relatively inchoate values. It is precisely the great care taken over other constitutional matters that reassures us for the future. A state ruled by law is, at least in the eyes of Central and Eastern European Constitutional Justices, a state abiding strictly by the separation of powers and careful to ensure legislative procedure is abided by.

Nor does it make much sense to worry about the fit of these decisions to western legal practices when one notes the concern to cite and test against legal opinion both within the CEE itself and within the rest of Europe. One consequence of this comparative citation is that it would be hard to fault these countries without also raising serious concern about Germany, given the centrality of their experience after unification to the case law of CEE states. (One might also suggest that the ease with which many CEE justices feel at referencing the ECHR requires any doubter either to accuse them of improbable duplicity or seriously to question the standards of the ECHR itself).

There is one serious question to resolve, however. It arises primarily in the Hungary versus Czech Republic contrast. What are we to make of the radically different approach to assessing the requirement that a policy satisfies the standards of a state ruled by law? One knows, of course, that the political background to transition sharply affects the context within which a court as well as a legislature have to come to terms with the past. Were it simply a matter of accounting for why the Czechs did, and the Hungarians did not, allow an extension of the statute of limitations, it might be enough to point to their respective histories in the decades before transition.[52] I have already pointed out that much of the difference comes about by the story the two countries choose to tell about themselves. What is problematic is the fact that both courts claimed to be doing the same thing—abiding by the requirements of a state ruled by law *where legal certainty is a major part of the definition of such a state*. Because it simply cannot be the case that legal certainty is compatible both with allowing and forbidding the extension of time during which someone can be tried for a crime. It cannot be the case, for that matter, that selecting only some such criminals, those who were protected by political forces, both is and is not discrimination against one group. We must, surely, choose between the formalism of the Hungarians or the determination to ensure substantive justice of the Czechs.

Or must we? There are those who would have preferred the Czech Court, if they felt obliged to allow the prosecution of political offenders from the past, to simply say that during a period of transition exceptions had to be made to the normal standards of a state governed by law, rather than to try to show that no breach of the standards being tolerated. There will be others who very much take the Czech point, and regard Hungarian formalism as dangerous because it insufficiently couples the

[52] Sólyom op. cit., n. 10, comes very close to using this form of argument to account for differences between various CEE states.

values of the new state to the formal idea of a law governed state. Which is the greater threat to liberal democracy? An over facile demonstration that something rather dubious is not only acceptable but characteristic of the new values, or an over willing acceptance that constitutions cannot be expected to provide substantive justice? Or does it not, in fact, matter? Perhaps the dichotomies set up above are false—maybe two conflicting definitions of legal certainty can be contained within one legal universe. Maybe that is what the classic "margin of appreciation" is all about. One might be happier were there cases to cite in which the court of the Czech Republic had slapped down its legislature over lustration issues. Because it is easy to show the Hungarian court, for all its formalism producing powerfully liberal decisions, sometimes supporting, sometimes negating the parliament: the history of its decisions over compensation for the past, which there has been no time to discuss, are to point out, but not exhaustive of such examples. And yet the powerful legal creativity summed up in the insight that there is something wrong with a doctrine on legal certainty that ignores value *discontinuity* is very attractive. Perhaps the contrast is, in the end, in itself a sign of legal intellectual health which can only benefit the rest of Europe. In a recent article Bernhard Schlink has likened the writing of legal opinions to the writing of a series of mysteries or love stories:

> Format, printing, and layout remain the same, the blurbs above the authors' names look similar, and the covers are designed to match. Some novels have the same author, and the reader recognizes the same writing. Some obviously belong to the same tradition or follow the same pattern. Others could hardly be more different from each other. Each novel tells a different mystery or love story. But all of the novels preserve the law of the genre.[53]

On that basis, the European genre has new authors, but law abiding ones.

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[53] Bernhard Schlink, "Hercules in Germany", *International Journal of Constitutional Law,* 4:4 (2003), p. 610.

