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THE SHARP EDGES OF EUROPE: SECURITY IMPLICATIONS OF EXTENDING EU BORDER POLICIES EASTWARDS

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SUMMARY

This paper is about the potential consequences for European security of extending EU border policies to central and eastern Europe (CEE), a process currently taking place as the European Union moves towards eastward enlargement. Its central argument is that an inherent tension is growing between EU internal and external security policies in the region to its East. Put very simply, the EU's external security concerns have caused it to encourage regional integration at all levels in eastern Europe, but at the same time its emerging internal security policies (contained in the newly integrated Schengen Convention, and justice and home affairs cooperation) are having contrary effects by reinforcing barriers between countries.

Section 1 explores the tensions between internal and external security policies by discussing the diverse security-related challenges arising along the EU's eastern border in the late 1990s, and the political context of policy-making. Many of the 'new risks' facing Europe after the Cold War involve borders, but the function of borders in security has changed. No longer used primarily to deter military attack and to keep unwilling populations within communist regimes, borders have become multi-functional. They are seen as something to be overcome (through cross-border cooperation, for example), but also as a discriminatory division between peoples (in visa policy). The applicants are seen by the EU not just as countries to be protected by the embrace of international security organisations, but as being themselves a source of potential danger to EU security at the micro-level. The fear of tanks and missiles arriving from across the Iron Curtain has been supplanted by a fear of uncontrolled immigration and cross-border crime.

Section 2 analyses the EU's responses to perceptions of different threats as relayed through the policy agenda it has developed for eastern applicants for membership. The way that the EU and its member states have dealt with these challenges has been inconsistent in the 1990s. Partly this is because EU border policies are themselves fragmented and patchily developed, following a chequered history of European integration in justice and home affairs.

EU accession conditions contain a large number of security-related tasks for the eastern applicants, but these are fragmented across a range of documents and agencies. Inconsistencies between the different tasks are emerging, but are little debated in the EU owing to the technocratic nature of EU accession policy-making. Since the early 1990s, concerns to stabilise CEE have led the EU to stress peaceful resolution of bilateral disputes, fostering regional economic integration and sub-regional cooperation initiatives, and integration of ethnic minority groups. However, EU policies for dealing with external borders (including migration and asylum) are having restrictive effects on the movement of both goods and people that are at odds with this emphasis on regional integration as means of ensuring long-term stability and security. A more sophisticated approach to border management is thus needed, one that overcomes the gaps in the existing institutional framework for security policy.

Section 3 discusses the consequences of EU border policies in CEE. The cases of Hungary and Poland show the range of dilemmas in the EU's effects on their foreign relations of CEE countries, in particular their ability to pursue constructive engagement with their non-applicant neighbours. Disruption of bilateral relationships and regional economic integration has important implications for security in the region. In particular, imposition of EU-driven border policies and visa regimes is inhibiting the ability of local and regional actors to cooperate on a range of sensitive issues, including minority relations, migration, local economic infrastructure, and institution-building.

Section 4 concludes with a discussion of potential future directions for EU internal and external security policies in CEE. It presents several proposals for mitigating the negative

consequences of EU policies for European security, calling for: a more inclusive accession policy; an end to discrimination between the applicants in EU visa policies; supplementary financial aid and political support to the countries farthest from joining; more support to bottom-up sub-regional cooperation across CEE; involvement of the applicants in external policies concerning their neighbours; and an overall EU strategy for the region that unites macro- and micro-security concerns. The applicants will have to take on border regimes if their citizens are to gain the full benefits of free movement in the EU; however, the EU's own long-term security depends on developing flanking measures to mitigate the impact of its border policies on regional integration in the wider Europe.

THE SHARP EDGES OF EUROPE: SECURITY IMPLICATIONS OF EXTENDING EU BORDER POLICIES EASTWARDS

Heather Grabbe

I. The functions of frontiers in post-Cold War security[1]

> 'All of us – the European Union, the applicant countries, and our neighbours in the wider Europe – must work together towards our common destiny: a wider European area offering peace, stability and prosperity to all: a "new European order".' Romano Prodi, President of the European Commission, Investiture speech to the European Parliament, 14 September 1999.

> 'The continent-wide application of the model of peaceful and voluntary integration among free nations is a guarantee of stability.' *For a Stronger and Wider Union*, Agenda 2000, Volume I, Strasbourg, 15 July 1997, Communication of the European Commission, DOC 97/6.

> '… the collapse of the Iron Curtain ended the Cold War and presented us with a unique opportunity to unite Europe in peace and freedom after almost five hundred years. We have a historical and moral duty to seize this opportunity.' Jacques Santer, President of the European Commission, Speech to the International Bertelsmann Forum 1998 Berlin, 3 July 1998.

This paper is about the potential consequences for European security of extending EU border policies to central and eastern Europe (CEE), a process currently taking place as the European Union (EU) moves towards eastward enlargement. Its central argument is that an inherent tension is growing between EU internal and external security policies in the region to its East. In brief, the EU's external security concerns have caused it to encourage regional integration at all levels in eastern Europe, but at the same time its emerging internal security policies (contained in the newly integrated Schengen Convention, and justice and home affairs cooperation) are having contrary effects by reinforcing barriers between countries.

A central aim of eastern policy since 1989 has been to stabilise the region on the periphery of the EU by encouraging integration and improving intra-regional relations. The three statements quoted above are examples of how EU policy-makers have repeatedly stressed integration of the wider Europe beyond the current applicants as part of the Union's overall mission. In particular, extending the successful model of west European integration eastwards to encompass the relations of the eastern applicants with their neighbours is a tenet of the EU's eastern security policy.

However, the 'macro-security' concerns of nurturing political stability through regional integration only sometimes predominated when it came to setting specific accession conditions for the applicant countries of central and eastern Europe (CEE)[2]. Numerous different agencies

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[2] There are ten CEE applicants for membership, and two Mediterranean ones. Six of the applicants (the Czech Republic, Estonia, Hungary, Poland and Slovenia, plus Cyprus) began accession negotiations with the EU in March

have played a role at different points in defining the accession *acquis*; in particular, EU institutions and member states have used accession conditionality to put pressure on CEE countries where there are issues of special concern to them (such as nuclear safety, treatment of minorities, and border policies). This opportunistic use of the conditionality lever has caused inconsistencies in the messages that EU policies have sent to the applicants, and hence in the EU's influence on policy-making in CEE.

One such inconsistency in the agenda set by the EU lies between the priorities for external security and those for internal security. In accession policy-making, one of the areas increasingly stressed by the member states located along the EU's eastern frontier is threats to internal security emerging from CEE. The opening of East-West borders has coincided with a burgeoning internal security agenda within the EU. A policy area that could be called 'micro-security' is growing fast as EU policy-makers respond to myriad threats to the security of their citizens by developing new instruments at both national and EU levels. At the same time, many of these threats are perceived to be emerging from behind the former Iron Curtain. The applicants are seen not just as countries to be protected by the embrace of international security organisations, but as being themselves a source of potential danger to EU security at the micro-level. Unlike the 'macro-security' concerns of the Cold War, which primarily involved state-controlled and politically driven threats from national militaries, the new risks are from the private sector. The CEE governments that are orienting their foreign policies towards joining Euro-Atlantic structures are by definition no longer a macro-security threat, but they cannot necessarily control the activities of their citizens in contact with the EU.

This privatisation of security threats from the East presents a complex dilemma because autonomous citizens are much more difficult to deal with than state-governed forces in the international security framework. These are threats that democratic CEE governments cannot counter by using the means of their repressive predecessors. Communist-era internal security regimes have been (at least partly) dismantled, and one of the new-found freedoms of the populations is less surveillance by the state. For western Europe, the fear of tanks and missiles arriving from across the Iron Curtain has been supplanted by anxiety about uncontrolled immigration and cross-border crime.

I.1 The changing nature of borders

The security dimension of enlargement is fragmented and poorly integrated with the rest of EU accession policy for CEE. At least until the first expansion of NATO and the Kosovo war, the potential demand for EU responses to security concerns was muted by the priority accorded by CEE policy-makers to NATO accession as their primary external security goal.[3] Meanwhile, the supply side was equally limited while the EU's own progress in developing a common foreign and security policy (CFSP) was stalled between the Maastricht and Amsterdam treaties, before it was given a jump-start by bilateral initiatives in 1998-99. Moreover, the three-pillar structure of the Union created at Maastricht divided up policy areas that are deeply interconnected in the CEE region.

