

Kin Minority, Kin-state and Neighbourhood Policy in the Enlarged Europe

Judit Tóth

I. Growing Rate or Figures?

Minority issues are of a dual nature: they are partly political and partly legal. Due to an absence of a regulatory mandate for EU institutions in this field, the protection of minorities is an *internal matter for member states*. Instead of common legislation at the EU level, minority issues only have been mentioned in various political documents adopted by the European Parliament, for example, the resolutions on how to protect and provide for the teaching and use of regional and minority languages in public education or public services.¹ On the other hand, *respect for human rights and their protection is part of the legal principle of Community law in general*. Special guarantees for minority rights, though, are primarily found outside of the EU, such as in the Council of Europe. While the number of EU references to the European Charter for Regional or Minority Languages (1992) or the Framework Convention for the Protection of National Minorities (1995) is growing, member states are not necessarily party to these regional conventions.² However, this *language protection* policy, including budgetary contributions to

¹ European Parliament Resolutions on the Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities (OJ 1981 C287/106), on Measures in favour of minority languages and cultures (OJ 1983 C68/103), on the Languages and Cultures of Regional and Ethnic Minorities in the European Community (OJ 1987 C318/160), and on Linguistic Minorities in the European Community (OJ 1994 C61)

² 12 Member States of the EU have ratified the Convention on languages and 19 Member States of the EU have ratified the Framework Convention <www.conventions.coe.int/Treaties/>, accessed 30 November 2004.

numerous programmes,³ can bypass the inconvenient recognition of the existence of an ‘ethnic or national minority’.

Another possibility for the protection of minority rights in the EU can be found in its *cultural profile*, which was reinforced by the Maastricht Treaty. Article 151 of the consolidated version of the Treaty Establishing the European Community emphasises the protection of regional and national diversity, including the protection of minority cultures.⁴ After much debate, no separate minority article was inserted into the EU Charter of Fundamental Rights (2000). Finally, the principles of the Constitutional Treaty for Europe (2004) include a simple reference on minorities in its first part. The *protection of cultural, religious and linguistic diversity* in the EU is not a binding, legally enforceable obligation as referred to in Article 22 of the Charter of Fundamental Rights.

Indirectly, the minority rights present in the Amsterdam Treaty can only be found in the form of *combating discrimination* on, inter alia, the grounds of racial or ethnic origin, religion, or belief (Article 13). Today, this is the highest-level reference in the EU *acquis* that can be applied indirectly to the protection of minorities. The European Court of Justice (ECJ) in the *Bickel-Franz* case⁵ affirmed that the protection of such a minority could be a legitimate, just objective of the state.⁶ The Court is inclined to accept the legitimacy of the protection of minorities also in the interpretation of the prohibition on discrimination. Moreover, the protection of minorities is *indirectly* served through improvements in social cohesion and social integration that may prevent the exclusion, discrimination, and racism in a wider meaning against traditional or new minorities. Nonetheless, these developments are a long way from the point

³ Balázs Vizi, ‘The European Union and the Rights of Ethnic Minorities: A Short Introduction to a Yet Immature Relationship’, *Minorities Research* 2:4 (2002), pp. 145–159.

⁴ Estébanez Martín, ‘The protection of national or ethnic, religious and linguistic minorities’ in N.A. Neuwahl and A. Rosas (eds.), *The European Union and Human Rights* (The Hague, 1995), pp. 133–163.

⁵ Case 274/96, *Bickel and Franz* [1998] ECR I–7637 (judgement of 24 November 1998) concerning the question whether the right to use the German language in official procedures applied to protect the local German minority as a right of EU nationals.

