

## THE EVOLUTION OF THE VISA POLICY OF THE EUROPEAN UNION: SELECTED ISSUES

### 1. Introduction

The integration of states within the European Communities, and subsequently the European Union is performed on many levels. One of the more important is, undoubtedly, the visa policy. This policy is an important instrument of border protection, since it regulates, on the one hand, the flow of people, and, on the other hand, it is expected to provide state security.

The origins of the visa policy were connected with the acceptance of the Single European Act and the Maastricht Treaty. However, the act of key significance was the creation of the so-called area without interior borders for human flow. Including the Schengen acquis into the Communities' legislation created the necessity of accepting new legal regulations.

The objective of this paper is to demonstrate the evolution of the EU visa policy, both in reference to law sources and forms, as well as to point out how the EU membership of the Middle-Eastern-European countries affected the implementation of this policy towards the eastern neighbouring countries.

### 2. Legal frames of the common visa policy

The genesis of the visa policy was connected with the acceptance of the notion of creating a passport Union by the member states of the Community in 1974. In 1981 and 1984 the Council passed two resolu-

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tions,<sup>2</sup> which pointed at the need for creating special border checkpoint for the citizens of the member states. These acts, however, were not binding. In 1984 Germany and France signed an agreement on a gradual abolition of control at their internal borders. In the same year, the Benelux countries sent a memorandum in which they expressed their will to join the agreement.

On 14 June 1985 an agreement on gradual abolishment of control at internal borders (the so-called Schengen Agreement was signed).<sup>3</sup> Originally its parties were the Benelux states, Germany and France. On 19 June 1990, a convention implementing the Schengen Agreement was signed.<sup>4</sup> Initially, despite the idea of appropriate agreements being the Commission's initiative, the conventions were international agreements rather, signed by the five countries only. Thus, it was an interstate cooperation implemented outside the Community law. The both acts came into force as late as 1995.

Simultaneously, on the grounds of the Community law there were still debates on the liberalization of control at internal borders. The Commission, in the White Book issued in 1985, pointed out that one of the obstacles to the establishment of an internal market is the maintenance of border checks. The Single European Act, signed in 1986, also included a reference to the question in point. It introduced the term "internal market" as an area with no internal borders, at which free movement of people, goods, services and capital will be secured.

Another step towards building a common visa policy was the solutions in the Treaty on the European Union signed in February 1992 (it came into force on 1 November 1993). The treaty introduced the first element of common visa policy into the Treaty on European Community in the added Article 100c. The Council was granted a competence to determine the list of the third states whose citizens had to have

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- 2 Resolution of the representatives of the Government of the Member States of the European Communities meeting within the Council of the 23 June 1981; OJ C 241, 19/06/1981, str. 1-7.
  - 3 Resolution of the Council and representatives of the Government of the Member States of the European Communities, meeting within the Council, concerning free passage across the Community's internal frontiers for Member States' nationals; OJ C 159, 19/06/1984, p. 1-2.
  - 4 The Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed in Schengen on 14 June 1985, OJ 2000 L 239, p. 13.

a visa while crossing the border of one of the member states. The envisaged list was prepared on the basis of the principles developed within the cooperation of the Schengen zone states.<sup>5</sup> The European Council also referred to this issue at the summit in Seville (21-22 June 2002),<sup>6</sup> calling, inter alia, the Commission and the Council for the review of the aforesaid list (by the end of 2002) as well as for the development of an electronic system of visa data identification.<sup>7</sup> In the event of an exceptional situation in a third country, which threatens with a sudden influx of its citizens to the European Community, the Council could introduce a visa requirement for the citizens of this country for the period not longer than six months. Moreover, the council was to take measures introducing a uniform visa format in all member states.

In the remaining areas of the visa policy the basis of the member states' cooperation was the regulations of title VI of the EU Treaty creating the so-called third pillar of the EU, i.e. provisions on cooperation in judiciary and home affairs and, of course, the Schengen acquis. In the both cases the cooperation was, de facto, of intergovernmental character.

