx of migrants, nor developed capacities for their reception (Mikac, Dragović, 2017).

4.1.2. Response by the European Union

According to Frontex data, over 1.8 million illegal crossings were detected in Europe during 2015. More than a million asylum seekers reached the European continent from Turkey, making a dangerous sea crossing to Greece, during which more than 3,700 people lost their lives or went missing (IOM, 2015). The member states were not ready for such an influx of people which resulted in the biggest crisis in the European Union so far. The crisis garnered widespread attention due to the scale of the movement and the challenges it posed to both humanitarian efforts and political unity within the European Union. The core of the Common European Asylum System (CEAS) is the Dublin Regulation, a European Union law that determines which member state is responsible for examining an asylum application (Karamanidou, Kasperek, 2018). The regulation aims to prevent "asylum shopping" by ensuring that each asylum seeker's application is processed by a single member state, usually the first one they entered (Mikac, Dragović, 2017). According to the European Commission, in 2015, the exceptionally large influx of refugees and irregular migrants into the European Union revealed a range of shortcomings and inadequacies in the Union's asylum policies.¹¹ The policies did not offer a flexible mechanism for redistributing asylum seekers across the European Union to alleviate the pressure on the most affected countries. Greece and Italy, which were at the forefront of the crisis and received a large number of migrants and refugees arriving by sea, faced a significant challenge (European Parliament, 2017).¹² The International Organization for Migration (IOM)

¹¹ See publication 'Fundamental Rights Report 2016' (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016-2_en.pdf)

¹² See publication 'Policy Department A: Economic and Scientific Policy' ([https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU\(2017\)614194_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU(2017)614194_EN.pdf))

reported around 1 million migrants arriving to Europe by sea, with over 800 000 of them reaching Greece, and just over 150 000 arriving in Italy. Their limited resources and infrastructure were strained by the sheer number of asylum seekers entering their territories. The Dublin Regulation's mechanism for determining the responsible member state proved inadequate in dealing with the exceptional circumstances of the crisis. The inadequacy of the previous system was visible and Europe's response was awaited. The best evidence on how the European Union unpreparedly welcomed the refugees was the entry of more than one million migrants into the territory of the European Union, whose identity was not established upon entry, nor were they properly checked and registered (Karamanidou, Kasperek, 2018). Some member states, such as Germany and Sweden, invited migrants to their territory, seeing them as potential contributors to the workforce, while some other states saw refugees as a potential threat. Many politicians from the European Union demonstrated a lack of responsibility and leadership, and the crisis challenged the fundamental values of the European community and brought insecurity into the lives of its citizens (Zeko, Vrbanec, 2022).

One of the major issues was the installation of razor wire on borders by Hungary which caused significant concern among the public (Tadić *et al.*, 2016). On the other hand, German chancellor Angela Merkel demonstrated strong leadership by supporting migrants and upholding fundamental European Union values through advocating the policy of open borders and acceptance of refugees. Alongside Germany, Sweden stood out as the country that received the most migrants, while Greece and Italy shouldered the greatest burden of care. Furthermore, all countries along the migration route from Macedonia to Germany were looking for the best and fastest way for migrants to leave their territory as soon as possible (Mikac, Dragović, 2017). The Schengen regime proved to be extremely ineffective in the fight against the consequences of the migrant crisis, but an even greater problem proved to be the lack of a common position by the European Union, as well as a direct 'attack' on the Schengen Acquis by installing wires between borders, including between Austria and Slovenia, both Schengen member countries. It is evident that the European Union's response was delayed and only initiated when the crisis had subsided, offering certain solutions (Župan, 2022). These solutions included the development of mechanisms for transfer and resettlement, the promotion of legal entry into the European Union, and the establishment of the European Border and Coast Guard Agency, along with the reformation of asylum-related legislation (Mikac, Dragović, 2017).

