

**„BABEȘ-BOLYAI” UNIVERSITY CLUJ-NAPOCA**

**FACULTY OF HISTORY AND PHILOSOPHY  
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STUDIES**

**ABSTRACT**

**PHD THESIS**

**European Union. Crossborder cooperation and the Schengen Acquis.  
Case study: Romania**

Scientific adviser: prof. univ. dr. ADRIAN IVAN

Candidate. IOAN BOGDAN

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**Key words:** integration, Security, Schengen, police, justice, cooperation, cross-border

Within the conditions under the integration of the Schengen Space has acquired substantial mutations, with consequences upon the core idea of participation and the full inclusion within a security framework rights, it has been constituted on basic principles of the EU, the doctoral research proposes an analysis of the announced topic for a critical evaluation of the aspects that influence the management of the EU, cross-border and national specialised structures in criminal law, under the conditions of the Schengen Agreement and the realities of the criminal activities, as a direct threat toward the European security.

Cross-border criminality is an indirect consequence of applying the fundamental principle of freedom to travel for persons within the EU and imposes specific measures of prevention and management of cross-border risks and threats to the European security

With this research, we intend to emphasize the particularities of the specific management in the field of Justice and Home Affairs, especially on cross-border cooperation in criminal matters as they were set within the Schengen Agreement. By management we understand the adaptation of the legal instruments and institutional mechanisms of the obligations taken by Romania in the perspective of the adherence to the Schengen Area, the harmonization and implementation of community regulations and procedures, cooperation and communication with the European partners, the evaluation of the results and intervention for increasing the efficiency of Romania's participation to the internal security of the Union.

Within the research, we propose an interdisciplinary approach, from the perspectives of international relations, security studies and community law, in order to transcend the dichotomy between supranationalism and intergovernmentalism, by emphasizing the necessity for a functionalist approach of cross-border cooperation in criminal matters and its the integration within a governance system of the EU.

Through the approach of the conceptual framework there is a need to clarify the use of different meanings of the specific terms that are applied within the management of the obligations taken within the Schengen system, that are related to interdisciplinary perspectives of approaching this research subject within a context of continuous need for adaptation the realities. We have to deal with an ongoing process, with modifications that substantially derive from one institution to another. The key element in this incursion on some elements that derive from the implementation mechanisms at the European level of

certain principles is strongly related to the idea of time and space. The need for enlargement in such a short timeframe and the implementation of certain principles confers to this mechanism a maximum level of structural and institutional approach, at administrative level of some segments; it requires a strong and necessary activity from the institutions in charged with the implementation of the laws.

From the perspective of the contextual dimension, it is noticeable the main risks, threats and vulnerabilities of the European security from the viewpoint of cross-border criminality. The permanent need of adaptation of all factors involved to the new technologies used by different organized crime groups and the implementation of some security concepts adapted to the actual realities constitutes arguments for the necessity of a construction based on the use of advanced technologies which implies additional costs.

Another dimension of analytical approach is related to the legal aspect; especially it must be taken into consideration the limits of interpretation and application of law in this field within the ongoing developing institutional context. The interference of some judicial institutions on the norms related to economics, political and social, constitutes premises for variables imposed by the analytical context. The deepening of certain expressions that implies juridical aspects analytically transforms the aspects in spheres of incursion within the institutional transformation of the process. The empirical dimension is emphasized by the content of the proposed analysis and the case study that aims to include practical realities of the mechanisms imposed at a theoretical level.

## Methodological aspects

The method of analysis that is reflected in the thesis is based on the review of specialized literature and legislation and the analysis of a large amount of sources, especially the legal documents that constitutes the Community acquis, working documents of the institutions, bodies and specialized agencies of the EU. Also, within the research process there have been consulted materials related to the history of European integration, political science, international relations, law, having in mind the complexity of judicial cooperation in criminal matters and its interdisciplinary character of the topic analyzed in the thesis.