CFSP is not the only issue in EU enlargement affecting European security, although it is often treated as such. Other parts of the EU's agenda for CEE have security implications,

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1998, and three of them (the Czech Republic, Hungary and Poland) joined NATO in 1999. Bulgaria, Latvia, Lithuania, Romania and Slovakia (plus Malta) opened EU accession negotiations on 15 February 2000.
[3] See Hughes, Grabbe and Smith 1999.

although the technocratic nature of the accession process tends to keep them hidden in the murky recesses of detailed and seemingly technical policy transfers. This paper turns the spotlight onto the border policies contained in the EU's internal security agenda for CEE. This area has been proliferating rapidly to comprise a wide range of policies, from migration to transnational crime to asylum policies and police cooperation. The *acquis communautaire*[4] on CFSP for the applicant states is largely uncontroversial, allowing it to be substantially agreed in the first few months of accession negotiations. By contrast, the internal security agenda is highly complex, growing fast and could become one of the most difficult issues in enlargement.

Borders lie at the centre of security debates as our perceptions of security threats move beyond a focus on traditional, hard-security concerns such as military attack to encompass a range of new risks. Many of these risks are transnational and frontier controls are used as the primary means of trying to guard against them: terrorism, arms smuggling and international organised crime can all threaten national security, and they are usually linked. Hence the distinction between national defence and internal affairs has become increasingly blurred, as border policies become key features of a new armoury to supplement military means of defence. Civilian security agencies are growing rapidly, and frontier policing is the backbone of national and international efforts to deal with these new threats. The distinction between military and police corps is being eroded as new forms of border regulation are created,[5] an illustration of the way in which institutional development is being changed by border policies. The development of the EU and the growth of trans-frontier links between sub-national authorities may be undermining the international frontier as a basic political institution, but one element of traditional sovereign control – policing movement across frontiers – remains at the centre of political debates.[6]

What are borders for? Many of the 'new risks' facing Europe after the Cold War involve borders, but the function of borders in security has changed. No longer used primarily to deter military attack and to keep unwilling populations within communist regimes, borders have become multi-functional. They are seen as something to be overcome (through cross-border cooperation, for example), but also as a discriminatory division between peoples (in visa policy). Their functions have changed in the last decade from being the frontiers of Cold War Europe, when the Iron Curtain held people in rather than kept them out. By the end of the 1990s, this situation had been reversed. Borders have been opened from the eastern side after 1989, but they are now being tightened from the West. Movement across the Schengen zone is loosening frontier controls in the West, but at the same time, borders between central and east European countries are controlled increasingly tightly. Yet, paradoxically, both of these border regimes are being wrought in the name of European integration.

Frontier controls have come to be seen as the EU's first line of defence against instability and its consequences – refugees, crime, and the breakdown of law and order. But frontiers are also something to be positively overridden; they are a legacy of the post-1945 divisions that the European integration project was designed to overcome. After all, the Treaty of Rome resolved 'to eliminate the barriers which divide Europe' and aspired to 'an ever closer union among the peoples of Europe', an aim that has been extended to include east European peoples following the collapse of communism in 1989.[7]

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[4] '*Acquis communautaire*' is the term used to refer to all the real and potential rights and obligations of the EU system and its institutional framework; the accession *acquis* is the whole body of EU law and practice – see Grabbe 1999.
[5] See Politi 1997.
[6] See Anderson 1996.
[7] 'Treaty Establishing the European Economic Community', Rome, 25 March 1957, Preamble.

The implications of extending Schengen borders to CEE are likely to be significant for the future of European integration and also for the security of the wider Europe surrounding the EU core. After all, 'Europe' is largely defined – both geographically and politically – by its border policies. We have often heard aspirations to a Europe 'whole and free' (in George Bush's words), but the interim phase of integrating only part of CEE into the Schengen zone runs the risk of creating new dividing lines in this wholeness.

I.2 The political context: post-Cold War anxieties

The dismantling of frontiers to the East is often blamed for the proliferation of transnational crime, because greater liberty to travel coincided with a breakdown in law and order in some east European countries. Frontier-crossing offers numerous possibilities for hard-pressed populations to earn money through both legal and illegal means. The two main concerns within the EU are migration and cross-border crime (the latter covering a vast range of problems including smuggling, trafficking in human beings, drug-running and terrorism). These two issues are often talked about in the same breath in public discourse, although they should not be causally linked: migration does not necessarily cause cross-border crime. Moreover, the migration issue is multi-faceted: there is the question of migration motivated by economic opportunities (which can be legal or illegal) and there is also transit migration across CEE (mainly illegal). Most complex of all is the movement of the Roma minority populations, who represent some of the most visible migrants from the region; the Roma claim discrimination in CEE as justification for seeking asylum in the EU, in turn raising various civil liberties and human rights issues.[8]

Table 1: GDP of the applicant countries (purchasing power standards) in 1998

	Population	*GDP in P.P.S (Purchasing Power Standards)*		
	million inhabitants	*billion euros*	*euro/inhabitant*	*euro/inhabitant as % of EU average*
Slovenia	2.0	27.4	13,700	68
Czech Republic	10.3	125.7	12,200	60
Hungary	10.1	99.0	9,800	49
Slovakia	5.4	50.2	9,300	46
Poland	38.7	301.8	7,800	39
Estonia	1.4	10.2	7,300	36
Lithuania	3.7	22.9	6,200	31
Latvia	2.4	13.2	5,500	27
Romania	22.5	123.7	5,500	27
Bulgaria	8.3	38.2	4,600	23

Source: Data compiled by Eurostat from national sources, published in Annex 2 of Commission of the European Communities (1999), *Composite Paper: Regular Report from the Commission on Progress towards Accession by each of the Candidate Countries, October 13, 1999*, Brussels: OOPEC, p. 24.

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[8] Migration of Roma populations is a long-term issue that merits much greater discussion about a joint EU-CEE strategy. Its complexities are beyond the scope of this paper, but see Vaše…ka 1999 and Amato and Batt 1999 for an informed discussion.

What is the real scale of potential economic migration? This is hard to estimate, but it is linked to socio-economic discrepancies between East and West. Gaps between income levels and living standards in CEE and the EU are being reduced by economic growth, but they will be there for several decades yet for most of the applicant countries.[9] As shown in Table 1, relative income levels are converging quickly with EU levels for candidates like Slovenia and the Czech Republic, but much more slowly for the Baltic and Balkan countries, for whom the EU will remain an economic magnet into the long term for hard-pressed populations trying to make ends meet.

However, flows of people seeking to reside in the EU in the long term are small, with most migrants taking up short-term economic opportunities in western Europe, where there is a strong demand for seasonal workers. In fact, permanent emigration from CEE has fallen substantially over the last decade, while short-term and transit migration are increasing.[10] Moreover, as shown in Table 2, flows into the main recipient country in the EU – Germany – have declined considerably after a surge in 1991-92 (more than half of which was accounted for by returning ethnic Germans).

Table 2: 1990-1996 Permanent and temporary emigration flows from selected CEECs to Germany, including returning ethnic Germans[11]

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

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

Academic surveys and estimations suggest that allowing free movement of labour on accession is unlikely to provoke large migratory flows.[12] The outcome of previous EU enlargements was relatively limited migration, despite wide disparities in employment and income between the poorer Mediterranean states when they acceded and richer northern Europe. Moreover, relative political stability in CEE, steady economic growth among the front-runners and foreign direct investment are already discouraging any large-scale movement of unskilled workers. Future East-West migration is not expected to cause problems for EU labour markets, even where unemployment is high.[13] By the time of accession, new CEE members will by

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[9] See estimations of catch-up periods in World Bank 1996.

[10] According to latest figures on East-West migration recorded in International Organization for Migration 1999.

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

[12] See Richter 1998.

[13] See Bauer and Zimmerman 1997.

definition have been judged to have met the Copenhagen conditions of stable democracy, a functioning market economy and the capacity to cope with competitive pressure in the European single market, conditions which remove the main incentives to migrate. Indeed, the consequence of liberalising labour markets is more likely to be 'brain drain' of the highly skilled to western Europe than any large-scale movement of low- or unskilled workers.

However, even if economically-motivated migratory flows from CEE are likely to remain relatively small and largely temporary, there is the separate issue of crime-related movement of people. The West-East traffic in goods (such as stolen cars and drugs) that burgeoned after 1989 is now accompanied by traffic in human beings, which is often safer and more profitable for the traffickers. This traffic in people (which is often coercive in the case of women) raises the difficult question of transit migration, that is, flows of people across CEE from other countries, particularly the former Soviet Union and Asia. These flows of third-country nationals are particularly worrying to west European policy-makers because they are so much more difficult to track and to control than are flows of CEE citizens. Transit migration is more likely to be illegal and linked to organised criminality than EU-CEE flows of people, and there are questions about the willingness and ability of poorly paid CEE police forces and frontier guards to combat a trade that often gives them some share in the profits.