4.1.3. Reestablishment of the national border control points due to migratory pressure

During the 2015 European migrant crisis and subsequent periods of heightened migratory pressure, several European Union member states opted to reintroduce national border control points within the Schengen Area. It took several months for European politicians and leaders to reach a consensus on addressing the challenge of illegal migration, and the agreement with Turkey regarding the care of migrants was their first concrete move in solving the crisis. The Schengen Agreement allows member states to temporarily reinstate border controls under exceptional circumstances. Austria, Germany, France, Hungary, Malta, Sweden, Slovenia and Norway exercised the option to reintroduce temporary intra-Schengen border controls due to the large influx of asylum seekers.¹³ Additionally, Hungary constructed barbed fences on its borders with Serbia, Croatia and Romania, and even contemplated to build one along the border with Austria (Guild, Brouwer, Groenendij and Carrera, 2015). During this time, efforts were also made to reduce the mass influx of migrants from the Balkan route. Consequently, at the end of January 2016, Austria implemented restrictions on the reception of refugees and migrants from Slovenia (FRA, 2016). Stricter criteria were swiftly implemented by Slovenia, Croatia, Serbia, and eventually Macedonia, with the intention of preventing economic migrants from crossing their borders. The European Union's stance towards Macedonia was paradoxical during the migrant crisis. Specifically, the countries of the European Union demanded that Macedonia stop the influx of migrants, while disregarding the fact that a non-member state is required to protect the Union from the Union itself, as migrants were entering Macedonia Greece - an EU member (Mikac, Dragović, 2017).

In light of the reestablishment of border controls, and with the aim of returning the Schengen system to its full operational capacity, an action plan titled "Back to Schengen" was introduced, proposing the removal of all internal border controls by the end of 2016.¹⁴ Although the Schengen Area eventually restored, the reestablishment of national border control points due to migratory pressure highlighted the challenges of balancing security concerns, humanitarian considerations, and the principles of the Schengen Agreement. This also triggered discussions about the necessity for a more unified and coordinated European Union approach to migration and border management.

¹³ See publication 'Fundamental Rights Report 2016' (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016-2_en.pdf)

¹⁴ See publication 'Back to Schengen: Commission proposes Roadmap for restoring fully functioning Schengen system' (https://ec.europa.eu/commission/presscorner/detail/en/IP_16_585)

4.2. 2020 COVID PANDEMIC

Over the past years, the Schengen Area faced another significant challenge in the form of the COVID-19 pandemic, which came on the heels of the migration crisis in 2015. Much like the situation during the 2015 migration crisis, the swift spread of COVID-19 was met with a delayed political response at the European Union level. Consequently, member states took independent actions, implementing measures to close both external and internal borders, and these actions were not always in alignment with one another (Voynikov, 2020). To worsen the matters, in numerous cases, the reintroduction of border checks was accompanied by limitations on non-essential travel, significantly limiting the freedom of movement for European Union citizens.¹⁵ The swiftness with which member states imposed these measures, causing European citizens to become isolated from their friends, family, neighbours, and co-workers, might have been unexpected, given our accustomed ease of travel across EU countries. This situation highlights that Schengen's privileges should not be assumed as a given (Rijpma, 2020).

4.2.1. Background and rapid spread of the COVID-19

The COVID-19 pandemic was caused by the new coronavirus SARS-CoV-2. The virus was first identified in December 2019 in the city of Wuhan, Hubei province, China. It was initially linked to a seafood market in the city, where live animals were sold. The rapid spread of COVID-19 was characterized by exponential growth in cases, driven by factors like super-spreader events and the emergence of more transmissible variants. It had global reach due to international travel, strained healthcare systems, caused economic and mental health impacts, and highlighted the importance of global collaboration in disease management. Public health measures varied in effectiveness. Overall, it underscored the need for early detection, swift response, and international cooperation in addressing global health crises. The varying levels of preparedness and response across different countries and regions also contributed to the differing rates of spread. Countries with robust healthcare systems, early testing, contact tracing, and effective communication strategies generally fared better in controlling the spread. In response to the rapid spread of COVID-19, countries and organizations implemented various measures such as lockdowns, travel restrictions, social distancing, mask mandates, and widespread testing to slow down the transmission. Although all measures were taken, COVID-19 pandemic was another problem that the European Union had to face in the already difficult situation with migrants.

