Introduction

One of the important consequences of the completion of the single market in the European Community was the need to abolish all obstacles and barriers preventing the movement of persons including checks at the borders. Thus, the old internal border controls carried out by the competent national authorities for third country nationals needed to be abolished too.\(^1\) The legal basis for doing this was provided in Article 14 of the Single European Act, which entered into force in July 1987.\(^2\) This coincided with intergovernmental efforts among some members of the European Community to develop the Schengen regime to enable the actual free movement of persons. Since the signing of the Schengen Convention in June 1990, most EU members have become part of the Schengen club. With the coming to force of the Amsterdam Treaty in 1999, the Schengen regime was moved into the European Union’s legal framework and became part of the standard EU acquis.\(^3\)

The Schengen regime aims to create a common European territory without internal borders along with the establishment of a common external border\(^4\) and ensure that once admitted inside the common territory, a person is entitled to move freely within the whole Schengen area for a period of three months out of every six

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\(^{2}\) Article 14.2 of the EC Treaties provides that “The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this treaty”.


without any further checks at the internal borders of any of the participating states.\(^5\) The regulations that make up the Schengen regime is complex and cover a wide range of issues. These include \textit{inter alia} rules concerning: the removal of checks on persons at common EU internal borders, the movement of people across EU external frontiers, police cooperation between member states, creation of the Schengen Information System and definition of the conditions under which Schengen visas can be issued. The Schengen regime also includes the list of third countries whose nationals are exempt from or must be in possession of visas.\(^6\)

An important consequence of the Schengen regime has meant that the nationals of third countries who have to be equipped with a visa to enter the EU have to surmount major bureaucratic hurdles and risk not being granted one. This complicates if not at times prevents the entry of people ranging from ordinary tourists to academics, students, business people and professionals from reaching the territory of the EU. The events of September 11 in New York City, March 11 in Madrid, and 7 and 21 July in London have accentuated the emphasis put on security and hence border control. This has been accompanied by an ever growing concern about illegal immigration and asylum in a number of EU member countries. These developments have been creating added pressure for tighter border control generating further frustration among those third country nationals wanting to enter the territory of the EU for very legitimate reasons. It is often nationals of countries in the immediate neighborhood of the EU that are most affected.

This is creating a situation that is somewhat contradictory to the EU’s efforts to develop better relations with its neighbourhood. The need to address this situation led to the European Commission proposal for a “Wider Europe – European Neighbourhood Policy” (ENP) in March 2003. The proposal has advocated the creation of “a ring of friendly” countries to the East and South of the EU. The proposal suggests a range of policies to tie these countries with the EU without actually offering them full membership. Enlargement so far has been the EU’s most acclaimed policy of expanding the zone of peace, stability and prosperity. However, the recognition that the EU can not forever keep expanding has led to the need to develop such an alternative policy. The so called carrots in the ENP include a “stake in the internal market” as well as closer cultural, social and other relations between the EU and the target countries. Yet, the Schengen regime in its current form can be argued to be working against these efforts and ambitions. The emphasis put on security and control is undermining prospects of encouraging better relations with neighbouring countries and their publics. Since the new accession countries joined the EU this has become much more conspicuous.


\(^{6}\) Council Regulation No 453/2003, 6 March 2003 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The list that defines the countries whose nationals have to obtain a Schengen visa for travel to the EU is often referred to as the Negative List or the “black list”. These lists are periodically renewed.