However, the fears about transnational crime raised in public debate are not necessarily informed by assessments of the real scale of the problem and potential solutions, as media coverage of cross-border crime in the borderlands of Europe has often been alarmist. It is undeniable that dismantling the barbed wire has allowed more crime across Europe's borders. However, it is extremely difficult to estimate exactly how much crime has increased, and migration alone does not necessarily exacerbate it. 'Criminal activity' has been redefined under new laws that liberalise political offences in CEE. However, crime against people and property – whose true extent was not acknowledged before 1989 – is more obvious because the media are at liberty to report it, and because criminals can now operate in both western and eastern Europe. Although there are certainly real problems with this kind of crime, something of a fortress mentality has developed as well. As Eberhard Bort puts it, '… one cannot but feel that the campaign against organised crime has had to serve as a surrogate for the Cold War enemy which vanished after the fall of the Wall.'[14]

Bringing together conflicting priorities from the external and internal policy agendas for consideration is difficult in the current political climate. Pressure is growing in Austria and Germany for repressive measures on movement of people because of political debates driven by vocal opponents of migration. Threat perceptions in western Europe have been affected by exaggerated claims about the risks of migration from CEE, and there have been few counter-claims about the real scale of the risks of migration in political debates. Populist politicians in the regions along the EU's eastern frontier have been quick to exploit public fears about migration, in turn driving their countries' positions in EU debates towards restricting movement from CEE. In Germany, the Christian Democrats (CDU/CSU) have demanded that free movement of people from CEE should not be allowed until 2015 at the earliest.[15] There is also pressure in Bavaria from the Sudeten German lobby to re-open border issues with the Czech Republic, and to restrict the number of ethnic Germans who can exercise their right to come to Germany.[16] The 1999 election campaign in Austrian made clear the extent of public support for Jörg Haider's anti-enlargement stance. The strong reaction from other EU governments against the entry of Haider's

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[14] Bort 2000, p. 13.
[15] Proposal reported in *Die Welt*, 8/7/98.
[16] See Bazin 1999.

Freiheitlichen Partei Österreichs into the coalition government is likely to make it harder for Austria to stall the enlargement process at EU level. On the other hand, the politics of fear that drove so many Austrians to vote for the FPÖ will remain a potent force, pushing governments towards increasingly restrictive border policies in relation to eastern Europe. Across the EU, parties of the far right are having an impact on political agendas by pushing centrist governments to prove that they are tough on crime through tightening border controls.

Some of the exaggerated claims about immigration are motivated by a concern about economic competition as well as xenophobia. Fears of migratory flows of cheap labour from eastern Europe have caused pressure from Austria and Germany to restrict CEE citizens' ability to work in the EU for many years after accession. The German economy in particular would probably benefit considerably from the immigration of skilled workers from CEE[17], and sectors such as construction and domestic services are already dependent on using cheaper east European labour; however, organised labour and other interest groups have objected loudly to further inflows. Furthermore, there is already sensitivity in Germany about what is seen as an unfair share of the refugee burden from south-eastern Europe; this affects German views on overall levels of migration, although in fact in 1997 (before the Kosovo crisis) more foreigners left Germany than entered it.[18]

In the face of these political pressures, the EU's immediate response has been to try to reduce the overall size of cross-border flows in order to reduce the total number of migrants. In addition to the question of crime, arguments are voiced that restricting migration in advance of accession is needed in order to prevent opposition to eastward enlargement from growing. At supranational level, there is also concern that the status of legal migrants resident in the EU should not be jeopardised by public perceptions that illegal migration is out of control. Yet the extent to which border controls are actually an effective way to reduce different forms of criminal activity is questionable, given that transnational criminal networks all have very sophisticated means of evading such controls. Practitioners often claim that frontier controls alone are of limited use in detecting crime, suggesting that the link between crime prevention and border control needs to be questioned, and even detached.[19]

How should the EU deal with these various new security dilemmas? How can it stabilise CEE through integration while simultaneously responding to the anxieties (even if unfounded) of its own population? Probably the best way of reducing these socio-economic gaps – and the security threats that might stem from them – is integration with the EU. Economic integration has been essential for the successes of post-communist transition in CEE, with the EU now accounting for the great majority of CEE trade and foreign direct investment inflows into the region. Many CEE jobs thus depend on maintaining access to EU markets, and these economic ties have helped to keep populations stable and crime down. Moreover, travel to western Europe is essential to both current economic activity and its future development: today's students visiting the EU are tomorrow's entrepreneurs.

The EU thus has a two-sided task in managing its borders with CEE: on the one hand, it has to maintain open access for goods and people to facilitate the economic integration that is benefiting both regions and stabilising CEE. But on the other, it wants to control cross-border movements in order to regulate trade and – more controversially – to try to reduce criminal activity. Can it maintain the right balance between these conflicting aims? At present, policy

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[17] See Bauer and Zimmerman 1997.
[18] Bort 2000.
[19] See Amato and Batt 1999.

measures to address these two tasks seem to be drifting apart. The next section of this paper argues that the hyper-activity of EU policy-makers in creating an internal security agenda since Amsterdam has caused the border-tightening side of the equation to run ahead of the trade and travel-liberalising side.

II. EU policies for CEE borders

EU accession conditions contain a large number of security-related tasks for the eastern applicants, but these are fragmented across a range of documents and agencies. Inconsistencies between the different tasks are emerging, but are little debated in the EU owing to the technocratic nature of EU accession policy-making. Since the early 1990s, concern to stabilise CEE has led the EU to stress peaceful resolution of bilateral disputes, fostering regional economic integration and subregional cooperation initiatives, and integrating ethnic minority groups. However, what might be called an '*acquis frontalier*' for the EU has been emerging at the same time which requires stricter border controls and a common visa regime, and is thus at odds with the emphasis on regional integration as a means of ensuring long-term stability and security. This problem is exacerbated by the independent development of the second and third pillars of the EU; there has been little rationalisation of their overlapping remits when it comes to eastern policy.

The border policies being extended to CEE reflect the many and diverse approaches that the EU has taken to frontier issues. EU border policies are themselves fragmented and inconsistently developed, following a chequered history of European integration in justice and home affairs; they have been driven by concerns as diverse as external security, social cohesion and the European single market. In addition, defining border policies for the applicants has been further complicated by rapid changes in the internal security *acquis* and the rebuilding of the policy-making infrastructure in this area under the Amsterdam Treaty, which has moved much of the justice and home affairs remit from inter-governmental cooperation into Community jurisdiction and has integrated the formerly extra-EU Schengen Convention into the first and third 'pillars' of the EU's treaty framework. Furthermore, border policies are bound up with a host of other issues, ranging from movement of goods within the European single market to domestic and international policing; on the CEE side, they are connected to the treatment and status of ethnic minority populations.

Behind the accession conditions on borders lies a dual motivation: to bring the applicants' border policies progressively into line with the Schengen *acquis*, and also to address immediate EU concerns about threats perceived by its member states. The most evident and pervasive of these concerns is the potential for illegal immigration by east Europeans or third-country nationals travelling through the applicant countries. Interior ministries in EU states have pressed for accession conditions to deal with the immediate migration pressures and crime threats by extending EU policies to the applicants' eastern borders to ensure that third-country nationals cannot travel through these countries to the EU; however, their counterparts in EU foreign ministries are (to greater or lesser degrees) concerned about promoting good relations between applicants and their neighbours in order to stabilise the region in the long term. These different sets of policy-makers have thus tended to push accession policy in divergent directions.

II.1 The evolution of EU border policies

The origins of EU border policies in the 1980s were largely based on getting rid of obstacles to the free circulation of goods, services and people, rather than regulating frontiers more tightly.[20]

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[20] See Bigo 1998.

Immigration and asylum policies were then matters for national authorities, and the European level was concerned with intergovernmental cooperation to foster economic integration through the European single market. The first moves towards common frontier policies were motivated by frustration with the slow removal of obstacles between countries that had geographically close and tightly integrated economies. This led to an agreement outside the European Community framework signed at Schengen in 1985, which was then elaborated and implemented as the Schengen Convention by five countries (Belgium, France, Germany, Luxembourg and the Netherlands) in 1990. Schengen's original aim was 'the gradual abolition of controls at common frontiers', although such controls were finally abolished only from 1995 onwards.[21] By that time most other EU members had signed up to Schengen, leaving only Ireland, the United Kingdom and Denmark partially outside it.[22]

The EU's institutional framework for 'justice and home affairs' – a portmanteau for issues ranging from refugee protection to organised crime to citizens' rights – has changed enormously over the past decade, moving from intergovernmental negotiations in the 1980s, to the 'third pillar' plus the extra-EU Schengen area after the 1992 Maastricht Treaty, to a new *acquis* following the creation of a new Title IV on migration and asylum in the Amsterdam Treaty in 1999. The Amsterdam Treaty's aim is to create 'An Area of Freedom, Security and Justice', with all matters relating to movement of persons placed in the first pillar, following unexpected developments at the 1996-97 Intergovernmental Conference.[23] Border controls, asylum, visas, immigration and cooperation on civil justice have now been put within the remit of Community institutions (such as the European Commission and Court of Justice), leaving the third pillar containing police cooperation and criminal justice.