Within the analysis we have used a large number of specialized articles and studies and there was scrutinized the viewpoints of the persons involved in the process of integration within the Schengen area, as well as interviews and public statements of those persons. Also,

we have used the on-line archive of the EU and the on-line sources and databases related to our topic.

The evaluation of the vulnerabilities, risks and threats related to the cross-border organized crime at the Eastern border of the Schengen Space constitutes a key element which determines the evolutions of the process. The fact that Romania becomes one of the states with the longest external frontier, transforms the process according to multiple variables. Institutionally speaking, the continuity of the process is connected to the effective possibilities of implementing the obligations.

Related to the human resource it is necessary to be identified the elements of management efficiency within the specialized structures, from the perspective of the conditions imposed by the lack of specialized personnel, with experience in the field and to be open to the evolution of new technologies.

### The structure of the thesis

The first chapter is dedicated to an analysis related to the methodological issues and theoretical framework, following to put into practice the conceptualization of the terms. Especially it is discussed the concept of the European security space, European judiciary space in the context of cooperation on criminal matters and cross-border police cooperation, from the perspective of cross-border investigation approached through two aspects, respectively the “ordinary” and the “emergency”. From the analysis we are not proceed without analyzing of the organized crime from the perspective of information criminality and illegal immigration as well as other components that are related to it.

The distinction between the different levels of analysis was imposed as a delimitating mechanism of competences and responsibilities of each actor, emphasizing the idea of a subsidiarity in the general framework of police and judiciary cooperation at the Community level. Therefore, the community level is realized through the institution and application of certain norms imposed by the supranational institutions, available for all member states of the Union. Once with the adhesion of a state to the EU, through the accession treaty it is obliged to adopt the entire Community acquis, including the Justice and Home Affairs provisions, a chapter that became one of the main pillars of the Union.

Through the existence of a Central head court in Strasbourg it was possible to realize a common effort for all member states in such way that nowadays it has been imposed a set of common measures and rules needed to be followed by all member states.

From this perspective, the system has become a tool for managing data, human and material resources needed for the prevention and combating criminal activities. The management of a data complex for all member states in a unitary way transforms the process into a fundamental one in the perspective of conducting operations at European level, which is vulnerable to actions that might destabilize its security from organized criminal groups from inside and outside of the Union.

The regional level is based on the creation of certain structures realized taking into consideration the security needs among the states that identify a set of risks, threats and vulnerabilities generated by the geographical positioning, the ethnic structure or certain local rivalries, and their expression does not impose an intervention at central level. The regional level can contain also international arrangements between two or more states outside of the EU, the most representative case is constituted by the South Eastern Cooperation Initiative which is a transnational organization, with the head court in Bucharest and aims to cooperate in combating criminal activities. Within the SECI there are eight working groups on: drug trafficking, human trafficking, financial in informational fraud, stolen vehicles, smuggling, containers security, criminality related to nature and environment.

The national level is instituted from the viewpoint of systemic construction regarding the Schengen Information System, through internal structures that operates in the member states of the EU. The national system of signals will manage the signals originated by the Romanian state. This system will contain all Schengen type national signals as well as other relevant cases.

The local level reflects the attribute of the law enforcement institutions which is applied according to their attributes resulting from the entire process of SIS functioning.

Distinct subchapters are elaborated through the analytical approach of the significance of fundamental concepts in order to facilitate a better understanding of the dynamics within the European security space, especially on police and criminal judicial cooperation. Accordingly, there were elaborated conceptual clarifications and the use of certain terms used in the thesis (European security space, Schengen Space, European judicial space, judicial cooperation in criminal matters, cross-border police cooperation, European Arrest Warrant). A fundamental feature of these concepts resides on the fact that are under a

continuous transformation, in the sense of permanent adaptation to the security dynamics in the community space. We can talk about a spill-over effect that influence the deepening of the police and judicial cooperation, having in mind the positive experiences accumulated so far and also having in mind the future challenges.

The second chapter entitled “The Dynamic of cooperation in criminal matters in the European space” is addressed to an analysis that aims to emphasize the constrains and opportunities related to criminal matters and judicial cooperation in the European construction, having as a subject the application of the European Arrest Warrant in a supranational context with implications at national level.