Under the provisions of the Amsterdam Treaty the principles of the visa policy changed. The visa policy was granted a status of community policy (through the introduction new title IV into the Treaty establishing the European Community). This created a possibility to apply community legal instruments in this area (including binding directives, regulations and decisions).

Also the Protocol of the Amsterdam Treaty including the Schengen acquis into the European Union was of fundamental importance.<sup>8</sup> The documents counted to the Schengen acquis embraced as follows: the Agreement on gradual abolishment of checks at the common borders of 1985, The Convention implementing the Schengen Agreement of 1990, all access protocols as well as decisions and declarations

5 See: C. Herma: Polityka imigracyjna, wizowa i azylowa Unii Europejskiej – najważniejsze instrumenty prawne i aktualna dyskusja, Biuletyn Analiz UKIE nr 19, październik 2002, p. 28, <http://www.biuletyn.ukie.gov.pl/HLP/banal.nsf/0/0C17948237E2C2BAC1256E9200388373?Open>

6 See: The Conclusions of the Summit of the European Council in Seville on 24 October 2002, p. 7: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/72638.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf) ; The European Council passed some changes in the EU policy as for border protection, visas, immigration and refuge.

7 A preliminary report on his issue was to be produced by the end of 2002: see: The Conclusions of the Summit...

8 <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0093010004>

passed by the Executive Commission.<sup>9</sup> The consequence of passing the aforesaid so-called Schengen Protocol was the inclusion of the “Schengen legislation” into the First (visa/migration policy) or the Third pillar (police and judicial cooperation in criminal cases) of the EU.

The visa policy within the framework of title IV of the Treaty establishing the European Community is of special character. As early as the enactment of the Amsterdam Treaty (1 May 1999), the Council, passing most of legal acts in this area<sup>10</sup> acts by qualified majority. Moreover, in accordance with the protocols appended to the Treaty, Great Britain, Ireland and Denmark do not participate in the community projects defined in title IV of the Treaty establishing the European Community, if they do not do otherwise in a particular case.<sup>11</sup> This is one of the examples of the integration flexibility with the simultaneous and at least partial abolition of the principle of community law uniformity.<sup>12</sup>

Modified by the Amsterdam Treaty, the Treaty establishing the European Community, in Article 62 para 2b, had enabled cooperation in practically all issued of the visa policy from the day of the Treaty of Amsterdam enactment, i.e. 1 May 1999. However, a full incorporation of this policy into the Community was facilitated after the transitional period had expired, through the application of the principle of voting by qualified majority in the Council in all issues.

Another stage of the visa policy shaping was the acceptance by the European Council, on 4-5 November 2004, the Hague Programme on strengthening freedom, security and justice in the European Union.<sup>13</sup> The programme also envisaged further strengthening of the visa policy. Its main aim was to facilitate legal travel and to counteract illegal migration. This aim was expected to be achieved through further har-

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9 Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis, OJ L 1999, no 176 p. 1 i n.

10 The exception concerns the question of procedure and conditions of granting visas by the member states as well as the regulations concerning uniform visas, in which the application of the qualified majority occurred after a five years' transitional period.

11 For instance, Denmark accepted the cooperation in some areas of the visa Policy.

12 I. Wróbel: Status prawny obywatela państwa trzeciego w Unii Europejskiej, Warszawa 2007, s. 37.

13 The Hague Programme: strengthening freedom, security and justice in the European Union, OJ 2005, C 54/1.

monization of home legislation and practices of application processing in local consular offices. Consequently, the European Council called the Commission to take the following steps:

1. appointing common centres for submission of visa applications;
2. swift implementation of the Visa Information System (VIS) including, inter alia, alphanumeric and biometric data;
3. securing for all the citizens of the EU the right to travel without short-term visas to all the third states whose citizens may travel without visas to the member states.

Due to the enactment of the Lisbon Treaty some changes will also concern the principles of shaping the visa policy. These principles were defined in Chapter 2 of Title V of the Treaty on the Functioning of the European Union.<sup>14</sup> Considering the previous actions and programmes, the updated goals of the Union's visa policy was emphasized:

- abolition of checking people at the interior borders of the Union, regardless of their citizenship,
- securing the control and efficient supervision at crossing the exterior borders,
- gradual implementation of the integrated system of interior border management.