However, despite the rapid growth of the internal security *acquis*, member states remain divided over how asylum and immigration policies should develop in the context of European integration. The Tampere summit of October 1999 highlighted continuing difficulties in defining common European interests and objectives for policies applied at EU borders.[24] Although the summit resulted in agreement on moves towards a common asylum policy, as well as further cooperation on tackling cross-border crime, there were fundamental disagreements over the degree of legal harmonisation needed on migration policies, burden-sharing in dealing with refugees, and use of EU trade and development policies to reduce immigration pressures.[25] Nevertheless, a central concern remains stemming migratory flows; more than 70 immigration and asylum measures were adopted by the Council of Ministers between 1993 and 1998 with this aim.[26]

The Schengen *acquis* is not the only means by which the EU affects border policies in CEE. Because of the extensive intergovernmental and extra-EU agreements governing this area, CEE countries have to take on the emerging EU refugee and asylum regime as well. This regime to harmonise treatment of refugees throughout western Europe has slowly emerged through a series of intergovernmental conventions and cooperation between national ministries of the

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[21] Border controls were abolished in 1995 between seven Schengen countries; Austria and Italy became fully part of the Schengen zone in 1998, while Greece is still in the process of implementing Schengen requirements.

[22] The UK and Ireland have opt-outs from Schengen that include a 'selective opt-in', whereby they do not normally participate in migration policy measures. Denmark is a member of Schengen, but has a special arrangement whereby it has opted out of the third pillar (although with extensive opt-in possibilities): see Monar 1999.

[23] For details of the negotiations behind this outcome at Amsterdam, see Petite 1998.

[24] European Council (1999), 'European Council in Tampere: Presidency Conclusions', 15-16 October.

[25] Monar 1999.

[26] Alan Travis in *The Guardian*, 20/10/98.

interior that has largely been hidden from public scrutiny.[27] It includes unilateral and bilateral agreements, and also multilateral activities that EU member states conduct with other European and non-European countries, international organisations and non-governmental organisations. CEE countries have been unilaterally incorporated into this regime through the EU's extension of its redistributive system for handling asylum claims and export of border control technology and practices to strengthen their eastern frontiers. The redistributive system rests on a series of readmission agreements that ensure the return of migrants to their country of nationality or their original country of entry, and on the 'safe third country' doctrine. The CEE applicants have now signed bilateral readmission agreements with EU members and other central and east European countries; most are considered themselves to be safe third countries by EU member states,[28] so their nationals cannot claim asylum in the EU.

Changes in CEE border policies have thus been provoked by more than just the formal accession criteria. Moreover, compliance with Schengen norms has been accompanied by increasing unease among CEE authorities about their implications for bilateral relations and the fact that applicants cannot participate in formulating these norms. While they remain applicants, the CEE countries are subject to an asymmetrical relationship where they are merely consumers of EU policies, and cannot contribute to them. The influence of EU practices above and beyond the formal accession requirements is partly due to the obscure status of these different EU demands. It is difficult to determine their legal status because the applicants are in a kind of 'twilight zone' with regard to EU obligations. They are aping EU-member state relations without being member states, implementing the policies without being able to influence their formulation. In fact, the only legally binding basis for EU-CEE relations is the Europe Agreements signed from 1993 onwards, which cover only a very small part of the *acquis communautaire* and whose provisions have been quickly exceeded by much more extensive demands made by the EU through later policy documents.

This legal obscurity clouds the issue of which conditions must be fulfilled before accession and which can be left until later, a critical question when considering the impact of the conditions on regional relations. Implementation of the Schengen zone has occurred in two stages for most EU countries: there was accession to the Schengen Accord, and then at a later point frontier controls were lifted once other Schengen members were confident about the ability of their neighbours to control external frontiers effectively. It is not clear how this procedure will apply to CEE, and there are different views in Brussels and across the member states on whether accession to Schengen has to be simultaneous with accession to the EU. In areas such as visa policy, the timing of the application of EU policies is vital to whether they become new dividing lines between countries. Moreover, timing will determine whether the applicants start to gain the benefits of Schengen before accession, or only the costs in terms of disrupting integration with their eastern neighbours.

II.2 The institutional framework

Justice and home affairs (JHA) is a policy area renowned for its obscurity and lack of transparency in public debate. It is thus hardly surprising that the implications for regional development of extending it eastwards have so far been little discussed. A further problem is its institutional framework, which tends to discourage coordination between policy-makers

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[27] The emergence of this complicated regime is analysed with admirable clarity by Lavenex 1999.
[28] This status is conferred bilaterally and is not harmonised across the EU: see European Parliament 1997.

concerned with different aspects of CEE relations. The institutional structure of emerging EU border policies covering sensitive areas such as refugees and asylum is a legacy of its intergovernmental origins, with subsequent development of new policy fields over-layering existing cooperation fora and complicating the picture with their overlapping responsibilities. The result is a plethora of policy-making bodies that have some responsibility for second and third-pillar issues. With regard to the latter, there are intergovernmental and EU institutions, and also extra-EU fora such as the Budapest Process, resulting in a complex entanglement of governmental, European and international relations. [29]

Implementation of the Amsterdam Treaty is now leading to some rationalisation of policy-making structures, particularly within the Commission, where there is a new directorate-general for justice and home affairs. However, there is still a complex web of Community and intergovernmental contacts involved in formulating EU policies concerning borders. Moreover, in the case of defining border policies for the CEE applicants, there are further participants from the European Commission and a Council Working Group on justice and home affairs. Running in parallel with accession negotiations are a 'Pre-Accession Pact against organised crime'[30] and proposals for CEE judicial cooperation with Europol.[31] The EU has applied further pressure on CEE through the intergovernmental Budapest Process (an extra-EU forum for coordinating migration and asylum policies). These parallel processes not only expand the scope of preparations for accession, but they could also lead to a formalisation of cooperation after accession that affects policies within the EU.

This proliferation of political declarations and parallel cooperation fora to deal with EU-CEE relations concerning internal security issues causes problems in accession policy because it lacks a definitive, integrated body of law. The CEE countries have to run to keep up with a rapidly changing *acquis*, making the EU a constantly moving target. This area of EU policies is particularly confusing, even for member states, because it lacked any treaty structure until recently. The justice and home affairs *acquis* developed out of informal contacts and non-public agreements between police and relevant ministries in the member states. Networking and the exchange of information, rather than the making of law, were its keys. It remained unclear which instruments were legally binding and in what context (i.e. international or Community law), an obscurity that long hampered implementation of third-pillar legislation.[32] The European Court of Justice has only recently been included in the JHA process, so there is a lack of case law to study that would assist applicants to understand this *acquis*. Yet, despite this lack of information and discussion, candidate countries are expected to sign up fully to it. The German EU presidency (January-June 1999) took some steps to redress this situation by offering to hold joint meetings on JHA and to inform candidates of the results of EU meetings in this field, but this remains a largely one-way process of policy transfer.

The Schengen *acquis* (its legal base and the body of law comprising it) was finally published in July 1999,[33] but there remains uncertainty for the applicants about what has to be applied before accession and what can be left until afterwards. Bringing in the Schengen provisions into the EU framework has significantly complicated the JHA *acquis*. There are special arrangements for three EU member states (Denmark, Ireland and the United Kingdom),

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[29] See Lavenex 1999.
[30] *Uniting Europe* 4, 27/4/98.
[31] *Uniting Europe* 2, 13/4/98.
[32] See comments by Eileen Denza in EWI 1999.
[33] 'Council Decision of 20 May 1999 concerning the definition of the Schengen *acquis*', *Official Journal of the European Communities*, L 176/1, 1999/435/EC, 10/7/99.

while Norway and Iceland are associated despite not being members of the Union. However, candidate states are not being offered the opportunity to negotiate similarly flexible arrangements; the European Council has made it clear on several occasions that new members will not be allowed opt-outs or other forms of flexible integration. The EU's new area of 'Freedom, Security and Justice' under the Amsterdam Treaty thus differentiates between existing and prospective members in its applicability. Defining this emerging *acquis frontalier* for CEE has raised new questions about the legal status of EU policies and how they should be applied to non-members.

These problems of internal coordination in the Union's structures for policy-making on justice and home affairs are part of a wider coordination deficit on policy towards CEE. Despite the 'ventilation' of the Schengen Convention and the *communautarisation* of much of the third pillar,[34] there is little coordination between the Union's pillars, and this is particularly important for policies concerning the applicants. There is a clear need to build bridges across the second and third pillars, allowing greater consideration of the overall impact of different border policies on European security.