For the relevance of the argumentation, we have addressed to the legal, institutional and procedural framework that implies the participation of Romania within the application of the European Arrest Warrant, analyzing different stages. Therefore, the way to realize the diffusion of the EAW through the Schengen and Interopl channels. In the case that the location of the requested person is not certain, the emitter judicial authority is realizing the transmission of the arrest mandate through the Center of International Police Cooperation of the General Inspectorate of the Romanian Police, which proceeds to the dissemination of the mandate through the channels of SIS and Interpol.

Regarding the execution of a European arrest warrant by the Romanian authorities there is an implication of two variables. Firstly, there is an external nature that influences the Romanian state to assume its obligations as a member of the EU, through the necessity on implementing the entire Community acquis, including the provisions of Justice and Home Affairs. ON the other side, we can observe that the application of EAW imposes an internal dimension from the perspective of the personnel involved in applying justice, through court decisions, arrest or condemnation of the persons that were took advantage in the past, of the legislative lacks and the avoidance of execution of the justice act, mainly because of the lack of procedures of data transmission.

Through the application of the procedures of the European Arrest Warrant the administrative phase is eliminated and the cooperation related to the arrest of the persons that avoid justice and the execution of the sentences is realized almost exclusively between the judiciary authorities of the member states of the Union. Therefore, the Decision of the Council from 13 of June 2002 regarding the European Arrest Warrant and the procedures of extradition between the member states represents one of the prompt and categorical reactions toward the amplitude of criminal phenomenon.



The third chapter represents a detailed analysis of the role of Romania in the internal security dynamics of the European Union from the perspective as a future member of the Schengen area, starting from the acknowledgement of Romania's importance in the geography of the European security. The prioritization of some issues such as terrorism and the devastating consequences constantly pressure the decisional factors in charged with national security. In order to provide efficiency for these objectives, at a structural level an essential component is the National Intelligence Community, created in 2005.

The issue of Romania's accession to the Schengen space has known in the spring of 2013 numerous variables determined by the European geopolitical context. Romania has fulfilled all the adhesion criteria, according to the *acquis* in the field. This fact was recognized by all member states and it was stipulated in the conclusions of the JHA Council from 9 June 2011.

## **CONCLUSIONS**

The present challenges of the European security environment and the consolidation of the Schengen area impose to Romania and its specialized institutions on judicial and police cooperation the adaptation to the values, norms and specific procedures for the management of terrorist phenomenon and the transnational organized crime. The assuming by Romania of this effort emphasizes a political engagement imposed by the quality of the member of the EU, as well a technical engagement that results from the geographical positioning of Romania at the Eastern border of the EU. This last aspect reveal the strategic importance of Romania and imposes the undertaking of major responsibilities in this flank of Europe.

The finality of the Romania's accession to the Schengen Area remains a matter of time, but the main challenges rely on the way in which the specialized structures will manage to contribute to strengthen the European security. In this perspective, there might be identified a series of vulnerabilities of the system, caused especially by the capacity of human resource to effectively manage certain specific procedures and operations to combat terrorism and organized crime. In the same time, we should not ignore the opportunities of Romania in order to become one of the main contributors to the security of the Union and its citizens.

IN a review of the recent literature that presents relevance in relation with the Schengen acquis, we can observe that in the field of security, this is not exclusively approached in terms of nation-state, but in a much broader sense from the perspective of a large organization as EU. In the same time, if we relate to the entities that contribute to its vulnerability such as the non-state organizations from the European periphery that might contradict with the concepts promoted at European level. This aspect determines a rapid re-orientation of the security agencies from the European space toward new approaches and new perspectives in different contexts. The extremist organizations that promote intolerance in relation with the fundamental human rights and terrorist activities, but also the use of new technologies in cyber attacks constitute also variables for analysis.