⁶ Alston Philip, *Human Rights and the EU* (Oxford, 1999).

where the protection of minorities can be considered as one of the principles of the *acquis*.⁷

Since the mid-1980s, the Council and the Commission have been making use of the EU's *foreign trade policies for the protection of human rights* with reference also to minority issues in OSCE documents—if the other party is also an OSCE Member State. The protection of human rights appeared in a contractual form as a clause in the document or within the framework of European political co-operation. For instance, the recognition of statehood was made conditional upon guarantees for the rights of ethnic and national groups and minorities in accordance with OSCE documents.⁸ Similarly, the partnership co-operation agreements signed with Central and East European countries contain a clause on respect for and protection of minorities. The Pact for Stability and Security in Europe (PSSE), proposed by the French Prime Minister Balladur, gave new impetus to minority issues in external relations. The partly naïve idea of PSSE, which aimed at the settlement of disputed questions in Central and Eastern Europe, originated from the assumption that the economic power and political pressure of the EU and the promise of future membership would motivate the countries of the region to solve minority problems in a spirit of good neighbourliness and in favour of the protection of minorities. Although numerous bilateral agreements were concluded on good neighbourly relations and minority protection and dozens of round table negotiations were held, the whole PSSE process did not yield the expected results due to the absence of any concrete preliminary assistance, control mechanisms, sanctions, or accession deadline.⁹

Today, minority rights are most obviously present in the *enlargement policy* of the EU. The protection of minority rights was established as one of the accession criteria at the Copenhagen summit in 1993. It is labelled as a political criterion and also a political precondition for the start of accession talks, although together with other political criteria it is not part of the subject-matter of the enlargement negotiations conducted with EU candidate countries. For this reason, the EU intends to judge minority

⁷ Judit Tóth, *The Application of Justice and Home Affairs and the Position of Minorities: The Case of Hungary*, (CEPS Policy Brief no. 18; Brussels, 2002).

⁸ *Bulletin of the European Communities*, 24:12 (1991), p. 119.

⁹ Péter Kovács, *Nemzetközi jog és kisebbségvédelem* (Budapest, 1996).

protection in a less strict way; for example, focusing on such questions as: how satisfied are minorities with their conditions in the given candidate state; to what extent do they endanger the political stability of the country; and to what extent is public opinion in the country divided on minority issues? The criticism in the Commission's annual reports on the progress candidate countries have made towards accession covers various aspects of the issue, mainly discrimination, social exclusion, minority language rights, and general attitudes towards minorities, in particular to the Roma. Nevertheless, the question arises: on what grounds can the EU evaluate the extent to which and when the policies of candidate states comply with the Copenhagen criteria in the absence of rules, mechanisms, and uniform practices of minority protection in the EU *acquis*?¹⁰ 'Presumably, it is not far from the truth that the political criterion of the protection of minorities is a "floating" condition of enlargement'.¹¹ This *inconsistent approach* to minority rights in the accession process may endanger the credibility of EU external policy or may raise the question of double standards in the EU. While the assessment of the political criterion concerning minority protection can refer only to non-EU documents, such as minority rights' conventions made under the auspices of the Council of Europe or the OSCE, EU member states are not necessarily state parties. Is this likely to change after EU enlargement to the East?

On the other hand, the living conditions of minorities that affect their rights (access to justice, public education, the labour market, vocational training, etc.) have appeared on numerous occasions during accession negotiations. In this context, minority issues are part of the political bargaining between the EU and the government of the candidate state. The *indirect involvement of minority issues in accession talks* truly has a double meaning: no objective assessment of minority rights exists and minorities' living conditions are discussed without the participation of representatives of minorities.

The rate and absolute number of ethnic and national minorities in the new member and candidate states is significant. The eastward enlargement

¹⁰ For this reason, the International Conference 'L'Unité et la diversité de l'Europe: les droits des minorités' held at the Palais d'Egmont Brussels, 28 October 2002 offered—*inter alia*—to create a legal basis for the evaluation and the establishment of a catalogue of minority rights at the EU level. These recommendations were forwarded to the European Convention on the Future of the EU.

¹¹ Vizi, *op.cit.*, p. 158.

means 71 minority communities with 7.2 million persons in ten new member states adding to the 30 million people in 58 minority groups living in the fifteen EU members. The problems of 8.2 per cent of the total population in the enlarged EU in May 2004¹² have become an organic part of internal policy and regional affairs. Furthermore, almost all of the accession countries have kin minorities and diaspora in other candidate states and/or in several countries beyond the first round of enlargement to the East. It is unclear in the medium-term whether this factor will inspire the establishment of a consistent system of minority rights on the EU level, including requirements for retaining connections between kin-states and kin minorities. In the short-term, certain changes in the CSFP, border control, and national legislation of some EU members are rather predictable.¹³