The foregoing aims are expected to be implemented with the means accepted by the European Parliament and the Council acting in accordance with an ordinary legislative procedure. They may concern:

- common policy for visas and other documents entitling to a short stay,
- checking of the people crossing internal borders,
- conditions of free short-period migration of the citizens of third states on the territory of the Union,
- any means indispensable for the gradual implementation of the integrated system of exterior border management,
- abolition of checking people, regardless of their citizenship, crossing internal borders.

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14 CHAPTER 2 POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION, Article 77 of TFUE, - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:PL:HTML>

Beside the Treaty regulations, the secondary legislation and the EU organs' practice is very important. The most important legal acts in this group are as follows:

- the regulation determining a uniform visa format,<sup>15</sup>
- the regulation determining the list of the third states whose citizens may possess visas while crossing the exterior borders as well as the ones whose citizens are exempted from this requirement,<sup>16</sup>
- the regulation on the freedom of movement with a long-stay visa,<sup>17</sup>
- the regulation on a uniform format for forms for affixing the visas granted to the persons who possess travel documents not recognized by the member states,<sup>18</sup>
- the regulation on the issue of visas at the border,<sup>19</sup>
- the regulation introducing a Facilitated Transit Document and a of Facilitated Rail Transit Document,<sup>20</sup>
- the decision establishing the Visa Information System<sup>21</sup> and the regulation on the Visa Information System (VIS) as well

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15 In this way the Council accepted the Schengen uniform visa form with no changes: Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visa.

16 Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States. This Act was repealed by the judgment of the ECJ of 10 June 1997 in case C-292/95 European Parliament vs. Council (European Court Reports 1997r. p. I-3213). The Court stated invalidity of this Act due to lack of new consultation on the part of the European Parliament, although it maintained in force its legal effects until a new regulation is issued. Another act in this matter was Council Regulation (EC) No 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States. This regulation was replaced by the still binding document, i.e. Council Regulation (EC) No 539/2001 of 15 March 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.

17 Council Regulation (EC) No 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa

18 Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognized by the Member State drawing up the form

19 Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit

20 Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual

21 2004/512/EC: 2004/512/EC: Council Decision of 8 June 2004 establishing the Visa Information System (VIS)

as the data exchange between the member states on short-stay visas (VIS regulation VIS),<sup>22</sup>

- the regulation establishing rules on local border traffic at the external land borders of the member states,<sup>23</sup>
- the regulation establishing a community code on visas (Visa Code).<sup>24</sup>

### **3. Selected problems of the implementation of the common visa policy**

The main aim of the Schengen Agreement was the abolition of control at internal borders, strengthening the protection of the external border and the harmonization of actions, inter alia, in several policies concerning visas, refuge, immigration, customs and police cooperation in combating crime, security and cooperation of judicial organs. The Schengen Area extended gradually by subsequent member states: Italy in 1990, Spain and Portugal in 1991, Greece in 1992, Austria in 1995, Denmark, Finland and Sweden in 1996, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in 2007.<sup>25</sup> Cyprus, Bulgaria and Romania pledged to enter the Schengen Area in the future. Great Britain and Ireland have a special status: they participate in the Schengen acquis in part only.<sup>26</sup> These countries made a decision to maintain border checks. They, however, may apply some provisions concerning the police and judicial cooperation in criminal cases. On the other hand, the associated countries which apply the Schengen regimen are extra-community countries: Norway, Iceland, Switzerland and, in the future, Lichtenstein.

As mentioned before, the Schengen agreements, beside the abolition of control at the internal borders, introduced certain harmoniza-

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22 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L218, 13/08/2008, pp. 60-81. For further information see, M. Krzemiński, System informacji wizowej, "Prawo i podatki Unii Europejskiej" 2008, nr 11, pp. 12-16.