Therefore, the political leaders of Europe have brought into their speech on security the needs connected with the idea of citizens, that raises the issue of increasing security within a common space of freedom, action and justice. The European strategies elaborated in the first decade of the 21<sup>st</sup> Century are based on a set of Eurobarometers that underline an increasing support of the citizens for a common policy in security and defense issues. Within this evolution, we can observe that since the moment of institutionalizing the Foreign and Security Policy of the EU at Maastricht, this policy has witnessed different forms of expression according to the characteristics of certain European actors. The conciliatory policies and sometimes the intolerance attitudes have represented a constant in the position of the member states.

Romania, through its forms of manifestation and the geopolitical context where it expresses its own interests, remains a constant preoccupation in security matters for its European partners. As a gate of entering in the EU space, Romania is in the center of attention through strategic and tactical perspectives. Border of the EU, Romania represents a challenge for all actors. In this perspective, the reticence of certain member states which confronts with their own internal security concerns, but also ongoing political constraints. The issue of illegal immigration, as well as the threats related to the organized crime, is evoked by political actors – scrutinized by their own citizens – that witness certain consequences such as the issue of the Roma population. But the challenges do not stop at this level. The problems of the East have become internal problems. The economic crisis generates also security concerns which can make the Union more vulnerable.

The project of European integration is associated to different sectors and policies of supranational governance agreed by the member states. While the main characteristic of

integration is related to economy, the law has become a framework of regulation that limits the competences between the Union and the member states. We can say that beyond the positive things shared by the member states of the EU, the international and cross-border organized crime networks represents one of the main threats to internal security. Cross-border organized criminality has the advantage that is not conducting its activities under the constraints of the law. They act asymmetrical and illegally. Therefore it presents a great flexibility and a larger spectrum of options while the specialized structures in law enforcement are constrained to act in the limits of law and specific regulations. Accordingly, there is a continuous development of instruments and mechanisms that allow to the states the cooperation in order to counterbalance the criminal organizations and the effects of criminal activities.

The geographical characteristics of Europe, in which the states are rather small and medium size (some of them are micro-states), the social and cultural diversity and the communication networks constitutes factors that contributed to the spread of criminal activities on the continent. Since the beginning of the consolidation of the state system in Europe, at the end of the 19<sup>th</sup> Century, there have been concerns and initiatives that emphasized the need for cooperation among the institutions of law enforcement.

A brief evaluation from the historical perspective of cooperation in criminal matters emphasizes the fact that the initiatives in this field had a strong intergovernmental dimension. The activities in this domain were based, in many situations, on the mutual perception of the existence of transnational threats, which determined the necessity for an international coordination in order to implement specific measures for combating the criminal activities.

The main objective of the Schengen Agreement was to develop policies that were applied to the external borders of the Community and then contributed to the gradual abolition of the internal frontiers, while later the entire Schengen acquis was inserted in the Amsterdam Treaty, entered into force at 1<sup>st</sup> of May 1999.

Within the European Union, the initial experience shows a modest beginning in judicial cooperation that implied activities of facilitating extradition procedures between the member states, as well as cooperation in law enforcement, especially on drug trafficking. The Schengen system has introduced the liaison officers between the states with the purpose of coordinating information exchange on illegal immigration, organized crime, drug trafficking and terrorism. An important contribution has been the introduction of specific provisions on the surveillance and pursuit of the suspects on the territory of other states.

The Schengen system has brought into discussion a new approach in relation with the decision making and implementation within a new framework of responsibilities and competences. Related to this issue, within the European space there has been a series of debates that promoted new interpretations about the security governance.

The main problem resides in the definition of the levels of authority, within a context where the Schengen project aimed to secure the European external borders and to ensure the internal security of the Union. Therefore, the political dimension was surpassed by the need to respond to the transnational security challenges. As long as the participants (mainly the states) accepted the idea that they share the same challenges, in order to face the vulnerabilities must accept the idea of cooperation. On the other side, the EU and the Schengen Space are the suggestive expression of modernity by bringing into discussion of relative interests in relation with the permanent need of redefinition of security issues.