II. Request for a More Flexible Schengen Regime

EU enlargement creates a new external border in the eastern part of the continent. This new border stretches from the north, beginning with the twin town of Narva-Ivangorod on the Estonian-Russian border, through areas of Western Belarus bordering Latvia, Lithuania and Poland to the Ukrainian borders with Poland, Slovakia, Hungary and all the way south along the Romanian border with Moldova and Ukraine. There will also be the Russian enclave of Kaliningrad, surrounded by Poland and Lithuania. Other new external EU borders are drawn between Hungary and Slovenia on the one hand and Yugoslavia and Croatia on the other. The borderline goes through areas *inhibited by people of similar cultural and historical backgrounds, who are, in a way, socially and ethnically related*. The EU border also divides communities which used to live in one country in Soviet times and have preserved social ties. A characteristic of the areas on both sides of the new EU eastern border is its *peripheral nature* (rural communities, undersubsidised with higher unemployment, lacking large industrial centres with some exceptions). This peripheral character strongly contributes to the ad hoc development of *cross-border contacts*

¹² István Kreczinger, *Nemzeti kisebbségek jogi helyzete Európában* (Budapest, 2004).

¹³ Judit Tóth, 'Connections of Kin minorities to the Kin-state in the Extended Schengen Zone', *European Journal of Migration and Law* 5 (2003), pp. 201–227.

and mutual attraction, particularly in business terms, while the tool of cross-border co-operation can influence internationally inspired good neighbourly relations. It means that role of the cross-border co-operation in the eastern regions differs from the deepening integration and cohesion of the EU member states of the past.¹⁴

For both practical and symbolic reasons, the *management of this external border* has a profound impact on relations between the EU and the non-EU parts of Europe. It is very important for the EU to take all possible measures to facilitate the crossing of its borders by the citizens of states neighbouring the EU. The construction of a new wall at the eastern-most extremes of the EU is an anachronism in post-cold war era. The stability of the countries of Eastern and Southeastern Europe that are outside the EU will be one of the crucial challenges for the enlarged European Union as a whole.

An influential view from within the Council of Ministers is that Schengen border controls and visas will not create significant difficulties for those outside the EU in terms of trade, exchanges, and maintaining relationships. The contrary view expressed by academics and certain politicians is that in both psychological and practical terms, the *procedures for crossing the external border are highly significant obstacles and that measures should, where necessary, be taken to counteract* these. In 2001 the CEPS-Batory Foundation Paper¹⁵ highlighted the following points of potential friction not only for minorities but for the whole region:

- a) The enlargement of the European Union will move the present external Schengen border to the East in a manner which will be more *restrictive for the movement of persons* in Central and Eastern Europe than has been the case for the whole decade since the collapse of the

¹⁴ Rafał Sadowski, 'Cross-border Co-operation at the new Eastern Border of the European Union', *CES Studies* 14 (2004).

¹⁵ Joanna Apap (ed.), *Reshaping of Europe's Borders: Challenges for EU Internal and External Policy: Report and Policy Recommendations from the Conference on New European Borders and Security Cooperation: Promoting Trust in an Enlarged European Union, organised by the Centre for European Policy Studies (CEPS), the SITRA Foundation and the Stefan Batory Foundation, CEPS, Brussels, 6-7 July 2001* (Brussels, 2001).

communist regimes, a period which saw the arrival of a new era of freedom of movement of persons.

- b) There are several highly *sensitive border regions*, which could be adversely affected. In fact these are found virtually all the way round the EU's future external frontier.

For example:

- *the Narva-Ivangorod border between Estonia and Russia*, where Russian communities are living directly alongside each other;
 - *the borders of Russian Kaliningrad with Lithuania and Poland*, given that Kaliningrad is due to become an enclave within the territory of the EU;
 - *the borders between Ukraine and its EU candidate neighbours (Poland, Hungary, Slovakia, and Romania) as well as between Belarus and Poland*, which currently have very large movements across them for purposes of trade and personal connections;
 - *the borders of Southeastern Europe*, where there is an outer ring of visa-free states (Croatia, Slovenia, Hungary, Romania [soon], Bulgaria and Greece), which surround an inner core subject to visa requirements (Bosnia, Macedonia, FRY and Albania);
 - *the border between Moldova and Romania*, with many Moldovans now acquiring dual Moldovan and Romanian citizenship because of the prospect of the new Schengen frontier;
 - *the Aegean islands of Greece which are very close to the Turkish coast*, where tourist movements, unfortunately, are now being very hampered at a time of improving Greek-Turkish relations.
- c) The priority of the EU is to ensure that the new member states will be *able to implement the existing Schengen rules, with new visa requirements* being the main instrument. The priority of the applicant states is to clear the way for accession to the EU as soon as possible. Neither side, therefore, has yet given sufficient attention to the need to make the new external Schengen frontiers of the EU as friendly as possible for the new borderland neighbours. The EU has not yet developed a positive, pro-active approach to minimising these problems.