23 Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention

24 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a community code on visas (Visa Code), OJ L243, 15.09.2009, pp. 1-58.

25 The abolition of control at land and sea borders occurred here in December 2007, and at the borders at airports in March 2008.

26 Great Britain since 2000 and Ireland since 2002.

tion of the visa policy. The Schengen *acquis* embraces in this respect, *inter alia*, the harmonization of the conditions of visa applications and the criteria of decision-making in this issue, as well as the introduction of uniform visa forms. It was established that the regulations concerning visas for the third states, whose citizens are subject to the visa requirement common for all country-parties, may be modified by mutual consent only. Exceptions in this matter may be justified only by important reasons of the interior policy, requiring immediate decisions (in this case, an obligation was imposed to request for opinions of the remaining members-parties of the Agreement).

The Schengen Implementation Convention distinguishes short-stay visas (not exceeding three months) and long-stay visas, still remaining within the competence of a sovereign decision of each country.<sup>27</sup> A significant solution is the introduction of a uniform short-stay visa<sup>28</sup> valid throughout the territory of participating States.<sup>29</sup> A uniform short-stay visa entitles to one or more entries, on condition that neither the length of a continuous stay nor the total length of the subsequent stays exceed three months within each six months' period counted from the date of the first entry. Such a visa may be also a transit visa entitling its holder to travel through the territories of the states-parties of the Convention once, twice or, in exceptional cases, many times on the way to the territory of a third state, on condition that this transit does not exceed five days. A uniform short-stay visa is basically issued by diplomatic missions and consulates of the target country. If the destination is impossible to determine, the visa is issued by the post of the country of first entrance.

The principles of issuing short-stay visas are determined in the Common Consular Instruction concerning visas for diplomatic missions and consulate posts of the contracting parties of the Schengen Convention.<sup>30</sup> Uniform visas were defined as permits or decisions issued in the form of a sticker affixed by a Contracting Party to a passport, travel document or other document entitling the holder to cross

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27 Articles 9–18.

28 For a detailed analysis of the legal character of this instrument see: A. Modrzejewski: Charakter prawny wiz jednolitych krótkoterminowych w Unii Europejskiej (in:) M. Zdanowicz (ed.): Status prawny cudzoziemca w Polsce, Białostockie Studia Prawnicze 2007, no. 2, p. 89.

29 As an exception, each country is entitled to reduce the territorial validity of the visa.

30 Common consular instructions on visas for the diplomatic missions and consular posts OJ C 326, 22.12.2005, pp. 1–149.



the border. A uniform visa entitles the foreign nationals who are subject to the visa requirement to put an appearance at the external border of the Contracting Party who issued the visa or another Contracting Party and, accordingly to the type of visa, to apply for transit or residence, provided the other entry or transit conditions have been met. Mere possession of a uniform visa does not confer an automatic right of entry (Article 2 para 1).

The member states of the Schengen Area may issue the following types of uniform visas, valid throughout the Schengen territory, which entitle their holders to enter and stay on this territory:<sup>31</sup>

- airport transit visas (A), valid only for plane passengers (does not allow the holder to leave the transit zone of the airport)
- transit visas (B), allow maximum five days' transit through the Schengen territory
- short-stay visas (C), allow to maximum 90 days' stay on the Schengen territory within 6 months from the moment of first entry.

The Schengen Implementing Convention also determined minimum requirements for travel documents. First of all, the validity period of a travel document should extend the validity period of a visa including the period for its use. This period should enable aliens to return to their home countries or to enter third countries. A visa cannot be placed in the travel document whose validity has expired. Moreover, a uniform visa cannot be placed in the travel document if it is not valid in any of the participating states.

The aforesaid Instruction also regulates the principles of determining the state proper for considering an application for a short-stay visa or a uniform transit visa. This property is defined in the following order:

1. the state on whose territory is the only or main destination. Under no circumstances can the territory of the Contracting Party through which the transit runs be recognized the main destination.