II.3 EU accession conditionality: defining the border acquis

Schengen has developed into a system both for abolishing internal border controls and for regulating controls at its external frontiers. It has evolved a common visa regime, common regulations for procedures at land and coastal borders and airports, and extensive police cooperation that includes the 'Schengen Information System' (SIS) database. The applicants have to take on the whole of the Schengen *acquis*, which means a range of measures to build the institutions and policies to implement it. The tasks that the Commission sets in its policy documents consist of specific measures with a clear timetable – for example, setting up new reception centres for asylum-seekers[35] – and also general exhortations to 'improve border management'.

Measures that affect border policies are scattered amongst several different documents that the EU has produced for the eastern applicants. These include the European Commission's 1997 'opinions' (or *avis*) on the applicants' readiness for membership, the Accession Partnerships of 1998 and 1999, and the Commission's annual 'Regular Reports' on the applicants' progress in preparing for accession; there are also some provisions for cooperation in border-related affairs in the Europe Agreements (signed from 1993 onwards) and the Single Market White Paper (1995). Each applicant has to produce a 'National Programmes for Adoption of the *Acquis*' (the first ones were submitted in mid-1998); these include details of timetables for implementation, funds allocated by the candidates and EU aid for each area. The general conditions include accession of the candidates to the relevant international treaties, observation of the rule of law, stability of administrative and judicial institutions, and data protection. More specific policy requirements are the establishment of equitable asylum procedures and laws, as well as the adoption of restrictive measures to limit immigration and to ensure stringent border controls. The latter include tightening visa regimes and admissions systems (rules on residence and work permits), strengthening enforcement and deportation procedures, introducing penalties for illegal

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[34] For an explanation of the Schengen 'ventilation' exercise (the term used for its partial integration into the first pillar), see Adrian Fortescue's evidence to the UK House of Lords: House of Lords 1999.
[35] European Commission's draft Accession Partnership for Hungary, published on web-page http://www.europa.eu.int/comm/enlargement/ac_part_10_99/intro/index.htm, October 1999.

immigration, concluding bilateral readmission agreements with other countries, and improving control and surveillance of borders.[36]

A large number of measures concerned with reinforcing border controls has so far made up the bulk of EU demands in justice and home affairs, and also its aid to CEE in this area through the PHARE programme. There are thus incentives as well as constraints encouraging the applicants to concentrate their energies on reinforcing border controls: transfer of the redistributive system for asylum claims has been accompanied by considerable funds and technology to combat illegal immigration and to deal with refugees. In addition to EU aid, there are large bilateral assistance programmes from Germany to transfer its border regimes to its eastern neighbours (discussed below in Section III.2).

II.4 The Schengen bargain: soft for hard borders

A new distinction between hard and soft borders has grown in EU migration policy since 1996. The idea behind softening borders in the Schengen zone is that internal frontiers become soft, while external ones are hard, effectively creating a larger zone of free movement, but one with sharper edges that are harder to penetrate from the outside. Once inside the Schengen area, people can move without frontier checks,[37] so entry to the area is strictly controlled. In theory, then, borders with Schengen countries become softer and more porous, as CEE countries are drawn towards the common frontier zone, but these concessions on their western borders are only made if they apply harder controls on their eastern borders. Extending Schengen eastwards thus implies a bargain: freer movement westwards at the price of not allowing free movement from the East.

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

There is a further dimension to the trade-off between hard and soft borders, that of timing. The implicit bargain of Schengen for countries like Italy and Greece is that the costs of hardening external borders are offset by the major gains of freer access to the rest of the EU. However, this calculation is different for the eastern applicants, because they will not get the full benefits of Schengen until after accession. Moreover, there are strong political pressures from some EU member states (particularly Austria and Germany) to keep restrictions on the freedom of CEE citizens to live and work in the rest of the EU for many years even after accession (under a long transitional period). The applicants are being expected to apply Schengen-like external controls

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[36] See Lavenex 1999 for details of the demands made on each applicant.
[37] However, they are still subject to checks by police within each country, and police have additional powers in border areas: see Bort 1999.

well in advance of joining, but their own populations will still be subject to frontier checks when entering EU countries for years to come. The applicants have accepted this unattractive bargain because it is bound up with overall accession conditions: CEE countries are applying Schengen controls without reciprocal advantages, because frontier controls have become part of the accession deal as well.

How much flexibility will there be in implementing Schengen borders? Officially the EU is requiring total compliance with its border policies and strict adherence to the *acquis.* However, Schengen borders in the EU are already subject to variation in implementation according to circumstances. For example, the border between Belgium and France is still subject to frontier checks because of French fears of drug trafficking through Belgium from the Netherlands. Similarly, the Nordic countries managed to bring their passport union into the Schengen zone, even though Norway and Iceland remain outside the Union. The principle of acknowledging particular difficulties of individual countries is already established, and there are hopes among the applicants that technical solutions can be found in applying the Schengen *acquis* flexibly. What is not clear is how far the EU will be able to allow flexibility in the face of pressures from its current member states to restrict movement of people from East to West.

III: Border dilemmas in central and eastern Europe and the impact of EU policies

This section discusses the consequences of EU border policies in CEE. Disruption of bilateral relationships and regional economic integration has important implications for security in the region. In particular, imposition of EU-driven border policies and visa regimes is inhibiting the ability of local and regional actors to cooperate on a range of sensitive issues, including minority relations, migration, local economic infrastructure, and institution-building.

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

Internal security is a potentially explosive issue because it touches many highly sensitive issues in domestic politics, both in the EU and the applicant states. In CEE, there are concerns that erecting Schengen borders with difficult neighbours like Ukraine, Kaliningrad (part of Russia) and Croatia will upset delicately balanced relationships and stall cross-border economic integration. CEE political leaders have repeatedly expressed their concern that measures such as introducing entry visas should not introduce new barriers between their populations, but the priority given to EU demands has caused acute dilemmas for domestic policy-makers. Behind the rhetoric of 'not putting up a new Iron Curtain' lies a complex set of compromises whereby each country has tried to navigate between EU pressures and other policy concerns, both domestic and external.

As the EU pressures the applicants to impose visa regimes on neighbouring countries, the bargain of harder external borders in return for free movement of people is increasingly difficult to accept domestically, even if political leaders remain committed to EU integration. Changing the status and porosity of countries' non-EU borders could re-awaken the many unresolved bilateral issues over the borders lying between the applicants (for example, the Czech Republic and Slovakia; Hungary and Romania), between applicants and member states (Germany and the Czech Republic; Austria and Slovenia), and between applicants and non-applicants (Poland and Ukraine; Romania and Moldova).

III.1 The impact of border policies so far

Schengen border policies have brought some benefits to CEE through the EU accession process: implementation of the common visa policy in the Schengen area means that nationals of eight of the ten countries can travel without visas to all Schengen countries (for 90 days over six months). Harmonisation under Schengen has eliminated the differences in visa policies between the countries for CEE, so that as of 1 July 1999, all ten countries of the Schengen group have signed bilateral visa-free agreements with the eight applicants on the EU's visa 'white list'. However, not all the applicants have benefited from taking on EU border policies. Treatment of the nationals of the different applicant countries is not uniform: eight of the ten countries have visa-free regimes with the EU, but Bulgaria and Romania remain on the EU's visa 'black list' in early

2000.[38] In addition, some EU countries maintain different regimes; the United Kingdom and Ireland have required visas of Slovaks since 1998, following an influx of Slovak citizens of Roma ethnic origin seeking asylum in the United Kingdom,[39] while Finland imposed a visa requirement in late 1999 following a similar influx.

Export of EU border policies is affecting intra-CEE relations through its impact on trade and investment patterns between the applicants and with CIS countries. Applying EU visa policies will inevitably inhibit economic integration and bilateral cooperation between countries that are 'ins' and 'outs' in the EU accession process. Because it has led to export of border policies, Schengen casts a shadow well beyond its present membership, covering the applicants and their neighbours as well. One phenomenon driving the erection of Schengen-inspired frontier controls in CEE has been anticipatory adjustment by the applicants. This form of adaptation – whereby the applicants take on what they perceive as EU norms in advance of formal EU pressure to do so – has been increasingly prevalent over the past three years. Indeed, even non-applicants are influenced by the Schengen model: the Ukrainian foreign ministry announced in March 1999 that it was implementing new visa regulations similar to those of Schengen countries and was planning to meet EU requirements on borders.[40]

In addition to the formal accession requirements relayed in EU documents, the applicants are subject to bilateral pressures owing to the expansion of the Schengen zone across the EU to their western borders. The former Iron Curtain became the external frontier of the Schengen zone when Austria and Italy began applying Schengen to their borders between October 1997 and April 1998. Fearful of the impact of the new frontier controls on cross-border relations, the Slovene border authorities took pre-emptive action by persuading their government to adopt Schengen-type identity and customs checks at their Croatian frontier. The aim was to convince the Italian and Austrian authorities that Schengen had been implemented along Slovenia's non-EU borders, thus allowing a more flexible and open approach by the EU countries to their Slovene borders even after Schengen became fully operational on 1 April 1998.[41] This was only partly successful: there are still long queues at the borders of Austria and Italy, and for both Slovakia and Hungary the new Schengen borders have significantly slowed traffic and disrupted trade.