On the other side, it might be identified a constructivist perspective in relation with the security needs of each member state of the Union. In this context there is necessary to realize activities to identify the real challenges related to the phenomenon of transnational criminality by the introduction of certain mechanisms in statistics that might underline the specific activities in each state. As a result of such correct emphasizing of criminal transnational phenomenon at state level, there might be realized a differentiation related to the competences of the law enforcement institutions which should make distinction between the criminal activities and the allocate the necessary resources for complex operations at transnational level. The institutional cooperation involves the allocation of human resources, well trained, in order to have the capacity of synthesis and analysis of criminal phenomenon at transnational level.

With regard on the police cooperation we underline the main evolutions within the content and interpretation of the third title – police and security, where there are clarifications on the limits of police and judiciary cooperation among the participating states.

It is important to have in mind the fact that beyond this extensive form of multilateral cooperation there has been implemented a series of bilateral agreements between the states and the main purpose of the Schengen Agreement was to harmonize the procedures and mechanisms for border control and their securitization. Therefore, the institutions of the participating states have been under a process of legislative reform in relation with the national procedures in order to make them compatible with the common objectives.

According to Sabine Gless, the forms and means of police and judicial cooperation within the inter-state relations in the EU, there is cooperation of all sorts, which can be grouped together by common features such as:

1. traditional cooperation, such as request for mutual assistance with regard to information or arrests;
2. cooperation relying on networking in a rather formal way, as in the European Judicial Network, or on an ad hoc basis such as the contact-point network set up to fight corruption and organised crime;
3. “co-active cooperation”, such as the establishment of joint investigation teams or joint controlled deliveries on ad-hoc basis in crisis situations;
4. trans-border cooperation, such as cross-border hot pursuit or surveillance; or cross border data sharing;
5. the establishment of shared institutions such as Europol, or the establishment of shared databases such as Schengen Information System (SIS);
6. collaboration based on the principle of mutual recognition – mostly available within the European Arrest Warrant, and other forms of exchanges based on bi-lateral agreements between member states that shares common borders.

The Maastricht Treaty has brought significant contributions to the development of the police cooperation by adding the third pillar “Cooperation in Justice and Home Affairs”. Title VI of the Maastricht Treaty extends the field of application of cross-border policies. Previous to that, a constant concern of the member states was addressed to the information exchange in police cooperation as well as judiciary cooperation. The central concern emphasized in the Title VI of the treaty is the internal security of the European Union. The campaign of abolition of the controls at the internal frontiers within the Union has been followed by the consideration of common policies regarding the third nationals, asylum policies, visas and illegal immigration, needed for the creation of an external frontier for the European Union. The governments have acknowledged their obligation to cooperate in order to respond to the threats generated in such context. The European states have noticed that through the loss of capacities to effectively control the internal frontiers, the potential of transnational organized crime has increased, especially terrorism, drug trafficking, money laundering or crimes related to the public order such as hooliganism and violent manifestations.

Even nowadays, the Lisbon Treaty did not offered a clear definition to police and judicial cooperation, outlining roughly a description of police cooperation: “The Union Shall establish police cooperation involving all Member States competent authorities, including police, customs and other specialized law enforcement services in relation with prevention, detection and investigation of criminal offences”. Moreover, according to the Article 89, the decision-making process has a strong intergovernmental dimension, the unanimity being required in the elaboration of the conditions and limitations under which competent authorities of the member states may operate in the territory of another state.

Judicial cooperation has as a purpose the mutual recognition of judicial decisions, legislative harmonization and the development of specific mechanisms of operational cooperation such as Eurojust and European Judicial Network. The main activities in this domain were aimed to implement the European Arrest Warrant, decisions regarding the financial penalties and execution of imprisonment decisions.

Within this approach, the member states went toward the adoption of common definition of criminal actions, especially those related to transnational crime and indirectly started to harmonize procedures of implementing judicial decisions. Mutual recognition of judicial decisions means that a particular decision adopted in one of the member state shall be recognized and implemented in all other member states, as a national decision.