d) Many ways exist which could alleviate undesired restrictive effects of the Schengen regime on the movement of honest citizens in and out of the EU, without prejudice to the security objectives of the EU.

Examples include:

- *provision of adequate consular services* for people living in frontier regions as well as capital cities, including necessary expansion of facilities in border cities and co-operative arrangements between EU member states where not all have consulates, or creation of a new category of EU-consulates so as to facilitate the issue of the standard 3-month Schengen visa;
- *upgrading of border facilities* to provide for rapid passage of large numbers without the long queues that are often experienced today, which are indicative of existing problems irrespective of Schengen rules;
- *special bilateral agreements for border regions*, such as long-term multi-entry national visas at low or zero charge,¹⁶ very short-term visas for one or two days¹⁷ to facilitate local family contacts, tourism, and small scale commerce, and (outside Schengen jurisdiction) permanent resident permits;¹⁸
- *customer-friendly consular and border services*, with training of personnel to eliminate the undignified interrogation styles, cut visa queues and delays, and make available application forms by post or from internet sites;
- *advanced electronic techniques to speed up frontier procedures*, including the use of ‘smart cards’ for multi-entry visas, and the possibility to renew short-term visas at the frontier with on-line consultation of Schengen Information System;

¹⁶ Estonia and Russia have agreed reciprocally to issue 4,000 long-term, multi-entry visas free of charge.

¹⁷ One day visas are understood to be available for travellers from Morocco entering the Spanish territories of Ceuta and Melilla. The same principle could be useful in other cases, including for local residents and tourists wishing to cross the Narva-Ivangorod border, and similarly people on the Turkish coast of the Aegean Sea wishing to visit nearby Greek islands.

¹⁸ Such as for the Greek community of Southern Albania, who have become also legal residents of Greece.

- *planning in neighbouring states for visa-free status*, with help from the EU to prepare action programmes for approaching the conditions under which visa requirements may be lifted;
- *development of Euro-region programmes* to boost co-operative regional development across the EU's new external frontier, with revision of segmented EU aid programmes (TACIS, INTERREG, etc.) to make them more border-region friendly;
- *reciprocal efforts by the neighbouring states*, with efforts on their part to ease or abolish visa requirements and improve consular and border services;
- *clarification of the rights of movement, residence, and employment in the EU of stateless persons*, including the substantial number of persons of Belarus, Russian and Ukrainian origin, who are permanent residents of Estonia and Latvia but have language difficulties to obtain citizenship in these states (the EU Commission has recently made general proposals in this regard);
- *sequencing in the introduction of Schengen*, taking care in managing the inevitably progressive application of the full Schengen regime (timing of elimination of old Schengen frontiers, and introduction of the new ones) so as to minimise frictions between accession candidates and with third countries;
- *possible easing of immigration policy by EU member states (or later by the EU)*, which has been the subject of a recent Communication by the European Commission.

These and other points should be subject of a *Green Paper* by the European Union, addressed to future EU border states and their neighbours for *consultation* and invitation of proposals. The process should be launched by a *Political Declaration from leaders of the European Union, in favour of a Friendly Schengen Border Policy (FSBP)*. This would constitute an invitation for all interested parties, particularly border regions on both sides of the future EU frontier, to prepare co-operative proposals. The Political Declaration would immediately give due weight to the EU's external policy priority of avoiding new dividing lines on the EU's eastern frontiers, alongside its internal priority of achieving certain security objectives. Some current requirements placed

on individuals had highly discriminatory effects and policy-makers should be aware of these.¹⁹ In the past, the staggered acceptance of new members to the Schengen system, whereby they first must satisfy the technical requirements and are then subjected to a political decision, was made on the basis of the Italian experience, but it is an opaque process which can have *negative effects within the candidate countries*. Presentation of policy is also important to produce the right impact. For example, reasonable immigration policy could damage relationships if presented in a confrontational manner to non-EU sending and transit countries.