¹⁵ See document by the EC 'Impact Assessment Report'
(<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2021:0462:FIN:EN:PDF>)

4.2.2. Consequences and member states response

The COVID-19 pandemic has prompted significant responses from both national governments and European institutions within the European Union. Prominent among these responses are restrictions on international travel and the closure of borders, frequently implemented as “state of emergency” measures. These actions have had far-reaching consequences, significantly restricting the mobility and freedoms of European Union citizens, residents, and even third-country nationals living within the Union. Furthermore, these measures have prompted significant questions about the principles of the Schengen Area, the Single Market, and European citizenship, all of which are rooted in the principles of unrestricted movement of people and the elimination of internal border controls.¹⁶ It's noteworthy that these measures coincided with the 25th anniversary of the Convention implementing the Schengen Agreement, which entered into force on March 25, 1995 (Carrera, Luk, 2020).

During the COVID-19 pandemic, member states frequently employed expedited procedures for the initial 10-20 days of border control, followed by more rigorous legal processes. However, it's worth noting that compliance with the obligation to furnish comprehensive justifications for these actions was limited among member states (Thym, Bornemann, 2020). Once again, there was no unified response from all member states, and each member state implemented its own restrictions independently within the Schengen Area.

The temporary reintroduction of internal border controls didn't equate to a prohibition on entering specific member states' territories. This is why most European Union member states implemented various forms of entry restrictions instead (Voynikov, 2020). When viewed through the lens of Schengen Law, the measures implemented by European Union member states concerning mobility restrictions can be categorized into three groups: the temporary reintroduction of border controls at internal boundaries, restrictions on crossing internal borders, and restrictions on the entry of third-country nationals into the European Union (Carrera, Luk, 2020). The Schengen Area is known for its open internal borders, facilitating seamless travel between participating European countries. Nevertheless, these open borders are accompanied by stringent controls at the shared external borders and close cooperation among member states to uphold security and manage border-related matters. As a result, the COVID-19 pandemic necessitated measures that temporarily contradicted the foundations of the Schengen Agreement, which emphasizes unrestricted internal movement.

¹⁶ See document by the EC 'Impact Assessment Report'
(<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2021:0462:FIN:EN:PDF>)

4.2.3. Aftermath and effect on Schengen Area

On the one hand, the Council of Europe's Venice Commission defines 'public emergency situations' as scenarios involving deviations from typical human rights standards and changes in the allocation of functions and powers among different state organs (Özbudun and Turhan, 1995). On the other hand, it is clear that the most egregious violations of human rights frequently occur in situations of emergency or states of emergency. Consequently, the COVID-19 pandemic has triggered a series of consequences affecting the Schengen system. The reintroduction of border controls had a far-reaching impact, affecting not only the freedom of movement for individuals but also the flow of goods, services, and capital. This had economic consequences, including supply chain delays and repercussions for businesses reliant on cross-border trade. In Europe, the reimplementation or absence of border controls quickly became a tangible representation of varying national stances toward the virus and the absence of a unified European approach (Rijpma, 2020). Various countries implemented border controls and travel restrictions at different times and with varying levels of strictness, creating problems for travellers who had to struggle with constantly changing rules (Rijpma, 2020). Disagreement also became evident in public health measures like mandatory testing, quarantine requirements, and mask mandates, which at times lacked consistency across borders. The disruptions brought about by the pandemic sparked discussions about the future of the Schengen Area. Some raised questions about whether the Schengen Agreement should be revisited to enhance its capacity to address public health emergencies while upholding the core principle of freedom of movement.

4.3. 2022 RUSSIAN INVASION OF UKRAINE

On February 24, 2022, Russia invaded Ukraine, in an escalation of events triggered by the annexation of Crimea in 2014.¹⁷ The countries of the European Union are also indirectly involved in that war, trying to support Ukraine with financial resources and military equipment. This conflict can be considered as a conflict between two opposing sides; the ideology of Western Europe, which Ukraine is getting closer to, and the ideology of Russia. Although the member states of the European Union did not directly join the conflict, according to the data provided by the European Commission, large amount of resources intended for securing the territory of the European Union were diverted to military and humanitarian aid to Ukraine.

¹⁷ See publication 'Conflict in Ukraine: A timeline (2014 - eve of 2022 invasion)' by Nigel Walker (<https://researchbriefings.files.parliament.uk/documents/CBP-9476/CBP-9476.pdf>)

Just days after the beginning of the war, Ukraine applied for the membership in the European Union, proving its close ties with the western ideologies of freedom, equality, prosperity and respect for human rights. By the middle of the 2022, Ukraine was granted a candidate status by the European Council, further severing the ties to Russia.¹⁸ With the conflict still happening today, it is difficult to imagine that Ukraine may join the European union anytime soon, much less the Schengen Area. Furthermore, Ukraine has been tied with many different corruption scandals after the break from Soviet Union, putting in place the question if they will ever be able to respect the fundamental values of the European Union. In order to understand the challenge that the Russian invasion of Ukraine poses, it is important to refer back to the causes of the conflict.