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31 See: Rozporządzenie Ministra MSWiA z dnia 18 grudnia 2007 w sprawie wiz dla cudzoziemców, D.U. 2007, Nr 238 poz. 1749. (Regulation of the Minister of Interior of 18 December 2007 on visas for aliens).

2. the state of the first entrance, if the Contracting Party being the main destination cannot be established.

The Instruction also regulates the principles of accepting the application and points at:

1. necessity of filling in the visa application form;
2. documents which are required to be attached to the application;
3. guarantees concerning return and maintenance;
4. need for a conversation with the applicant.

Beside uniform visas the member states of the Schengen Area issue long-stay national visas and stay permits valid only on the territory of the issuing state. Long-stay national visas (D) allow their holders to stay for over three months and are issued in accordance with the national law. Moreover, they permit their holders a one-off, not exceeding 5 days, non-visa transit through the territories of other countries of the Schengen Zone in order to reach the state that issued the visa, provided they meet the other conditions of entering the Schengen Zone, and are not on the national list of alerts for the purposes of refusing entry. However, in order to make a return journey, as well as any following trip by transit through the territories of other Schengen countries, a holder of a Polish long-stay visa has to be previously granted a visa by the country through whose territory he/she is to travel.

National permits of stay allow their holders to travel throughout the Schengen Zone without visas for the period not exceeding 90 days.

The main principles of the visa policy implementation are specified in the regulation determining the list of third countries whose citizens must have visas while crossing the external borders as well as those whose citizens are exempt from this requirement.<sup>32</sup> States, accordingly to the visa policy, have been divided into three categories:

1. member states whose citizens enjoy the freedom of people's movement;

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32 Council Regulation (EC) No 539/2001 of 15 March 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.

2. states embraced with cooperation within the European Economic Area, whose citizens basically enjoy the same rights of entry and residence as EU citizens;
3. states in the “white list”; their citizens are not required to possess visas;
4. states whose citizens are required to possess visas to cross the border of a EU memberstate.

F. Jasiński and W. Kałamarz specify on problems, related to application of principle of visa reciprocity.<sup>33</sup>

In the light of the abovementioned regulations, the entry of third states’ nationals onto the Schengen territory depends on the following conditions:<sup>34</sup>

- possessing a valid travel document,
- possessing a visa, if required,
- justification of the purpose of the trip and the conditions of the intended stay,
- possessing sufficient means of subsistence (both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted) or an opportunity of their legal acquisition.

Moreover, the aliens cannot be the persons in reference to whom there has been an alert for the purposes of refusing entry,<sup>35</sup> cannot be recognized as a threat to the public order, national security or international relations of the Schengen Zone countries.

Summarizing, the nationals of third states may enter the territory of the Schengen Zone memberstate if they are in possession of one of the following documents:

- a uniform short-stay Schengen visa,
- a long-stay Polish national visa,

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33 F. Jasiński, W. Kałamarz: *Reforma unijnego mechanizmu wzajemności wizowej*. Wspólnoty Europejskie 2005, No 10(167), pp. 49-52.

34 Article 5, para 1. of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, *OJ L 239*, 22/09/2000

35 An alert in SIS, see: The Convention Implementing the Schengen Agreement, Article 96

- a residence permit from the host nation,
- a residence permit from another Schengen country.

The documents valid for transit only are as follows:

- a uniform airport Schengen visa (valid only in the premises of the airport),
- a uniform transit Schengen visa,
- a long-stay visa issued by another Schengen Zone country (a one-off transit to reach the territory of the Schengen Zone state which issued the visa),
- a residence permit issued by Liechtenstein.