Despite these proposals and other similar initiatives,²⁰ the flexible border regime has not been formed and implemented. The Dutch Presidency intends to advance work on frontier issues,²¹ so it proposed *regulations for local border traffic* at the external borders of the member states and the temporary external land borders between the member states as a gesture or a small chance for divided communities. Further on, the Presidency will also endeavour to achieve a common approach to a *more flexible application of the Schengen regime*, including negotiations on an agreement with Russia on facilitating the issuance of short-stay visas to EU and Russian citizens and in new member states the unilaterally recognition of the uniform visa, long-term national visa, and residence permits issued by the Schengen States as equivalent to their national visa.

The recent reports on the EU's eastern borders,²² particularly on the divided ethnic, language, or cultural communities, confirm the prior negative information. The missing demarcations or international treaties on border lines in the eastern regions can be overcome easier with support for the development and modernisation of border infrastructure and the training of border services operating at the western boundaries of Russia,

¹⁹ Barbara Bósze, 'EU Neighbourhood Policy and a new Order at the External Borders', *Regio* (2003), pp. 187–202.

²⁰ Impact of the Extension of Schengen Agreement on the National Policies and Local Communities of Nine Central East European Countries. Key Findings and Recommendations. Institute for Public Affairs, Warsaw, January 2003. It is addressed the EU institutions, international organisations, NGOs, regional policy makers and the governments in concern.

²¹ Main elements of the Dutch presidency programme on asylum, immigration, integration and frontiers. Council of the European Union, 29 June 2004, Brussels (10989/04).

²² Bartosz Cichocki, 'The Eastern External Border of the Enlarged European Union', *CES Studies* 14 (2004).

Belarus, Ukraine, and Moldova. The visa regimes hit, with varying intensity in different countries, the NIS and neighbouring non-EU citizens *working illegally* in the enlarged EU as well as people living in the border areas who engage in *trading illegal amounts of excised goods* (e.g. between Estonia, Latvia, and Russia or Slovakia and Ukraine). The illegal trade is not reduced as a result of implementing the visa obligations. The *widespread suitcase trade* at the new members' eastern borders is a symptom of the retarded development of the social and economic border contacts without reference to ethnical preferences or publicly required preferential treatment,²³ not to mention the damage it inflicts on the economies of the EU members and their border regions in particular. *How should the EU facilitate the visa regimes with a diversified approach to regional contacts that does not support illegitimate border movement and illegal immigration threat?* This difficult question is addressed at both the national and EU level. For instance, bilateral agreements were concluded with non-EU states on facilitated border crossing, non-visa entry, introduction of a quota system of migrants, and combating corruption. The EU provides financial contribution to border management through the Schengen Fund, pre-accession funds, and training programmes.²⁴ Later on a rather multi-functional initiative will need to establish a neighbourhood and cross-border co-operation policy.

III. Neighbourhood Strategy and Emerging Instruments

Cross-border co-operation is one of the key tools to minimise the negative effects of border tightening (e.g. the stricter visa and entry regime, safer

²³ There is a spread assumption that individual smuggling or unregistered employment is the sole source of income for families or even whole ethnic (segregated, discriminated) communities in border zone. As Bartos Chichoeki also indicates, the poorest strata of society cannot afford to be involved into smuggling or gangs are keeping in hands the whole business across the border. Moreover, this shadow economy effectively discourages potential investors impeding the economic development of the poorer regions.