4.3.1. Causes and beginning of the invasion

The conflict between Russia and Ukraine dates back even before the collapse of the Soviet Union. Considering that Ukraine and Russia share common roots, the allegation that they are actually ‘one nation’ is often mentioned (Goncharenko, 2022). After the collapse of the Soviet Union in 1991, Ukraine stood out as one of the countries that embraced this with enthusiasm (Haran, Burkovskyi, 2022). In 1994, Ukraine further solidified its commitment to international security by signing the Nuclear Non-Proliferation Treaty, pledging to dismantle its nuclear arsenal and arrange for its return to Russia. While Ukraine considered itself an independent nation, following the collapse of the Soviet Union until Euromaidan and the overthrow of Ukrainian President Viktor Yanukovich, its political decisions always leaned towards Russia (Goncharenko, 2022). The gradual expansion of Western policy and NATO toward former Soviet Union member states contributed to deteriorating relations between Ukraine and Russia, ultimately culminating in the annexation of Crimea in 2014, after which the regions of Luhansk and Donetsk transformed into strongholds for pro-Russian forces, supported by Moscow, leading to their declaration of independence in April (Lončar, 2022).

Based on these events, the conflict between pro-Russian rebels and Ukraine in those two regions began, leading to escalated conflicts. Eventually, both sides, with the help of Germany and France, reached a cease-fire agreement in 2014, known as the Minsk Agreement. However, there have been frequent armed incidents, and the warring parties continued to accuse each other. Given the ineffectiveness of the agreement, there was a pressing need to negotiate a new agreement in order to once again halt the violence in Ukraine. Minsk II was concluded at the

¹⁸ See Conclusions to the European Council meeting (23 and 24 June 2022) (<https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>)

beginning of 2015 (Haran, Burkovskyi, 2022). Escalations continued in the following years, and this culminated in 2022 when Russia invaded Ukraine. Russia reached agreements with rebel-held areas and initiated an attack on Ukraine from the territory of Belarus (Lončar, 2022). The reasons provided in an interview by President Vladimir Putin for the Russian invasion have evolved over time and initially, the conflict was referred to as a “special military operation”, aimed at demilitarizing and de-Nazifying Ukraine. Furthermore, President Putin justified this "special military operation" by claiming that Ukraine was engaging in genocide within the separatist regions. This marked the beginning of an information war, with both sides claiming success to this day. With the narrative constantly changing, it is not hard to come to a conclusion about the real reasons for the beginning of the invasion. It is reasonable to assume that after the fall of the Soviet Union, Russia never gave up on the former territories and will never accept that these independent states turned towards the European Union and NATO.

4.3.2. Measures taken by the European Union

At the beginning of the Russian invasion, hundreds of thousands of refugees flooded the European Union (Lončar, 2022). By June 30, 2023, over 4 million refugees had temporary protection status in the European Union. The most refugees were registered in Germany, i.e. over 1.1 million and Poland with over 900 thousand refugees (Eurostat). The European Union, having learned from the migrant crisis of 2015, reacted and within the framework of the Technical Assistance Instrument initiated a special appeal to member states facing a large influx of refugees in order to ensure the reception, accommodation and integration of refugees and reduce dependence on fossil fuels procured from Russia.¹⁹ The European Union introduced sanctions against Russia, in the area against individual Russian citizens, organizations and businesses. Further sanctions were introduced, such as the suspension of the EU's Visa Facilitation Agreement with Russia, the ban on the import and export of goods, and the suspension of traffic. The European Council adopted within its measures the regulation enabling temporary trade and other trade liberalization benefits for certain Ukrainian products (Lončar, 2022). In response to Russia's aggression, the European Union, its Member States, and financial institutions have mobilized a total of approximately 38.8 billion euros for Ukraine's economic and social resilience, alongside around 20 billion euros in military assistance, including 5.6 billion euros from the European Peace Facility, resulting in a combined support