III.2 Predicaments of history and geography: Hungary and Poland

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

Poland has borders with three countries that are not affiliated to the enlargement process: Belarus, Ukraine and Russia (Kaliningrad). Implementing Schengen-type external controls along these frontiers is a mammoth task, and it could have far-reaching implications for Poland's

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[38] The European Commission recommended on 26 January 2000 that visa restrictions on Bulgarians and Romanians be removed, but the Council of Ministers has not yet agreed: see section III.3 below.
[39] The Republic of Ireland also requires visas of Slovak nationals because its open border with Northern Ireland means it has to follow UK visa policy.
[40] Ukrainian Foreign Ministry briefing, reported by Ukrainian radio 10/3/99 (from BBC Monitoring reports).
[41] Bort 2000.

relations with the rest of a troubled region. Much of this long border is 'green', running through open country and mountains; it is difficult and costly to patrol the green borders with Belarus (407 km) and Ukraine (526 km). The border with Kaliningrad is still more sensitive; the question of how to manage Russian military transit to the enclave is becoming an issue for the EU, particularly now that Lithuania has started negotiations, encircling Kaliningrad with EU-oriented countries. However, there is as yet no coordinated EU policy response on how to deal with Kaliningrad.

The EU has supplied considerable financial and technical assistance to upgrade Poland's border infrastructure, both from the Union's PHARE programme and from German bilateral aid. Germany has provided a major aid programme to increase border policing and there is close cooperation between German and Polish border guards, including joint operations and training.[42] German influence has considerably speeded up the process of developing mechanisms for migration control, ensuring that would-be migrants heading for Germany are stopped and held in Poland. It is now impossible to gain asylum in Germany once migrants have arrived in Poland, owing to the 1993 bilateral Readmission Agreement,[43] so the whole migration issue once pertaining to Germany has been shifted eastward. For migrants from the former Soviet Union and from Asia, Poland has thus become a country of settlement rather than a country of transit. Taking on the German model of migration policy has entailed a much more restrictive approach to migration, as Poland has effectively become an immigration buffer-zone for its EU neighbours.

Erecting an external Schengen border presents a major challenge to Poland's eastern policies. Polish leaders have consistently presented their country as a bridge to Ukraine, Belarus and Russia, and have pursued very active bilateral political engagement with these countries. Policy statements by President Aleksander KwaÑniewski, Foreign Minister Bronis»aw Geremek and the various ministers for European integration have stressed stabilisation of the states emerging from the former Soviet Union as a key foreign policy goal. In particular, Poland has strongly advocated extending links between the EU and Ukraine.[44] Integration with these markets and constructive engagement with their political leaders are major contributions by Poland to European security, providing both NATO and the EU with a stable link in a troubled region. Poland also provides markets for CIS goods and jobs for migrant workers. Hard estimates of economic dependence are difficult to find, but it is clear that many Ukrainian families depend on the earnings of family members working in Poland as their main source of income. The new measures to seal the border with Ukraine had a dramatic effect on the regional economy when introduced in late 1997, causing a fall of about 30% in trading that hit both the Ukrainian and Polish economies.[45]

Concern about the impact of EU border policies is widespread in the Polish political elite, but it has not stopped the adoption of a large number of measures to control cross-border movements, some of which have caused tensions with neighbouring countries. Poland came under pressure to tighten its eastern borders from late 1997, when Schengen was being brought into force prior to its full operation from 1 April 1998. New laws have been introduced in the past

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[42] Malhan 1998.

[43] In addition to the bilateral agreements, there was a prior multilateral readmission agreement between Poland and the Schengen countries (including Germany) signed in March 1991: see Pastore 1998 on the development of the readmission treaty system.

[44] Relations with Ukraine are explicitly mentioned in the annual 'exposés' of Polish foreign policy: 'Expose Pana Ministra Bronis»awa Geremka, Sejm, 8 Kwietnia 1999' (Exposé of Minister Bronis»aw Geremek, Plenary Session of the Parliament, 8 April 1999) and other foreign policy documents: 'Priorytety Polskiej Polityki Zagranicznej' (Priorities of Polish Foreign Policy), both from www.msz.gov.pl.

[45] Bort 2000.

18 months on aliens, causing major protests from Russia and the withdrawal of the Belarusian ambassador from Warsaw. Fifteen new border crossings are to be built on the eastern frontier by 2001, the number of border guards has been increased, and new equipment to read passports electronically is being installed at border checkpoints, using EU PHARE aid.[46]

KwaŇniewski has made promises to Ukraine on several occasions that Poland will not introduce visas for Ukrainians prior to its accession to the EU, and Geremek recently made a similar commitment. However, this stance may not be sustainable in the face of pressure from Germany and other EU states; already, an agreement on a visa-free border regime with Ukraine was signed, but its ratification was stalled as a result of Polish concerns about the EU's opposition to it.[47]

Poland is thus seeking to maintain a very delicate balance between its EU obligations and its relations with its neighbours.[48] One response to the dilemma of how to maintain good regional relations in the East while imposing these new barriers is to stress cross-border cooperation. The German-Polish border has provided a model for such initiatives to try to overcome the legacies of history by encouraging confidence-building at multiple levels: local, regional, civilian, military, public and private sectors.[49] There are five Euro-regions along the Oder-Neisse river (flowing along the border between Poland and Germany), which are home to joint governmental commissions, cross-border national parks, joint military brigades, and growing civil society cooperation. Similar initiatives have been tried along Poland's eastern border with Ukraine, with the creation of four Euro-regions, a joint Polish-Ukrainian battalion and other forms of cooperation.[50]

In contrast with the Oder-Neisse region, the Polish-Ukrainian border lacks the favourable circumstances of economic transition and European integration to nurture such cooperation. Infrastructure is certainly inadequate: there are only four official crossing-points on the Polish-Ukrainian border, in contrast with the 26 crossings for traffic on the Polish-German border.[51] However, Poland's ability to replicate these positive models along the Bug (the river that separates Poland and Ukraine) is limited not just by the socio-economic disparities and political problems on either side, but also because the EU accession framework inhibits it. In particular, EU pressure led to a tightening of frontier controls from late 1997 that has cut down the number of crossings, reducing economic, political and civil societal interactions alike.

For Hungary, the main concern about Schengen is the impact of EU visa policies on the access of the ethnic Hungarians living in surrounding countries. These 'external minorities' total up to 3 million people,[52] a significant number in relation to the 10 million living in Hungary. At present, ethnic Hungarians who are citizens of Romania, Slovakia, Ukraine or one of the former Yugoslav countries can travel to and work in Hungary without visas. Ensuring the welfare of these communities is a main tenet of Hungarian foreign policy and is a central issue in its bilateral relations with its neighbours.[53] Moreover, much cross-border trade and investment

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[46] Bort 2000.

[47] Pavliuk 1997.

[48] See Bachmann 1999 on Polish approaches to border management.

[49] For a critical comparison of Polish and Czech cross-border cooperation policies with Germany, see Handl and Zaborowski 1999.

[50] See Lepesant 1999.

[51] Pavliuk 1997.

[52] On the difficulties of estimating minority populations in CEE, see André Liebich's appendix to Amato and Batt 1999.

[53] See Schöpflin 1993 on Hungary's relationships with its neighbours.

depends on family and cultural ties with diaspora communities, and pendulum migration into Hungary provides jobs that support many families in poorer neighbouring countries.

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

A number of proposals have been put forward to deal with the problem of admitting ethnic Hungarians without visas. One is a 'national visa' permitting a stay of over 90 days for citizens of neighbouring countries, but in Hungary alone;[54] however, this would presuppose a system of checks on Hungary's Austrian border too. Another much-discussed possibility is long-term visas, for 10 years or so, to be given to ethnic Hungarians. The Independent Smallholders' Party – the government's junior coalition partner – has called for ethnic Hungarians to be given dual citizenship, but the ruling FIDESZ-MPP party has rejected that option for the time being.[55] The government is concerned that offering statutory dual citizenship to millions of ethnic Hungarians would cause both legal and political complications (establishing criteria for determining who is an ethnic Hungarian is legally difficult, for example), and such favourable treatment could also result in resentment against ethnic Hungarians in Romania.[56]

Even if Hungary does not have to introduce visas for its neighbours prior to accession, EU-inspired tightening of frontier controls is having an impact on cross-border trade and investment. From 1 September 1999, all people crossing borders in either direction (whether Hungarian or foreign) have had to be registered (and the data stored for 90 days), causing significant queues at Hungary's border posts.[57] Moreover, this caused an unwanted additional complication in Hungarian-Romanian relations shortly before what could be critical elections in Romania.