4. Citizens and Foreigners in the Enlarged Europe

Enrica Rigo

1. Introduction: Repositioning European Borders

The Eastern enlargement poses an essential challenge to the issue of European membership. The current process of repositioning European borders not only dramatically increases the population of the "new" Europe but also confronts the theory and practice of defining "European citizenship". During the past decade the debate about citizenship has largely been dominated by contending ideas of an exclusive Westphalian model of membership, based on nationality, versus an inclusive post-Westphalian model where the entitlement to rights is based on *personhood*.[1] In the case of Central and Eastern European countries this debate has been particularly polarized within normative discourses on "national values" and "national community," which have partially framed discussions about internal constitutional reforms as well as the depiction of a European post-national and potentially all-encompassing membership.[2]

The process which redefines citizenship in the context of European Union enlargement illustrates a more complex state of affairs. I will argue that the transformation of European borders creates a system of "differentiated" memberships which questions the normative assumption that post-national communities are potentially inclusive. My aim is not so much to investigate whether national values continue to permeate the concept of citizenship in Central and Eastern Europe but to critique the reification of the debate on EU enlargement into contrasting models

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1 The literature on citizenship is extensive, for an overview see Stephen Castles and Alastair Davidson, *Citizenship and Migration. Globalization and the politics of belonging* (London: Macmillan Press 2000); for a critical approach on post-Westphalian citizenship, see Else Kveinen, "Citizenship in a Post-Westphalian Community: Beyond External Exclusion?", *Citizenship Studies*, 1 (2002), pp. 21–35.

2 On citizenship and constitutional reforms in Eastern Europe, see Ulrich K. Preuss, "Patterns of Constitutional Evolution and Change in Eastern Europe", in Joachim J. Hesse and Nevil Johnson (eds.), *Constitutional Policy and Change in Europe* (Oxford: Oxford University Press 1995), pp. 95–125; on contending models of citizenship in Eastern and Western Europe see André Liebich, Daniel Warner and Jasna Dragovic (eds.), *Citizenship East and West* (London: Kegan Paul International 1995); for a critical approach see Willfried Spohn and Anna Triandafyllidou (eds.), *Europeanisation, National Identities and Migration. Changes in Boundary Construction between Western and Eastern Europe* (London: Routledge 2003).

Wojciech Sadurski et al. (ed.), Spreading Democracy and the Rule of Law?, 97–119.

of membership. In particular I intend to concentrate on the limited inclusiveness of European citizenship revealed by the emerging practice of border administration. In fact, in order to account for the specificity of the European membership model(s), it is necessary to focus on the norms that identify boundaries at each level of the European polity. The signing of the Schengen agreements,[3] their incorporation in the Amsterdam Treaty through the creation of an area of "freedom, security and justice" and the enlargement process have determined structural changes in border control regimes. The common assumption that controls were subsequently relocated from national borders to the external frontiers of the European Union is only partially true. In reality, the very concept of borders has undergone deep transformation.[4] Borders are no longer dividing lines between distinct political territorial units with clearly defined sovereignties. On the contrary, they develop into areas where sovereignty is shared among different actors and is sometimes delegated to private agents. Borders delocalise governmental[5] policies over populations and individuals far beyond either the territory of national states or the territory of the European Union. At the same time, the legal institutions which define the status of aliens generate lines of continuity between external and internal boundaries: in other words they internalize borders in the form of diffuse mechanisms of control.

Present-day borders are products of modernity. With the birth of nation states, as Raimondo Strassoldo argues, "[w]hat was formerly a frontier area of expansion of European civilization, becomes a state, and therefore tends to harden, close and

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3 "Schengen agreements" here refer both to the first Schengen agreement signed by Germany, France and Benelux on 14th July 1985, and the agreement of 19th June 1990 which applied Schengen I. All the member states with the exception of United Kingdom and Ireland have gradually joined the Schengen Agreements.

4 Elsewhere I have argued that frontiers between member states did not disappear following the implementation of the Schengen Agreements. Citizens of non-EU states are still subject to forms of internal border controls within "Schengenland". Sandro Mezzadra and Enrica Rigo, "L'Europa dei migranti", in Giuseppe Bronzini, Heidrun Friese, Antonio Negri and Peter Wagner (eds.), *Europa, Costituzione e movimenti sociali* (Roma: Manifestolibri 2003), pp. 213–231; Enrica Rigo, "Politiche di migrazione", *Derive Approdi*, 22 (2002), pp. 157–162.