Undoubtedly, the extension of the Schengen Zone resulted in barriers and restrictions for border traffic with third countries, including especially the eastern neighbouring states. The situation is represented by the statistic data of traffic at the Polish eastern border after Poland entered the Schengen Zone.<sup>36</sup> In the first quarter of 2008, in comparison with the first quarter of 2007, traffic at the Polish borders fell down dramatically: in the case of Russia and Belarus by over 40 per cent, while the Ukraine by over 25 per cent. In the first four months of 2008 the consulates in Belarus issued c. 26.5 thousand visas, which, in comparison with nearly 93 thousand visas issued at the same period the previous year, means a drop by over 70 per cent. In the consulates in the Ukraine the number of the issued visas fell by over a half (from 209 thousand to 92 thousand), while in Russia by almost a half (from 60 thousand to c. 32 thousand).<sup>37</sup>

As it is evident, the major fall concerns the citizens of Belarus. Between the European Union and Belarus no agreement on visa facilitation has been signed and, consequently, the latter's citizens have to pay for a one-off uniform Schengen visa 60 Euros (to compare: before Poland's entering the Schengen Zone it was c. 5 Euros). As far as the remaining neighbours of Poland are concerned, such agreements have been signed:

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- 36 K. Pisarska: Polska a Układ z Schengen – dylematy polityki wizowej wobec wschodnich sąsiadów, (in:) K. Żukrowska, J. Stryjek (ed.): Polska w Unii Europejskiej, Warszawa 2004, p. 269 – 270.
- 37 O. Wasilewska: Schengen zatkało wschodnich sąsiadów, „Gazeta Wyborcza” z dn. 9.07.2008r., [http://wyborcza.pl/1,75515,5440718,Schengen\\_zatkalo\\_wschodnich\\_sasiadow.html](http://wyborcza.pl/1,75515,5440718,Schengen_zatkalo_wschodnich_sasiadow.html)

- Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation of 25 May 2006,<sup>38</sup>
- Agreement between the European Community and Ukraine on the facilitation of the issuance of visas of 18 June 2007.<sup>39</sup>

Consequently, the citizens of the aforesaid countries pay visa charges of 35 Euros (70 euros if the visa application was submitted within 3 days before the intended date of entry). However, before Poland's access to the Schengen Zone, visas to Poland were either free (for the citizens of the Ukraine or the Kaliningrad Oblast) or cost far less than now (12 dollars in the other part of Russia, and 5 Euros for the citizens of Belarus).

N. Bulicz underlines, that introduction of visa duty for east neighbours required improvement of infrastructure of Polish consular postes as well.<sup>40</sup>

A very important problem arose about the implementation of the Schengen acquis, especially by Poland and Lithuania. These countries were obliged to execute the visa requirement from the citizens of the Russian Federation who live in the Kaliningrad Oblast. However, the problem of transit of the citizens of the Russian Federation (to and from the Kaliningrad Oblast) through the territories of the EU member states.

A specific respond on the part of the European Union to the problem was the abovementioned Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention.<sup>41</sup> This need was emphasized by the Council in June 2002 along with the approval of the "Plan for the management of the external bor-

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38 OJ 2007 L 129.

39 OJ 2007, L 332.

40 N. Bulicz: Europeizacja polskiego prawa wizowego w świetle dorobku prawnego Unii Europejskiej, (in:) Europeizacja administracji publicznej. Zbiór studiów, J. Lipowicz (red.), Warszawa 2008, p. 204.

41 For further information see: B. Fieducik: Instytucje małego ruchu granicznego, (in:) M. Zdanowicz (ed.): Polska w Schengen, Białystok 2009, p. 37.

ders of the Member States of the European Union”, subsequently endorsed by the European Council in Seville.

The principles of a local border traffic are an exception to the general rules regulating the principles of the visa policy and the principles of border control of the people crossing the exterior borders of the EU member states. As highlighted in the preamble of regulation 1931/2006, a permit to cross the border within the framework of local border traffic should be issued to the inhabitants of the border zone regardless of their being subject to visa requirement.