In Autumn 1999, the Hungarian government committed itself to adopting the EU's visa policy and to introducing a Schengen-type system of controls at its borders, but the timescale for doing this was left obscure.[58] External border controls with fellow-applicants Slovakia and Slovenia are to be erected only if the EU says they are necessary,[59] which is unlikely while the EU itself has bilateral visa-free travel regimes with these countries; however, Romania and Hungary's non-applicant neighbours are another matter. Romania is home to the largest external minority (more than 1.6 million ethnic Hungarians), and the main solution sought by Budapest is for the EU to abolish visas for Romanians before Hungary joins the EU. However, such a solution is not possible for Ukraine and the other non-applicant neighbours, leaving a problem for the longer term when Hungary eventually accedes.

Imposing a visa regime will also affect EU-sponsored regional cooperation initiatives. The Carpathian Euro-region (which covers the borders of Hungary, Moldova, Romania, Slovakia and Ukraine) is an example of successful regional cooperation in an area of considerable ethnic

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[54] Proposal made by Zsolt Németh, Political State Secretary, Hungarian Foreign Ministry, reported on Hungarian radio, 3/6/99 (BBC Monitoring Service).

[55] Hungarian radio report, 20/2/99 (BBC Monitoring Service).

[56] János Martonyi, Hungarian Foreign Minister, interviewed on Hungarian radio, 5/1/99 (BBC Monitoring Service).

[57] Reported in the Hungarian economics weekly *HVG*, 4/9/99, no. 99/35.

[58] Commitment made in the Hungarian position paper for the last five chapters of negotiations submitted to the EU on 29 November 1999, reported in *HVG*, 6/12/99, no. 99/42.

[59] János Martonyi, Hungarian Foreign Minister, press conference in Budapest, 26/11/99, reported by *Bridge News*, same date.

diversity and potential tension that has been given substantial financial support and political encouragement by the EU. Currently, nationals of the Euro-region's member countries can travel within it without passports, but this regime will soon have to end when EU applicants – starting with Hungary – have to introduce Schengen controls on their borders. This will have a dramatic impact on the cross-border trade and short-term pendulum employment in Poland that sustains more than 100,000 people in the western Ukrainian region of Transcarpathia.[60]

III.3 Visa regimes for Bulgaria and Romania

Although they are much further away from accession than Hungary or Poland, Bulgaria and Romania have also introduced measures to tighten border controls and impose visa regimes on third countries. Their motivations for adjusting to EU norms are not confined to anticipation of EU entry requirements, but are rooted in their desire to leave the EU's 'black list'[61] of countries whose nationals require a visa to enter the EU. The EU's December 1999 invitation to Romania and Bulgaria to start negotiations raised hopes that the visa black list might be revised, and the European Commission recommended to the Council of Ministers on 26 January 2000 that visa restrictions on these two countries be removed. However, it is not clear that the Council will agree to this step, despite the symbolic importance of demonstrating inclusiveness in opening negotiations with all the countries in February 2000. It is possible that the proposal will be taken up under the French presidency of the EU in the second half of 2000, but several member states remain opposed to changing the visa regime owing to anxiety about migration and crime emanating from these countries.

The Romanian government took anticipatory measures to try to reassure the EU ahead of the revision of the visa black list, in the hope of being taken off the list by showing 'a significant reduction of transit migration from third countries through Romanian territory'.[62] By late 1999, Romania had joined 57 agreements with regard to preventing and fighting organised crime, and is negotiating another 35, in addition to 31 readmission agreements; a bill was passed providing for the withdrawal of passports from criminals convicted abroad; new security features have been added to identity documents to prevent forgery; and restrictive visa requirements are being applied to 85 countries that have 'significant illegal migration potential', while a new law on refugees modelled on European practice is being adopted. Under the new EU-aligned border law, Romania was to stop issuing entry visas at its border crossing points from 1 January 2000.[63] However, lack of resources and infrastructure remains a major problem in implementing EU border policies for Romania. For example, the Romanian interior ministry told the JHA council in Autumn 1998 that cooperation with neighbouring countries was essential to effective control of frontiers owing to the inadequacy of infrastructure for Romanian police forces to carry out such tasks.[64]

The EU's visa policy towards Bulgaria and Romania is causing a major dilemma for CEE policy-makers, who want to avoid having to impose a similar visa regime on neighbouring countries. In the Czech Republic, there was a clash when Foreign Minister Jan Kavan publicly

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[60] Estimate by *The Economist*, 2/10/99.
[61] Council Regulation 2317/95.
[62] 'EU Integration Process: Measures to Strengthen Border Control and Curb Illegal Migration', Romanian Ministry of Foreign Affairs, http://domino.kappa.ro/mae/dosare.nsf/, downloaded 1/12/99.
[63] Reuters news agency report, 13/10/99.
[64] Assemblée Nationale 1999.

criticised an interior ministry proposal to introduce visas for Bulgarians and Romanians in June this year.[65] This discriminatory visa policy is also having unintended consequences in the region. In Bulgaria and Romania, there is a widespread perception that the only reason why their nationals are subject to visa restrictions is that the EU fears a flood of Roma from the East, exciting accusations of double standards when the EU demands better treatment of the Roma in eastern Europe. Similarly, the United Kingdom's introduction of visas for Slovaks because of an influx of Roma asylum-seekers has led to resentment towards the Roma in Slovakia.[66] Where visa restrictions are blamed on the Roma and this causes even more discrimination against them, it can in turn create greater pressures for them to emigrate, causing such restrictive policies to be counterproductive.

Joint approaches to dealing with the regional dilemmas posed by accession have so far been limited. The question of visa regimes is frequently discussed in CEE parliamentary debates and the media, but multilateral cooperation between the applicants has so far been largely informal. Although both Hungarian and Polish leaders have made rhetorical commitments not to introduce visa requirements for Ukrainians before joining the EU, multilateral cooperation in this area remains very limited. The Czech Republic, Hungary, Poland and Slovakia have started discussing it under Visegrád Cooperation, but most negotiation on the issue has been done bilaterally between each country and the EU. At a recent summit between the Visegrád leaders to discuss the impact of Schengen borders (on 16 October 1999), a common concern was relations with Ukraine, and the need to maintain good relations with Kyiv while tackling organised crime along the Ukrainian border.[67] However, such discussions have not yet resulted in institutionalised coordination of border policies or a united position on EU demands.

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[65] Reported in the Czech daily *Hospodarske Noviny*, 1/6/99.
[66] See reports in the Slovak daily *SME*, 6/10/99 and editorial in *Neue Zürcher Zeitung*, 6/10/99.
[67] *Neue Zürcher Zeitung*, 18/10/99.

IV. Towards a 'neighbourhood policy' for Europe:
future directions for border policies within a regional strategy

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

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

Juxtaposed, the above statements indicate the tension inherent in extending the borders of Schengen eastwards. Mitigating the negative consequences of EU border policies is essential for European security. The 'paper curtain' of visas and frontier controls will certainly inhibit the economic integration and political cooperation between the applicants and their neighbours that has been advocated by the EU; however, its impact could be softened by flanking measures to promote bilateral cooperation and subregional integration. Such flanking measures could be developed in four areas:

1. A more inclusive accession policy. The EU needs to find a more even balance between more exclusive border policies and more inclusive regional strategies that build trust between neighbours. The EU should not put pressure on the applicants to apply Schengen-like controls on their external frontiers before member states are ready to open borders on the EU side. If there is to be a two-stage application of the Schengen *acquis*, with internal frontier controls removed at some point after accession to the EU, then there should be matching flexibility from the EU's side in applying Schengen controls on the new external border. At the least, timetables for tightening eastern borders should be reciprocated with binding commitments to loosening western ones.

To allow short-term alarmism over migration pressures to jeopardise long-term stabilisation of CEE would run counter to EU interests. In any case, closing the vice on legal migration tends to provoke a growth in illegal migration, as would-be migrants fear to use legal channels. Restrictive stances also encourage the development of a trade in human trafficking that is very difficult to control. To impose such restrictive policies while there is relatively little migratory pressure from the East seems short-sighted, particularly so early in the accession process. If CEE citizens get all the disadvantages of Schengen years before the benefits start to appear, their entry into the EU will already be tainted by bitterness in public opinion. We need to return to Schengen's original purpose of facilitating free circulation of goods, services and people.