5 The term "governmental" is used here with reference to Michel Foucault's analysis of the "art of government" which, according to the author, differs from sovereignty: "This means that, whereas the doctrine of the prince and the juridical theory of sovereignty are constantly attempting to draw the line between the power of the prince and any other form of power, because its task is to explain and justify this essential discontinuity between them, in the art of government the task is to establish a continuity, in both an upwards and a downwards direction", Michel Foucault, "Governmentality", in Graham Burchell, Colin Gordon and Peter Miller (eds.), *The Foucault Effect. Studies in Governmentality* (London: Harvester Wheatsheaf 1991), p. 91. On borders as dispositives of governmental policies see also William Walters, "Mapping Schengenland: denaturalizing the border", *Environment and Planning D: Society and Space*, 20 (2002), pp. 561–580.

control its boundaries."[6] This geopolitical understanding of borders and the role they have served for the construction of national identities, has often overshadowed other meanings of political and territorial boundaries. Firstly, borders not only divide but also link. As a consequence their main function is less concerned with "separation" than with "differentiation". This was emphasized by Niklas Luhmann who analysed territorial borders as system boundaries and considered them "means of production of relations"[7] which allow for increasing differentiation and complexity of modern societies. Secondly, territorial borders produce two combinations of political relations: those between distinct political systems and those between the political system and the world which limits the system itself.[8] In other words, they do not simply produce and regulate relations between states but also over the people who come from outside the political system. It is especially this relationship which reveals the characteristic asymmetry of borders: the fact that they perform diverse functions according to the side from which they are crossed.[9]

Migration movement challenges the territorial system of national states. However, when considering trans-national migration, sociological literature rarely takes into account the fact that migrants' flows are not *the only* variable. Territorial political and legal boundaries also move and transform themselves; continuously redefining the relation between citizens and foreigners. The process of European enlargement is a privileged field in which to analyse the transformation of national and supra-national borders and consider the system of differentiated European memberships. I will focus on changes that have occurred in post-communist legal systems in an attempt to incorporate candidate countries into a European area of "freedom, security and justice." Particular attention will be given to the legislation on aliens approved by parliaments of Central and Eastern European countries in order to meet the requirements of the Schengen *acquis*. The cases of Poland, Romania and Bulgaria will be used as exemplification. Poland is one of the countries where changes first occurred (largely as a result of its particular relationship with Germany) and where transformations in national legislation have been the most far-reaching. Romania and Bulgaria have been chosen with the purpose of comparing countries which will participate in successive phases of the enlargement. Moreover, these two countries hold a key position in relation to migration

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6 Raimondo Strassoldo, "Boundaries in sociological theory: a reassessment", in Raimondo Strassoldo and Giovanni Delli Zotti (eds.), *Cooperation and Conflict in Border Areas* (Milano: Franco Angeli 1982), p. 259.

7 Niklas Luhmann, "Territorial borders as System Boundaries, in Raimondo Strassoldo and Giovanni Delli Zotti (eds.), *Cooperation and Conflict in Border Areas* (Milano: Franco Angeli 1982), p. 237.

8 *Id*, p. 236.

9 Ètienne Balibar, *La paura delle masse. Politica e filosofia prima e dopo Marx*, trans. Andrea Catone (Milano: Mimesis 2001), p. 210.

movements due to the fact that they are situated on transit routes for migrants entering Europe from Asia.

Poland has recently approved a new Act on Aliens in view of meeting the Schengen requirements (*Polish Act on Aliens* of 13 June 2003, *Journal of Laws* of 2003, No. 128, it. 1175). The first comprehensive legislation on aliens was passed by the Polish Parliament in 1997 (*Polish Aliens Law* of 25 June 1997) which was then amended in 2001 (Act of 11 April 2001). On the same date that it passed the *Act on Aliens*, the Polish Parliament also approved an *Act on granting protection to aliens within the territory of the Republic of Poland* (*Journal of Laws* of 2003, No. 128, it. 1176). This second law introduces new forms of legal status for aliens such as "tolerated stay" and "temporary protection". In December 2002 the Romanian government repealed the previous legislation on aliens and replaced it with a new body of rules approved through an *Emergency Ordinance on the regime of aliens in Romania* (*The Romania Official Journal* No. 955, 27 December 2002). The ordinance was approved on the basis of the provision in article 114(4) in the Romanian constitution which states that the government may adopt "in exceptional cases" emergency orders that need subsequent approval by the parliament. In 2002 Bulgaria also introduced amendments to legislation, although major changes to the first *Law on Foreigners in the Republic of Bulgaria* approved in 1998 had already been established in 2001.[10] The principle aim of the changes introduced by the three countries was to adapt the domestic normative framework to the new visa regulation imposed in view of future entrance into the Schengen Area. Nevertheless, these acts affect other aspects of the legal condition of aliens and reflect a progressive "Europeanization" of domestic legislation. To illustrate the consistency between external and internal boundaries I will focus on a range of legal institutions related to the detention and expulsion of aliens.