¹⁹ See publication 'Ukraine: Commission launches special call to support Member States welcoming refugees from Ukraine and the phasing out of their reliance on fossil fuels from Russia' (https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1867)

package of about 59 billion euros. Alongside the resources for member states dealing with large influx of refugees, the total support amounts to around 76 billion euros. ("EU Assistance to Ukraine") The president of the European Commission, Ursula von der Leyen referred to the sanctions as necessary as they are eroding Russia's economic base and reducing their ability to finance the war. European Union is constantly working together with countries such as United States, United Kingdom, Norway, Switzerland, South Korea, Japan, Australia and Canada in order to ensure the implementation of the sanctions and prevent anyone trying to avoid them.²⁰ Furthermore, European Union reacted swiftly and awarded Ukraine a candidate status in June 2022.

5. MAIN CHALLENGES OF ENLARGING SCHENGEN AREA TO ROMANIA, BULGARIA AND CYPRUS

Romania and Bulgaria joined the European Union in 2007 and have not yet been granted full membership in the Schengen Area. Although it was initially planned that both Romania and Bulgaria would join the Schengen Area in a package with Croatia, this ultimately did not happen. Despite both countries successfully completing the Schengen evaluation in 2011, their accession to the Schengen Area has been delayed to this day. The question arises whether it is enough to meet all the technical conditions or whether politics ultimately has the final say (Britvec, 2018). Regardless of that, Romania and Bulgaria, in their efforts to comply with all the regulations of the Schengen Acquis, encountered the most problems in the area of unaddressed cross-border crime, illegal migration routes, and security issues. To gain admission to the Schengen Area, it is necessary to secure the votes of all member states.

The evaluations carried out from 2009 to 2011 covered assessments in the areas of data protection, police cooperation, visa policy, management of the land, air and sea borders and utilization of the Schengen information system. It was concluded that there are areas that can be improved, but that despite this, both members meet the conditions for the abolition of internal borders (Application of Schengen Acquis in Bulgaria and Romania, 2011). Contrary to the evaluation reports, accession was supposedly opposed by France, Germany, Finland, Sweden, the Netherlands and Belgium. The primary reason for the rejection of Romania and Bulgaria was their insufficient progress in combating corruption and organized crime (Liboreiro, 2022).

²⁰ See publication 'EU welcomes co-ordinated First Anniversary push on Russia Sanctions' (https://policy.trade.ec.europa.eu/news/eu-welcomes-co-ordinated-first-anniversary-push-russia-sanctions-2023-03-01_en)

To make progress in combating corruption and organized crime, the European Commission established the Cooperation and Verification Mechanism (CVM) as a transitional measure to assist both countries in addressing these issues. Progress reports on both countries are published annually. Both countries were expected to make significant advancements in the efficiency and transparency of their judiciary, as well as in the fight against corruption. Bulgaria, in particular, was required to demonstrate additional improvements in combatting organized crime.²¹ Due to a lack of progress in their Schengen accession for several years, both Romania and Bulgaria invited a team of experts in 2022 to assess the application of the Schengen Acquis, under the coordination of the European Commission.²² The Report of the voluntary fact-finding mission to Bulgaria and Romania on the application of the Schengen Acquis and its developments since 2011 concluded that Bulgaria and Romania continue to meet the conditions necessary to apply all relevant parts of the Schengen Acquis in full (Report of the Complementary Voluntary Fact-Finding Mission to Romania and Bulgaria, 2022). On November 16, 2022, the European Commission communicated to the European Parliament and Council that the Schengen Acquis had been fully implemented in Bulgaria, Romania, and Croatia (Making Schengen Stronger. Communication from the Commission to the European Parliament and the Council, 2022). Subsequently, on December 8, 2022, the European Council approved Croatia's accession to the Schengen Area (Council Decision 2451, 2022). However, it's noteworthy that Austria and Germany voted against the accession of Romania and Bulgaria due to concerns over the substantial influx of migrants passing through these two countries (Liboreiro, Genovese, 2022). It's also worth noting that Croatia successfully joined the Schengen Area, even though it became a European Union member six years later than Bulgaria and Romania.