²⁴ The EU allocates some of the funds under the Schengen Facility referred it the Accession Treaty for this purpose (Article 35). Between 1 May 2004 and the end of 2006 nearly 860 million EUR, base on 1999 prices, should be spent on projects addressing the external border. The recipients of these funds include Estonia, Latvia, Lithuania, Slovakia, Hungary, Poland and Slovenia <www.europe.eu.int/comm/enlargement/>

documents, mobile control units) and to develop partnership with neighbours. The basic assumption of the border management model is that it should include guaranties of *complete security* during the entire enlargement procedure. Although the eastern EU border requires a comprehensive approach and consideration of all related issues, including the minority protection, the EU border policy is based on *two contradictory objectives: border security and friendliness*.²⁵ The supported cross-border co-operation has been implemented mainly *at the level of local authorities and NGOs* with exception of security (developing border infrastructure, crossing points, roads across the borders), which is governed in a strong *centralised, expensive and non-transparent way*.

The EU instruments financing cross-border projects as well as the emphasis on these programmes will be subject to change. The European Commission is calling for a new framework for relations with the EU's eastern and southern neighbours in a '*Wider Europe*'.²⁶ It aims to reduce the zone of poverty and create a common area of stability and welfare through the expansion of cross-border co-operation. The differences between the support programmes addressed to the EU members and NIS countries and the lack of co-ordination between them pose a serious impediment to taking up cross-border activity. For this reason, a New Neighbourhood Instrument (NNI) will be set up using the positive experiences of the TACIS, PHARE, and INTERREG programmes, and subregional co-operations along the borderlands are also endorsed.

To develop the NNI, the priorities of co-operation served by it at the external borders were defined as follows: (a) sustainable economic and social development in the boundary areas on both sides of the border, (b) combating the threats connected with border operation (illegal migration, organised crime, smuggling), (c) border security, and (d) promoting contacts between people, which may include minority communities.²⁷ The Communication suggests that NNI should replace existing programmes

²⁵ Sadowski, op.cit., p. 8.

²⁶ Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours. Communication from the Commission to the Council and the European Parliament, COM (2003) 104 final, 11 March 2003.

²⁷ Paving the way for a New Neighbourhood Instrument. Communication from the Commission to the Council and the European Parliament, COM (2003) 393 final, 1 July 2003.

and become a common tool for all external borders by 2006, and it would combine *foreign and economic policy* together with coherent social development issues.

On the basis of detailed analysis managed by the Commission, the European *Neighbourhood Policy as a strategy* of the EU was outlined in a form of action plans covering geographical scope,²⁸ areas, and shared values of co-operation.²⁹ Although the objectives are to share the benefits of the EU's 2004 enlargement with neighbouring countries by *strengthening stability, security, and well-being* for all concerned, through the action plans with each partner, an instrument is ensured for differentiating between the participating countries, connecting among various programmes, monitoring the progress ahead, and establishing a five year framework. Instead of listing priorities, about ten target areas are indicated, such as environmental protection, justice and home affairs, trade and free markets, and people-to-people contacts. The privileged relationship with neighbours will build *on mutual commitment* to common values within the fields of (a) rule of law, (b) good governance, (c) *the respect for human rights, including minority rights*, (d) market economy and sustainable development, and (e) international law (fight against terrorism, uncontrolled proliferation of weapons, conflict resolution). The action plans contain concrete programmes, and countries of concern will be monitored by bodies established by the Partnership and Cooperation Agreements or Association Agreements, so new organs or institutions are not needed. Despite the different social, economic, and cultural background of participating states, the strategy intends to prevent a new dividing line from emerging between the enlarged EU and its neighbours by involving them in various EU activities. The Communication envisions a further epoch in the contractual links with each partner; the action plans will provide a guiding framework for other financial instruments,³⁰ and

²⁸ Russia, Ukraine, Belarus, Moldova, Armenia, Azerbaijan, Georgia, Egypt, Lebanon, Israel, Jordan, Morocco, Palestinian Authority, and Tunisia.

²⁹ European Neighbourhood Policy—Strategy paper. Communication from the Commission to the Council and the European Parliament, COM (2004) 373 final, 12 May 2004.

³⁰ The Commission includes the new European Neighbourhood Instrument as one of six financial instruments (2007–2013) that should operate in the area of external relations after 2006. Finally a preparation of a new regulation to govern the ENI to fund activities both inside and outside of the Union is proposed.