2. European Policies and Their Eastward Influence

Before examining the recent transformations in legislation of Central and Eastern European countries and attempting to formulate some hypotheses about the actual and future implementation of laws, it is necessary to refer to the multi-level system of decision making established in the wake of the harmonization of immigration and asylum policies within the actual Member States of the European Union. Since the middle of the 1980s, European states have increasingly coordinated their immigration and asylum policies with the aim of combating illegal immigration and redistributing the burden of hosting asylum seekers. The first stage of co-operation coincided with the signing of intergovernmental agreements and conventions such as the Schengen agreements, which concerned the free movement of persons within

[10] The analysis of the legal acts approved in Poland, Romania and Bulgaria is based on official English translations provided by the OCSE Office for Democratic Institution and Human Rights, Warsaw, Poland.

the territory of member States, and the Dublin Convention, which determined which state was responsible for examining asylum applications. In 1997 the Amsterdam Treaty incorporated the Schengen Agreements into the Union's *acquis* and asylum and immigration policies were transferred from the third to the first pillar of the Union. This evolution is currently undergoing a transitional period of five years (which commenced following the entry into force of the Amsterdam Treaty in 1999) during which time major decisions taken unanimously by the Council are binding for all member states (with the exception of Ireland, United Kingdom and Denmark) and are introduced accordingly into domestic legislation.[11]

Both the Schengen Agreements and the Dublin Convention can be considered "laboratories" for European policies,[12] especially in the field of border management. Even though Eastern and Central European countries were not part of these two inter-governmental agreements, they were nevertheless affected by them. In order for their citizens to benefit from visa exemptions, candidate countries had to implement measures to prevent the transit of illegal migrants through their territory, guarantee the readmission of migrants returned from Member States and progressively implement a tighter system of visa regulation the basis of which had already been established within the Schengen framework. Moreover, the system set up by the Dublin Convention to prevent the repeated applications by asylum seekers arriving from countries considered "safe" forced Central and Eastern European Countries to shoulder a great part of the refugees who tried to enter member states overland. As a result of the Schengen Agreements and the Dublin Convention national borders have not simply been relocated at the external frontier of the Union but rather, neighbouring countries have become dynamic components of a new "communitarized" concept of a "border" which extends its influence throughout their territories.

During the entire accession process, issues of migration control and asylum policies have played a prominent role. As a condition of membership in the Union, applicant states have been required to fully implement the communitarian *acquis* in these areas before completion of their accession and despite the fact they took no part whatsoever in the negotiations and decision process.[13] Due to the multi-level system of decision-making outlined above and the different stages of its implementation, it is difficult to provide a straightforward account of the results and tendencies

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[11] For a recent and extensive analysis of the European decision-making system on immigration and asylum policies see Maria Fletcher, "EU Governance Techniques in the Creation of a Common European Policy on Immigration and Asylum", *European Public Law*, 4 (2003), pp. 533–562.

[12] Jörg Monar, "The Dynamics of EU Justice and Home Affairs: Laboratories, Driving Factors and Costs", *Journal of Common Market Studies*, 39 (2003), pp. 747–764.

[13] On this issue, with regard to Bulgaria and Romania, see Lora Borissova, "The adoption of the Schengen and the Justice and Home Affairs *Aquis*: The Case of Bulgaria and Romania", *European Foreign Affairs Review*, 8 (2003), pp. 105–124.

of European asylum and immigration policies. Besides European treaties, communitarian and national legislation, the *acquis* encompasses non-binding instruments, norms of general guidance and rules associated with European Union objectives.[14] In addition, it is essential to consider how domestic strategies of migration control lead to different kinds of bilateral agreements between member states and prospective countries as well as between prospective states and third countries. These include readmission agreements to facilitate the return of illegal migrants and cooperation agreements over the issue of border management.

Member and applicant states have played a different role in regional and sub-regional approaches to migration control according to their stronger or weaker influence in external relations. A typical example is the role played by Germany in influencing Polish and Czech policies, referred to sometimes as the "German factor."[15] However, migration policies have also been influenced by non-applicant countries, as in the case of recent Polish visa regulations for neighbouring countries which had previously been postponed due to the opposition of Russia, Belarus and the Ukraine. Indeed, the visa requirements to enter the EU—and now also applicant countries—have been recognized as one factor that fuels anti-EU sentiments among the populations of south-east Europe and the former Soviet Union.[16] In the specific case of the eastern Polish border, many commentators predict that the new visa regime will probably lead to the collapse of the cross-border trade (estimated in 2002 at 700 million euros) which in many cases constitutes a main source of income for sizeable part of the population in the region.[17]

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[14] Rosemary Byrne, Gregor Noll and Jens Vested-Hansen, "Western European Asylum Policies For Export: The Transfer of Protection and Deflection Formulas To Central Europe and the Baltics", in Rosemary Byrne, Gregor Noll and Jens Vested-Hansen (eds.), *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union* (The Hague: Kluwer Law International 2002), pp. 5–28. Examples of non-binding documents include various *Schengen Catalogues* on borders management and police co-operation and the *Green paper on a community return policy on illegal residents* (COM(2002) 0175 final, 10th October 2002).