The Community’s competence in the area in question is exclusive, although in Article 13 of the regulation the member states are entitled to maintain or sign bilateral agreements with their neighbouring third states in order to implement the principles of local border traffic. The condition is, of course, that such agreements comply with the provisions of Regulation 1931/2006. Before signing or changing a bilateral agreement on this matter the member states were obliged to consult the Commission. In the first report period of the Commission the member states carried out consultations with it on 10 planned bilateral agreements. Poland performed such a procedure in two cases: agreements with the Ukraine and Belarus. So far, the procedure with the Ukraine has been finalized (March 2008<sup>42</sup>), the adjustment of the content of the second bilateral agreement is still in process.<sup>43</sup>

The regime of local border traffic involves several procedural facilitations in comparison with standard procedures and controls applicable to external border crossings determined in the Schengen Border Code.<sup>44</sup> These facilitations embrace, inter alia, exceptions to the condi-

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42 Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of the Ukraine on the rules of Local Border Traffic, signed in Kiev on 28 March 2008 and the Protocol signed in Warsaw on 22 December 2008 between the Government of the Republic of Poland and the Cabinet of Minister of the Ukraine on the amendment of the Agreement between the Gov. of the Rep. of Poland and the Cab. of Ministers of Ukraine on the rules of Local Border Traffic signed in Kiev on 28 March. Dz. U. 2008, Nr 103, para 858.

43 Since the approval of the regulation on Local Border Traffic only three agreements on Local Border Traffic have been enacted: between Hungary and the Ukraine (in force since 11 January 2008), between Slovakia and the Ukraine (in force since 27 September 2008) and between Poland and the Ukraine (in force since 1 July 2009).

44 See: Report from the Commission to the European Parliament and the Council on the implementation and functioning of the local border traffic regime introduced by Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States: <http://eur-lex.europa.eu/Notice.do?val=498654:cs&lang=pl&list=498654:cs.&pos=1&page=1&nbl=1&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

tions of entry ruled in the Schengen Border Code. The holders of permits to cross the border within the framework of local border traffic are exempt from the visa requirement (if such requirement exists). They do not have to meet the condition of possessing sufficient means of subsistence (for the period of stay and for return). Moreover, the production of complementary documents confirming the purpose of their visit are not to be required at border crossings.

Another facilitation concerns the duration of stay. The persons who possess the abovementioned permits to cross a border are eligible to stay on the territory of the proper neighbouring country with no time limits, although a continuous stay cannot exceed 90 days. This is an exception to a standard rule defined in the Schengen Border Code, according to which a short stay is restricted to maximum 90 days within the range of 180 days.

Besides, some other facilitations are worth noting, for example the fact that:

- Local border traffic permits may be issued free of charge.
- The permits may be issued for a period of validity of between 1 and 5 years.
- Special border crossing points could be set up for the local border traffic.
- Specific lanes could be reserved for border residents at ordinary border crossing points.
- Local border traffic permit holders are exempt from the passport stamping obligation when crossing the border.

It seems that the institution of local border traffic may become an important instrument affecting people's traffic in borderlands, at least partly compensating the tightening of the visa regime for the citizens of the eastern neighbours of the European Union.

#### **4. Summary**

First actions in reference to the visa policy were double-track: in the EU and within the framework of the international cooperation of extra-EU states, which constituted the Schengen acquis. A turning point for the visa policy was connected with the inclusion of the

Schengen acquis into the community legislation. It was then that several binding legal acts were approved. It was not, however, the end of changing processes in this policy. The extension of the Schengen Zone and its negative consequences for neighbouring countries forced the approval of solutions concerning, for instance, local border traffic at the external land borders of the member states.

The common visa policy of the member states were mainly shaped by:

- regulations approved in the direct connection with the freedom of persons' movement within the internal market,
- decisions of the Convention implementing the Schengen Agreement (in connection with the control abolition at the internal borders of the Schengen Zone),
- provisions of the Founding Treaties on creating “the zone of freedom, security and justice.”

The accession of the Mid-Eastern-European states to the European Union was connected with several consequences for the eastern neighbouring countries. Above all, a visa requirement was introduced for the citizens of these countries. This naturally resulted in the decrease in persons' movement. This is especially visible in the example of Belarus, with which an agreement on visa facilitations has not been signed. Neither has the problem of the Kaliningrad Oblast been solved yet. The European Union takes certain steps towards alleviating the resultant tensions, e.g. through the institution of local border traffic. They are not, however, fully efficient actions, which can be observed in the cooperation in this matter with Belarus.