Cyprus is another candidate country for Schengen Area membership. However, despite its application in September 2019, it faces aces significant obstacles primarily due to the unique situation of the Cyprus Green Line. The longstanding Cyprus problem, which remains unresolved, originally stemmed from British colonial issues associated with the decolonization process before 1960. However, by 1960, it had evolved into an internal dispute between Greek and Turkish Cypriots with Green line representing the Boundary between their parts of the

²¹ See publication 'Cooperation and Verification Mechanism for Bulgaria and Romania' (https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en)

²² See publication 'Making Schengen stronger: Bulgaria, Romania and Croatia are ready to fully participate in the Schengen Area' (https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6945)

country. Despite being an internal issue, external powers have become involved in the conflict (Fisher, 2021). The Green line, also known as the Buffer Zone, stretches approximately 180 km across the island and it is under the control of the United Nations, more precisely the United Nations Peacekeeping Force in Cyprus, with the goal of maintaining stability and peace in the region (see the UNFICYP [website](#)).

The origin of this issue can be traced back to 1963 when tensions between Greek and Turkish Cypriots escalated, primarily due to disagreements on political and legal matters. This ongoing problem poses challenges for Cyprus in terms of its ability to fully engage in the Schengen framework, particularly in areas related to border control, security, and the unrestricted movement of people and goods. Schengen member countries are required to demonstrate effective control over their external borders. Cyprus encounters challenges in meeting this requirement due to the divided nature of the island and the absence of a unified border control system between the northern and southern regions. Despite its accession to the Schengen Information System in July 2023, the largest and most widely used information-sharing system for security and border management in Europe, the European Commission has indicated that Cyprus is not presently prepared for membership in the Schengen Area (State of Schengen Report 2023).

6. SUSTAINABILITY OF SCHENGEN AND FUTURE ENLARGEMENTS

In light of the persistent challenges faced by the European Union and the Schengen Area over the past decade, the question arises as to whether all necessary measures have been taken to preserve the fundamental values and whether the same is possible in terms of new expansions. The response of member states to challenges such as the substantial influx of migrants and the COVID-19 pandemic often led to the closure of borders, resulting in violations of the Schengen Area. This immediately sparked a public, academic and political debate about the sustainability of one of the greatest achievements of European integration (Nikolić, Pevcin, 2021). The Schengen Area has evolved into the world's largest zone for unrestricted travel, promoting principles of freedom, security and justice.²³ To ensure its successful maintenance, all 27 member countries must collaborate, employing uniform policies and principles. The 2015 migrant crisis underscored challenges related to the united action of member states within the context of enlargement, as best exemplified by the cases of Romania and Bulgaria. While both countries have successfully completed the Schengen evaluations, 16 years later they are still

²³ See publication 'Schengen Area – The World's Largest Visa Free Zone' (<https://www.schengenvisainfo.com/schengen-visa-countries-list/>)

not members of the Schengen Area. Despite receiving support from the European Commission and the European Parliament, a persistent question has lingered for years: Can these countries effectively manage the substantial influx of migrants who, upon entering their territories, could subsequently move freely within the Schengen Area?

The primary objective of the Schengen Area was not solely to create a region of unrestricted movement and boost economic growth, but also to foster a collective European identity among citizens of the entire European Union, closely tied to European citizenship (Salomon, Rijpma, 2021). Salomon and Rijpma further argue that the re-establishment of internal borders within the European Union had a significant impact on all European Union citizens and likely diminished the sense of shared connection among them, as well as their connection to the European Union. They also point out that the European Union has not taken concrete measures to prevent member states from reintroducing internal border controls, intensifying issues within the Schengen Area in the context of European unity (Salomon, Rijpma, 2021). Therefore, in the context of expanding the Schengen Area, it is crucial to consider not only the principles of facilitating the free movement of people but also the potential for enhancing European identity, which fundamentally underpins the European Community.