Well-managed open borders are a key facilitator of regional stability and hence security. Opening borders has been used in the EU as a positive way of encouraging integration between peoples and economies, knitting them together in ways that discourage conflict, as has long been the aspiration of European integration. A good start would be an end to discrimination between the applicants in EU visa policies so that Bulgarians and Romanians are treated like all the other applicants. The symbolism of maintaining a visa regime for countries in negotiations for membership is highly significant in the domestic politics of these countries. Moreover, visa requirements alone do not combat transnational crime effectively, as the European Commission

proposal recognises; it would make much more sense to replace crude distinctions between countries in visa policies with closer cooperation to target criminal activity across and within countries, if combating transnational crime is really the object.

2. Supplementary financial aid and political support to the countries farthest from joining is an essential prerequisite to improving their ability to deal with the regional tensions resulting from EU border policies. Effective frontier policing requires cooperation between national forces; borders cannot be managed from one side only. As a recent report to the European Commission suggests, a constructive first step would be to establish a joint EU-CEE border and customs service along the external borders of the current EU.[68] A second step would be to boost EU programmes to assist border regions along the new frontiers of the enlarged EU, with greater financial and political support to subregional cooperation between the applicants and non-applicants.

3. Involving the applicants in external policies concerning their neighbours would bring them into EU policy-making structures where they have a major contribution to make. In 1999 the EU developed new 'common strategies' for its external policy, the first two applying to Russia and Ukraine.[69] Prospective members have to sign up to these strategies, but they have no say in formulating them, despite the fact that they apply to the applicants' immediate neighbours. So far, the strategies have been relatively limited in their substantive content. However, their future development has the potential to limit the terms on which the candidates can forge bilateral links with these neighbouring countries. Moreover, it seems short-sighted for the EU not to use the expertise of countries like Poland that have pursued dynamic eastern policies and have long experience of managing open borders with problematic neighbours.

4. Uniting internal and external security concerns. An overall EU strategy for the region that unites macro- and micro-security concerns needs to be developed, bringing together enlargement policies and integrating them with other parts of external policy. There is a clear need to build bridges across EU structures, allowing the rejuvenated second pillar to connect with the Schengen and third pillar *acquis* for the applicants, and also with wider strategies such as the Stability Pact for the Balkans. The security threats facing Europe are interconnected and require a united and coherent policy to coordinate national and international approaches to them. This is most clear in south-eastern Europe, where the new strategies established after the Kosovo crisis provide an opportunity to bind regional security concerns together. Indeed, one of the conditions for starting negotiations on the new 'Stabilisation and Association Agreements' proposed for Albania and former Yugoslav countries is 'proven readiness to promote good-neighbourly relations'.[70]

Inhibiting bilateral initiatives between applicants and non-applicants thus runs against the goals of the EU's own Stability Pact for the Balkans, which aims at economic cooperation and free trade throughout the region. At Helsinki, EU leaders reiterated this approach to stabilisation of south-eastern Europe:

> 'The European Council stresses the major importance of improving relations and removing trade barriers and barriers to the movement of people between the countries concerned.'[71]

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[68] Amato and Batt 1999.

[69] 'Common Strategy of the European Union of 4 June 1999 on Russia', *Official Journal of the European Communities*, L 157, 24/6/99; 'European Council Common Strategy 1999/CFSP', Annex V to the Presidency Conclusions of the Helsinki European Council, 10-11 December 1999.

[70] Conditions for the Stabilisation and Association Agreements, published on http://www.seerecon.org, 30/9/99.

[71] Presidency Conclusions of the Helsinki European Council, 10-11 December 1999.

Yet at the same time as the EU countries were making this statement, they were also telling Bulgaria, Hungary and Romania to impose entry visa requirements on their southern and eastern neighbours. This contradiction is symptomatic of the need for the EU to find ways of encompassing both internal and external security goals in a coherent policy framework that addresses the long-term problems of the wider Europe, rather than simply differentiating between countries on the basis of their status in the accession process. The EU has an unprecedented opportunity to influence CEE through the accession process and as the principal aid donor to the Balkans, but to use this influence effectively it has to unite its different agendas for applicants and non-applicants.

Conclusions

A principal aim of the EU's eastern policy since 1989 has been to stabilise CEE by using the same methods applied so successfully in western Europe over the past half-century. The EU has encouraged regional integration with the aim of reducing socio-economic disparities and knitting populations together so that tensions are reduced. The second prong of this approach is to sponsor peaceful resolution of bilateral disputes and good-neighbourly relations, both through its conditions for accession and by providing financial and political support for intergovernmental fora and sub-national initiatives such as Euro-regions.

These goals are still present in the Union's enlargement strategy, but other policies are also being developed that run counter to them. EU border policies are raising new barriers to free movement of people and goods, and these inhibit the trade and investment between applicants and with non-applicant countries that are essential to regional integration. There is a risk that the EU could end up giving the CEE countries the benefits of westward integration with their richer neighbours at the cost of cutting off ties with their poorer neighbours to the East. This bargain is still acceptable overall to most political leaders in central Europe; however, acceptance of the EU's terms has been accompanied by a great deal of unease about its unintended consequences for intra-regional relations. Moreover, this is not just a problem for CEE; the overall security of Europe depends on preventing the isolation of politically unstable, poor countries on the edges of an enlarged Union.

The EU has already been actively exporting its border control technology and practices to CEE, and also its emerging common methods for handling asylum claims and refugees. The next item on the EU's agenda is export of its visa policies, but these are much more controversial because they will inevitably break socio-economic and political ties across borders between applicants and non-applicants. Not only do EU border policies go to the heart of these countries' new-found sovereignty, but their foreign relations are affected as well. Adopting the Schengen zone's common visa regime means introducing visas for the nationals of neighbouring countries, with concomitant effects on bilateral relations. CEE political leaders have repeatedly expressed their concern that such measures should not introduce new barriers between their populations, but the priority given to EU demands has caused acute dilemmas for domestic policy-makers. Behind the rhetoric of 'not putting up a new Iron Curtain' lies a complex set of compromises whereby each country has tried to navigate between EU pressures and other policy concerns, both domestic and external.

Freedom to travel in western Europe is a key benefit of liberalising the 'kidnapped East'[72] after 1989, and is an important symbol of the acceptance of post-communist countries as part of Europe. Hence the visa requirements on Bulgaria and Romania are seen as indicative of a second-class relationship for them, especially now that they are joining negotiations with the others; similarly, long-standing restrictions on the freedom of CEE citizens to settle and work in the EU after accession – as proposed by some EU member states – would be perceived as second-class membership. The applicants will have to take on border regimes if their citizens are to gain the full benefits of free movement in the EU; however, the EU's own long-term security depends on developing flanking measures to mitigate the impact of its border policies on regional integration in the wider Europe. Schengen borders are drawing circles of inclusion and exclusion between the countries of the region. These new dividing lines need not inevitably lead to greater tensions in the region if due care is paid to mitigating their effects. Flexible application of EU-inspired

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[72] A phrase used in Milan Kundera's influential essay 'The Tragedy of Central Europe' (Kundera 1985).

measures and attention to timing could ameliorate the problems that are arising as CEE countries implement EU policies on their eastern borders. Now that all the candidates are in negotiations, it is time for the EU to face up to the problems created by phased accessions. Relationships being shaped now – between the EU, its applicants and non-applicants – will have long-term effects on the EU's ability to act as a stabilising force in the region.

This paper has outlined several flanking measures to mitigate the impact of its border policies in CEE. Most critical is to ensure a much more consistent regional strategy that does not treat accession issues as wholly separate from policies for the wider CEE region. Accession policy-making has tended to be driven by the task of legal harmonisation and the immediate, short-term concerns of member states. There now needs to be greater effort at coordinating policies in CEE for the longer term; in particular, building bridges across the different pillars of EU policy-making is essential to ensuring the consistency and coherence of the messages sent to CEE. The Kosovo conflict in 1999 caused a re-thinking of policy for the Balkans and a renewal of interest among EU policy-makers in developing a strategy for the whole region. This is thus a good moment to consider how the different parts of the EU's agenda for CEE add up, where some elements are in conflict with others, and how to deal with inherent tensions.

The applicants will have to take on EU border policies if their citizens are to gain the full benefits of free movement in the EU. However, it is equally important not to lose sight of the effects of tightening controls on relations with neighbouring populations and economies vital to overall regional stability, and hence our collective 'macro-security'. More sophisticated frontier controls of the kind advocated by the EU should aim at keeping disruption to legitimate trade and legal movement of persons to an absolute minimum, rather than relying on repressive measures to restrict overall flows as a crude method of reducing the criminal activity that they carry. We now need to develop a holistic approach to security that unites these different concerns.

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