European Neighbourhood Agreements would be set up in the light of the experiences with the action plans. While the minority issues are mentioned superficially only in a reference on human rights and conflict management,³¹ the methods to increase efficient border management are detailed (to facilitate lawful movements, to issue more secure travel documents, visa procedure, readmission agreements, growing police capacity, EUROPOL and EUROJUST), reflecting a real security priority, at least in short term, under the subtitle of neighbourhood and partnership.³²

IV. Unilateral Reactions in National Legislation

The government and authority of accession (candidate) states have developed *a set of compensatory legislative and political measures* eliminating the negative (or presumably negative) effects of movements in a more regulated legal space forced by the EU.³³ Their major types are as follows:

- a) *(Visible or hidden) ignorance of border control in legal practice and execution*, including a liberal issue of residence permit, weak practice in customs and sanctions for illegal employment, overstaying, misuse

³¹ The annex of the Communication enumerates the key international conventions whether the participating states ratified them or not. The UN Convention on the Elimination of all forms of Racial Discrimination, the ILO Convention no. 111 and the CE Framework Convention for the protection of National Minorities can be found on the list. The last was ratified only by Moldova, Ukraine and Russia from the supported neighbouring states.

³² Annual Policy Strategy for 2005. Communication from the Commission to the Council and the European Parliament, COM (2004) 133 final, 25 February 2004.

³³ From the rich literature, see, for example: Barbara Bogusz, 'Regulating the Right of Establishment for Accession State Nationals: Reinforcing the "Buffer Zone" or Improving Labour Market Flexibility?', *European Law Review* 27:4 (August 2002); Judit Tóth, 'Diaspora Politics: Programs and Prospects' in Ilona Kiss and Catherine McGovern (eds.), *New Diasporas in Hungary, Russia and Ukraine: Legal Regulations and Current Politics* (Budapest, 2000), pp. 96–141; Judit Tóth, 'Pulling the Wool over Hungarians' Eyes', *Regio* (2002), pp. 129–150; Judit Tóth, 'The Consequences of Accepting EU identity: The Case of Hungary and Ethnic Minorities' in Kees Groenendijk, Elspeth Guild and Paul Minderhoud (eds.), *In Search of Europe's Borders* (Immigration and Asylum Law and Policy in Europe vol. 5; The Hague, 2003), pp. 251–272.

of travelling documents, and entry without proper financial sources. These have been based on solidarity toward members of the same community or come from the poor infrastructure of border crossing and authority practice, as well.

- b) *Lobbying for development of acquis* on common visa and visa-free list, local border traffic at EU level, and for a less limited movement of new member state citizens including minorities within the EU.
- c) *Participating in regional co-operation* for development, local authority, and civil society co-operation, in part to assist kin minorities. This is reflected in ad hoc projects out of international public law.
- d) *Concluding bilateral agreements* on friendship, visa free travel, exchange of trainees, cultural co-operation at least to benefit of kin minorities, and direct minority protection agreement with adjacent states.
- e) *Ethnical preferences in various part of domestic regulation*, basically in order to assist people-to-people contacts, cultural identity, and community building of kin minorities.
- f) *Status laws* as a separate legal tool for establishing a linkage between the kin-state and kin minority and as a novel type of legislation.
- g) *Dual citizenship* provided in a facilitated or privileged way for kin minority as a top of compensation on the base of sovereignty of kin-state.

Kin-states have developed or intended to apply almost all of these in creating a new stratum of legislation, public administration, and polity.

Conclusion

The non-discrimination legislation, including Article 13 of the EC Treaty, the directive against racial discrimination (2000), and reference on minority rights in the Constitutional Treaty for Europe (2004) together with diversity policy, neighbourhood strategy, facilitated cross-border co-operation, and their national implementation, would be considered the most relevant and promising panacea for divided communities and minority issues due to further problems raised by the enlargement and

desire of total security at the EU-level. Certain specific financial supports, such as Schengen Funds, pre-accession grants, and NNI, may be ensured by the EU budget. Moreover, birth of a flexible Schengen regime and local traffic *acquis* is uncertain, while novelties in legislation belong to national competences (such as protection of cultural identity and its assistance for kin minority) will be tolerated but not inspired by the EU institutions. All of them would be more probable than a direct minority protection regime established at an EU-level in medium term. In a positive view, the eastward enlargement may inspire the creation of a 'rather timid minority protection system' not only in favour of 8.2 per cent of the enlarged EU's population, but of third country nationals in adjacent states as well.