Furthermore, as conflicts deepened within the European Union, the Netherlands has stood out as one of the biggest opponents of further European expansion, especially in terms of how it divides the European population (Van der Woude, 2023). Even though the Netherlands initially supported European Union enlargement, it later became more cautious and concerned about the consequences of adding new member states from Central and Eastern Europe (Harryvan, van der Harst, 2022). Van der Woude points out that although population migration within the Schengen Area is actually one of the priorities of the Schengen Acquis, migrants from Central and Eastern Europe are often perceived as a threat to the local population, specifically in terms of potentially taking jobs and introducing instability into established member states (Van der Woude, 2023). The experiences of countries like the Netherlands, which have implemented stricter policing practices and border controls in response to security concerns related to Central and Eastern European nationals, serve as a warning as they aim to create a division between "core" Europeans (Western Europe) and "non-core" Europeans (Central and Eastern Europe) (Van der Woude, 2023). It is safe to conclude that in order to preserve the integrity of Schengen and achieve successful future enlargements, it is imperative that member states refrain from passing judgment and instead prioritize collaborative solutions that uphold the principles of security, shared responsibility, and mutual trust.

The European Union employs a range of measures to preserve the Schengen Area, passing regulations that standardize the procedures and conditions of access to the Schengen Area. Additionally, the European Union allocates funding to support essential infrastructure, equipment and personnel for the protection of the external border and the processing of refugees and migrants. In response to the migrant crisis, the European Border and Coast Guard Agency (EBCG) was established in 2016. Its primary mission is to oversee the implementation of European integrated border management and ensure the efficient operation of border control at the external EU borders in collaboration with the national authorities of EU Member States and Schengen-associated countries. Additionally, over the years, significant efforts have been made to improve the Common European Asylum System and establish The New Pact on Migration and Asylum. These initiatives aim to provide member states with a range of measures to streamline the processing of refugees and migrants. Moreover, large IT systems are being developed at the European Union level to improve the security of the Schengen Area, mainly the Entry Exit system and the ETIAS system. These systems will enhance the capacity of member states for monitoring both legal and illegal migration and ultimately ensure the security of the Schengen Area. Considering that the European Parliament and the European Commission are urging the admission of Romania and Bulgaria into the Schengen Area, despite protests from some countries, their imminent entry can be anticipated soon. However, questions arise regarding the next steps in the context of enlargement. The only remaining member states to join the Schengen Area are Cyprus and Ireland. Nevertheless, due to border issues and electoral considerations, their accession to the Schengen Area is unlikely in the near future. The official status of candidate countries for accession to the European Union includes 8 countries: Turkey, Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia and Ukraine. It's worth noting that the process of admission to the European Union takes several years, and the process of joining the Schengen Area is entirely separate. As of now, Schengen Area enlargement has progressed up to Romania and Bulgaria. For further enlargements, ensuring a balance between security and the facilitation of free movement will remain essential for the Schengen Agreement's long-term sustainability.

7. CONCLUSION

It is unquestionable that the European Union and the Schengen Area are founded on principles such as respect for fundamental human dignity, freedom, democracy, equality, the rule of law and the protection of human rights. The journey toward the current level of cooperation among European countries has been ongoing for a long time. Through the establishment of the Schengen Area, the European Union has successfully realized one of its primary policy objectives, facilitating the unrestricted movement of over 400 million people across its territory. However, the path to achieving this comprehensive freedom was far from easy, and member states encountered numerous challenges over the past decade.

Taking into account the principles promoted by the European Union, it becomes apparent why citizens from underdeveloped countries in the Middle East and Africa attempt to cross Schengen borders. The migrant crisis of 2015 underscored the shortcomings in united action among the member states and the European Union. Measures taken varied across member states, and the European Union struggled to coordinate a cohesive response to the emerging crisis. Even after the migrant crisis began to subside, member states continued to face a large number of migrants. While the newly revitalized Schengen Area was slowly rebuilding trust in the institutions of the European Union and among member states, the European Union was further challenged by the COVID-19 pandemic.

The pandemic has once again highlighted the challenges that arise during emergency situations and the need for improved coordination within the European Union. Member states introduced internal border controls and restrictions on the free movement of people and goods to safeguard their populations. The measures that were taken after the crises faced by all member states were mostly implemented too late, primarily serving to “contain the damage” rather than proactively address the issue. While the concept of the European Union entails coordinated efforts among member countries to protect the Schengen Area, it is evident that achieving such coordination has been challenging. The difficulties and challenges that the European Union has faced over the last decade have significantly impacted the expansion of the Schengen Area.