Treaty of Amsterdam introduced modifications that substantially affected national sovereignty and the principle of territoriality, allowing Europol to conduct operations and harmonization of legislation related to transnational criminal activities. The Amsterdam reforms left criminal matters in the third pillar. The amended Title VI included combating crime, terrorism, trafficking of persons and offences against children, illicit drugs and arms trafficking, corruption and fraud. The Treaty envisaged closer cooperation between police forces, customs and judicial authorities, and with Europol seeking approximation of the criminal justice systems of the member states as necessary.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union adopted on 29th of May 2000 open a new perspective on cross-border judicial and police cooperation within the EU. This convention provided a bundle of modern investigation methods to fight cross-border criminality such as: hearing by video conference; hearing by telephone conference; controlled deliveries; Joint Investigation Teams; covert investigations and interception of telecommunications.

Within the management of EU Home Affairs, an important role is played by the specialised agencies that deals with all aspects related to the internal security of the Union: Europol, Eurojust, Frontex and CEPOL. The mandates and tasks conferred to these EU agencies, however, are constrained; agencies are intended to be primarily ‘technocratic actors’ – they have no executive powers and are mandated largely to support, facilitate or coordinate the actions of member states, with whom they share legal competence over policy areas of law enforcement, judicial cooperation and external border control.

In terms of cross-border police and judicial cooperation, each agency has particular responsibilities, according to their status and specific mandate. A comprehensive approach of the internal security governance imply a closer cooperation among these agencies and requires the implementation of a information sharing system and mutual assistance, aimed to simplify the communication between all national and supranational actors responsible involved in the EU’s internal security.

Within the Internal Security Strategy (ISS) of the EU (2010) the concept of internal security is understood as a wide and comprehensive concept which straddles multiple sectors in order to address these major threats and others which have a direct impact on the lives, safety and well-being of citizens. In this perspective the main crime-related risks and threats are: terrorism, serious and organized crime, drug trafficking, cyber-crime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime.

The recent debates upon different dimensions of European security (both internal and external) emphasize a governance oriented approach that engages different types of actors that interact at different levels. According to the ISS, Internal security must be seen as encompassing a wide range of measures with both horizontal and vertical dimensions:

- *horizontal dimension*: to reach an adequate level of internal security in a complex global environment requires the involvement of law-enforcement and border-management authorities, with the support of judicial cooperation, civil protection agencies and also of the political, economic, financial, social and private sectors, including non-governmental organizations;
- *vertical dimension* of security at various levels: international cooperation, EU-level security policies and initiatives, regional cooperation between Member States and Member States’ own national, regional and local policies.

The previous experiences of cooperation demonstrates the opportunity of effective management on combating the cross-border criminal activities but also identifies the future challenges on judicial cooperation that requires a coherent approach.

Also, it is important to have in mind the fact that the bilateral agreements have not lost their important role in the management of cross-border cooperation. Traditionally, these forms were applied according to the norms of international law and within Interpol, especially in judicial cooperation.

An important question is addressed to the issue if the bilateral cooperation is better than the multilateral cooperation developed by the European Union, having in mind that the informal and bilateral level has prevailed in comparison with the European level, because the fundamental elements needed for cooperation rely on trust and communication, as a counterbalance to bureaucratization and institutionalization. But in this context we should have in mind the personal relations in comparison with the institutional aspects. The human resources involved in the process presents limits of implications in operative activities so the large number of operations and the diversity of the cross-border criminal activities imply complex analysis that takes time to be shared through the information channels.

In practice, there are many cases that underline the efficiency of the informal cooperation. In most of the cases they are based on the lack of time for the operative activities and the accomplishment of all formal activities and procedures restrain on the emergency of the operative situation. Therefore we can conclude that both options (formal and informal) imply advantages and disadvantages, but when they are realized on a large European scale, the institutional bureaucratic cooperation presents superior advantages in relation with the informal dimension, mostly with simple solutions and positive implications at bilateral level.



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