[15] Wlodek Aniol, *Poland's Migration and Ethnic Policies: European and German Influences* (Warsaw: Friedrich Ebert Foundation 1996), p. 10.

[16] Milada A. Vachudová, "Eastern Europe as Gatekeeper: The Immigration and Asylum Policies of an Enlarging European Union", in Peter Andreas and Timothy Snyder (eds.), *The Wall around the West. State Borders and Immigration Control in North America and Europe* (Boston: Rowman and Littlefield Publisher 2000), p. 166.

[17] Helmut Dietrich, "The new border regime at the Bug river. The east of Poland and the PHARE programmes" (Forschungsgesellschaft Flucht und Migration Working Paper 2002); available at http://www.ffm-berlin.de/english/publik/bug%20river.doc; Guy P. Chomette, "Alle Frontiere orientali dell'Unione Europea. Integrazione della Polonia, disintegrazione di Ucraina e Bielorussia", *Le Monde Diplomatique* (Italian version), March 2003. The decrease of the cross-border trade is positively considered by the Commission as a sign of the efficient implementation of the new visa regime (European Commission, *Comprehensive monitoring*

After the collapse of the "iron curtain" a new curtain of entry visas and administrative procedures has been erected with the purpose not only of limiting admission to European member states but also to candidate countries and therefore frustrating the promise of a freedom of movement that had only recently been acquired. The case of Kaliningrad is paradigmatic. As a result of the implementation of the Schengen *acquis* by Poland and Lithuania the inhabitants of the Russian enclave will need a valid passport to travel to the rest of Russia, which is actually in breach of the constitutional right of freedom of movement guaranteed to Russian citizens. During the enlargement negotiations, the Russian government pressed for a flexible application of the *acquis* by neighbouring countries, at least with regard to the inhabitants of Kaliningrad.[18] Although reasonable, this proposal has not been accepted because admission to the EU does not allow any form of flexibility with regard to "security" matters. The absolutist attitude held by present Member States highlights the unequal position of candidate countries and reflects a degree of "*hypocrisy*."[19] This is particularly the case if one considers that the Europe of Justice and Home Affairs is affected by a "variable geometry" arising from the different positions held by the United Kingdom, Ireland and Denmark which are not bound by the Schengen *acquis.*

The increasing relevance of borders is corroborated by the fact that they are becoming ever more autonomous objects of European policy-making and that permanent community structures are created in order to co-ordinate integrated strategies of border management. Already in May 2002 the Commission proposed the setting up of an "External borders practitioners' common unit"[20] which was endorsed by the Council in the *Plan for the management of the external borders of the Member States of the European Union* agreed on June 2002.[21] More recently the Commission presented a *Proposal for a Council regulation to establish a European Agency for the Management of Operational Co-operational at the External Border*.[22] While the competencies of the Common Unit regarding the strategic co-ordination of border management would remain, this new Agency would deal with operational tasks that, until now, have been left to the exclusive competence of national authorities. For instance, the Agency would be in charge of "co-ordinating and organising

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report on Poland's preparation for membership, 2003; and European Commission, *Regular report on Romania's progress towards accession*, 2003).

18 For an extensive analysis of this issue see Olga Potemkina, "Some ramification of Enlargement on the EU-Russia Relations and the Schengen Regime, *European Journal of Migration and Law*, 5 (2003), pp. 229–247.

19 Neil Walker, "The Problem of Trust in an Enlarged Area of Freedom, Security and Justice: A Conceptual Analysis", in Malcom Anderson and Joanna Apap (eds.), *Police and Justice Co-operation and the New European Borders* (The Hague: Kluwer Law International 2002), p. 28, italics in original.