Candidate countries for the Schengen Area have come under scrutiny from the entire European Union, often facing criticism for the effectiveness of their border security, police cooperation, and efforts to combat corruption. Plans for the enlargement of the Schengen Area were thwarted, and the accessions of Croatia, Romania and Bulgaria were repeatedly delayed. These countries found themselves in a challenging position, as they were suddenly required to meet significantly higher standards for Schengen Area entry than any other country before. It is understandable that the European Union has increased the criteria for Schengen access and

developed new evaluation mechanisms to safeguard the Schengen Acquis. However, it is undeniable that political decisions have also played a role in the enlargement process.

The primary challenge facing the Schengen Area is the lack of a coordinated strategy across the entire European Union. The measures that have been adopted, including the establishment of the European Border and Coast Guard Agency, the New Pact on Migration and Asylum, and the provision of financial assistance to member states through the instruments of the European Union, a continuous effort to enhance the internal security of the Schengen Area, even though these actions take time to implement. Despite advancements in external border protection, the European Union continues to contend with a significant influx of refugees and migrants. It is crucial to make further strides in enhancing control and protection of the European Union external borders to ensure the internal security of the Schengen Area.

Despite indications of reforms at the highest levels, the implementation of these reforms often takes a considerable amount of time. In the foreseeable future, although it has been previously anticipated on several occasions, there are plans for Romania and Bulgaria to become members of the Schengen Area. Their accession will be closely observed by all member states, and it is the responsibility of the European Union to ensure that this process occurs without bias or political interference. The sustainability of the Schengen Area principle can only be achieved through the coordinated efforts of all member states in implementing the Schengen Acquis.

Predicting which country will be the next to join the Schengen Area remains challenging, and it's clear that unforeseen challenges, such as the ongoing conflict in Ukraine, will continue to surface.

This thesis effectively aimed to answer the main research question by identifying the challenges that threaten the enlargement and sustainability of the Schengen Area, specifically focusing on how various crises have impacted the European Union's ability to manage its borders effectively and prepare for the integration of potential new members into the Schengen Area.

To date, although at a gradual pace, the European Union and its member states have successfully addressed the challenges they've encountered. Nevertheless, despite the progress achieved in safeguarding the Schengen Area, it's evident that both the European Union and its member states will need to sustain substantial efforts to ensure the internal security of the Schengen Area in the context of future enlargements. Since the European Union itself is deeply rooted in the principles of the Schengen Acquis, these principles are inherently intertwined, making it impossible to reject them or abandon further progress and expansion.

Future research that could contribute to a deeper understanding of the challenges facing the Schengen Area should focus on the specific problems encountered by the candidate and potential candidate countries for EU membership. Additionally, it would be beneficial to analyse the effectiveness of the use and management of the available European Union Funds to gain a comprehensive understanding of the measures undertaken by the European Union to safeguard the Schengen Area and ensure its long-term sustainability.

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9. SUMMARY

The Schengen Area is founded on the principles of respect for fundamental human dignity, freedom, democracy, equality, the rule of law, and the protection of human rights. Presently, it stands as the largest area facilitating the free movement of people. Its most distinguishing feature is the absence of internal borders, a testament to the unity achieved among member states. This unity extends to collaborative efforts aimed at thwarting both external and internal threats, thus safeguarding the continued existence of the Schengen Area.

In the past decade, Schengen member countries have encountered various threats that have shaken the very foundations of the Schengen Area. Events such as the European migrant crisis in 2015, the COVID-19 pandemic, and the conflict in Ukraine have led to the temporary closure of internal borders within the Schengen Area. These challenges have at times prompted member states to take actions that may appear inconsistent with the fundamental principles of the Schengen Acquis. The objective of this master's thesis is to investigate whether the current Schengen Area model remains sustainable, particularly in the context of potential future enlargements. It seeks to explore whether the European Union and its member states can ensure the security and well-being of European Union citizens while upholding the principles and values that underpin the Schengen Area.

The Master's thesis identifies the foundational values upon which the Schengen Area was established and highlights the significant challenges that member states confronted within a relatively brief timeframe, particularly concerning the integration of new member states into the Schengen Area. Over the years, the European Union and its member states have made concerted efforts to respond to these challenges. While they have effectively overcome crises, it has become increasingly apparent that enhanced cooperation and improved organization at the collective level of all member countries are imperative for the sustainable preservation of security within the Schengen Area and the facilitation of its expansion.

Key words: European Union, Schengen Area, external borders, challenges, enlargement