20 COM (2002) 233 final, 7th May 2002.

21 Doc. 1009/02 FRONT 58 COMIX 398, 14th June 2002.

22 COM (2003) 687 final, 11th November 2003.

return operations of Member States and identifying best practices on the acquisition of travel documents and removal of third country nationals from the territory of the Member States."[23] The Commission justifies the Agency's supplementary competences with the pretext that in most member states such tasks "fall under the competencies of the authorities responsible for controlling the external borders."[24] This extension of competences confirms, however, that the process of "communitarization" changes the object of border management: managing external borders is not limited to keeping unwanted foreigners out but to continue administrating their positions inside the territory. These positions are not at the exclusive disposal of the hosting state authorities but arise from the intersection of powers exercised by different national, trans-national and sub-national actors.

The words used in official documents to describe the tasks of the "Common Unit" well reflect the balance between decision-making at EU and national levels. The Common unit is defined as "acting as "head" of the common policy on management of external borders and as "leader' co-ordinating and controlling operational tasks."[25] On the one hand, this language echoes the fact that major policy developments have occurred outside the communitarian framework, and on the other, it mirrors the reluctance of states to relinquish sovereignty in matters of Justice and Home Affairs. One consequence of this is that policies related to internal security have been proceeded "by drift and reaction rather than by direction and design."[26] Another related consequence is that operational agencies and expertise groups proliferate to the detriment of transparency. The alarm raised over the lack of democratic accountability is compounded by the concerns over the limited judicial control of the Court of Justice. In fact various norms in European Treaties exclude the competence of the Court when "relating to the maintenance of law and order and the safeguarding of internal security" (Art. 68 II EC) and a similar provision has also been reproduced in the draft Constitution presented by the Convention. Bearing in mind that national legislation considers immigration and asylum policies as strictly related to the maintenance of "internal security" and "public order", operational tasks carried out by national police forces and administrative authorities are *de facto* barred from the control of the European Court of Justice.

3. The Eastern Borders of Europe

Official documents of the Union declare that the enlargement poses new challenges for the protection of its external frontiers given the fact that future member states

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[23] *Id*, p. 3.

[24] *Ibid*, at. 23.

[25] *Id*, p. 2. The Italian version of the document also utilises the term "*direttore d'orchestra*", orchestra conductor.

[26] Walker, above n. 19, p. 31.

will be largely responsible for the internal security of the Union.[27] However, the involvement of candidate countries in European policies on immigration control dates back to the beginning of the 1990s. The two main instruments through which present member states have unloaded part of their responsibility towards hosting migrants and asylum seekers are the "safe country principle" and "readmission agreements."

The "safe country principle" was introduced in the German Federal Constitution in 1993 with the aim of regulating the arrival of protection seekers from Poland and the Czech Republic. Asylum seekers entering Germany from a "safe country" would now be subject to denied entry or, if stopped and identified on German territory, to removal. Shortly afterwards, the "safe country principle" was adopted by the other European member states, and all countries bordering the Union were designated as "safe". This policy had the effect of transforming countries bordering the EU into "buffer zones" for asylum seekers and transit migration. Moreover, in order to maintain their good relationship with the EU, neighbouring countries were responsible for preventing transit migration from moving further west. The tightening of European migration and asylum policies has spread with a "domino effect" to Central and Eastern European Countries who, in turn, have modified their domestic legislation to declare neighbouring countries to be "safe" and have signed readmission agreements with migrants' countries of origin and transit states. Over the past decade some Central and Eastern European countries have amended their legislative framework on more than one occasion, and each time in an increasingly restrictive way. For example, according to art. 14 of the *Act on granting protection to aliens within the territory of the republic of Poland* of 13th June 2003, an alien arriving from "a safe country of origin or a safe third country" is refused refugee status as this is now regarded "[a] reason of manifestly unfounded nature of the application." In the previous *Polish Aliens Law* of 1997 the arrival from a safe country and the lodging of a "manifestly unfounded" application had to be both taken into consideration in order to refuse the refugee status.

Readmission agreements are the instruments which enable the actual removal of aliens from a state's territory and are therefore essential to the functioning of the "safe countries" policy as well as guaranteeing the return of illegal migrants. Once again, Germany acted as pioneer signing with Poland in 1993 the *Governmental Agreement on Co-Operation in matters Referring to Migration Movements*.[28] This agreement was a bilateral modification of a general document signed in 1991 between Poland and the Schengen States which had done little to limit migration, especially towards Germany. Since then most other European member states have concluded similar agreements with migrants' countries of origin and transit, and as

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[27] Doc. 1009/02 FRONT 58 COMIX 398, 14th June 2002.

[28] Gregor Noll, "The Central Link: Germany Poland and the Czech Republic", in Byrne *et al. op. cit.* n. 14. p. 43.